



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2023-12

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

Before: Pre-Trial Judge

Judge Marjorie Masselot

Registrar: Fidelma Donlon

Date: 19 June 2025

Language: English

Classification: Public

Decision on the Thaçi Defence Preliminary Motion on Jurisdiction

Specialist Prosecutor
Kimberly P. West

Specialist Counsel for Hashim Thaçi
Sophie Menegon
Luka Mišetić

Specialist Counsel for Bashkim Smakaj
Jonathan Rees
Huw Bowden

Specialist Counsel for Isni Kilaj
Iain Edwards
Joe Holmes

Specialist Counsel for Fadil Fazliu
David Young

Specialist Counsel for Hajredin Kuçi
Alexander Admiraal

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 95(2)(f) and 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 29 November 2024, the Pre-Trial Judge confirmed, in part, the indictment against Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi (collectively "Accused") for offences against the administration of justice and public order – specifically, attempted obstruction of official persons in performing official duties, violating the secrecy of proceedings and/or contempt of court ("Confirmation Decision").²

2. On 12 February 2025, the Specialist Prosecutor's Office ("SPO") appealed the Confirmation Decision,³ with leave of the Pre-Trial Judge,⁴ and on 3 April 2025, the Court of Appeals Panel rendered its decision on the SPO's appeal and remanded one matter to the Pre-Trial Judge for further consideration.⁵

3. On 14 April 2025, the Pre-Trial Judge amended the Confirmation Decision following the decision of the Court of Appeals Panel, ordered the SPO to file an

¹ KSC-BC-2023-12, F00015, President, [Decision Assigning a Pre-Trial Judge](#), 6 June 2024, public.

² KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, confidential, para. 313. A public redacted version was filed on 12 February 2025, [F00036/RED](#).

³ KSC-BC-2023-12, IA002/F00002, Specialist Prosecutor, *Prosecution Appeal against the "Decision on the Confirmation of the Indictment" (F00036)*, 12 February 2025, confidential, with Annexes 1 and 2, public. A public redacted version of the main filing was submitted on 14 February 2025, IA002/F00002/RED.

⁴ KSC-BC-2023-12, F00149, Pre-Trial Judge, [Decision on Specialist Prosecutor's Request for Leave to Appeal the "Decision on the Confirmation of the Indictment"](#), 30 January 2025, public.

⁵ KSC-BC-2023-12, IA002/F00012, Court of Appeals Panel, *Decision on the Specialist Prosecutor's Office's Appeal Against the Decision on the Confirmation of the Indictment*, 3 April 2025, confidential. A public redacted version was filed the same day, [IA002/F00012/RED](#).

amended confirmed indictment and set the date for the Defence to lodge preliminary motions.⁶

4. On 16 April 2025, the SPO filed the amended confirmed indictment (“Amended Confirmed Indictment”).⁷

5. On 8 May 2025, the Defence for Mr Thaçi (“Thaçi Defence”) filed, among others, the “Thaçi Defence Preliminary Motion on Jurisdiction” (“Motion”).⁸

6. On 23 May 2025, following an extension of the time limit,⁹ the SPO responded to the Motion (“SPO Response”).¹⁰

7. On 30 May 2025, the Thaçi Defence replied (“Reply”).¹¹

II. SUBMISSIONS

A. THAÇI DEFENCE MOTION

8. The Thaçi Defence challenges the jurisdiction of the Pre-Trial Judge to hear the present case on two grounds, namely that:

⁶ KSC-BC-2023-12, F00260, Pre-Trial Judge, [Decision Amending the “Decision on the Confirmation of the Indictment” and Setting a Date for the Submission of Preliminary Motions](#), 14 April 2025, public.

⁷ KSC-BC-2023-12, F00264, Specialist Prosecutor, [Submission of Amended Confirmed Indictment](#), 16 April 2025, public, with Annex 1, confidential (containing the confidential version of the Amended Confirmed Indictment), and [Annex 2](#), public (containing the public redacted version of the Amended Confirmed Indictment).

⁸ KSC-BC-2023-12, F00290, Thaçi Defence, *Thaçi Defence Preliminary Motion on Jurisdiction*, 8 May 2025, confidential and *ex parte*, with Annex 1 confidential and *ex parte*. Public redacted versions of both the main filing and the annex were filed on 12 May 2025, F00290/RED and F00290/RED/A01/RED.

⁹ KSC-BC-2023-12, F00306, Pre-Trial Judge, *Decision on “Prosecution Request for Extension of Time on Preliminary Motions Responses”*, 15 May 2025, public.

¹⁰ KSC-BC-2023-12, F00310, Specialist Prosecutor, *Prosecution Response to THAÇI Preliminary Motion on Jurisdiction*, 23 May 2025, confidential and *ex parte*. A public redacted version was filed on 27 May 2025, F00310/RED.

¹¹ KSC-BC-2023-12, F00318, Thaçi Defence, *Thaçi Defence Reply to SPO Response to Preliminary Motion on Jurisdiction*, 30 May 2025, confidential and *ex parte*.

- (a) the present proceedings fall within the exclusive jurisdiction of Trial Panel II – which is seized of the parallel proceedings in *The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* (“Case 06”) from which the present case originates – and were initiated without the authorisation of Trial Panel II; and
- (b) the Pre-Trial Judge was assigned in violation of the Law, having previously sat as Single Judge on the same matter, during the investigation of the offences presently alleged.¹²

9. On the first ground, the Thaçi Defence argues that: (i) the indictment in the present case concerns allegations related to and intrinsically linked to Case 06; (ii) Trial Panel II has authority over all matters concerning Case 06 and an obligation to ensure that the trial is fair and expeditious and that proceedings are conducted with full respect for the rights of the Accused; (iii) Trial Panel II cannot fulfil this obligation if a separate Panel is seized with matters concerning the conduct of its case; (iv) Trial Panel II must, therefore, have exclusive power and responsibility over all aspects of the case, including allegations of contempt and witness interference; and (v) it was therefore for Trial Panel II to oversee the investigation into the offences alleged in the present case, determine whether they warranted an indictment and separate case, and decide whether a different Panel should be seized.¹³ In this regard, the Thaçi Defence references the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and avers that they should inform the procedure before the Specialist Chambers.¹⁴

10. The Thaçi Defence adds that the present proceedings have undermined Trial Panel II’s power to guarantee a fair trial in Case 06 as: (i) the Trial Panel

¹² Motion, paras 1-6.

¹³ Motion, paras 2-4, 21-45, 55-56, 83-85.

¹⁴ Motion, paras 30-41.

was deprived of the possibility to prevent and address allegations of witness interference; (ii) any rulings to be made by Trial Panel II on the evidence given by Case 06 witnesses – which the SPO claims to be tainted – risk violating Mr Thaçi's presumption of innocence and prejudging the outcome of the present case; (iii) Mr Thaçi's ability, time and facilities to prepare his defence in Case 06 are significantly affected by the present proceedings; and (iv) Trial Panel II cannot ensure Mr Thaçi's rights as a detainee since he is now subject to a separate regime of detention in the present proceedings.¹⁵

11. On the second ground, the Thaçi Defence argues that: (i) a Single Judge can only act where no Panel is already seized of a matter and Trial Panel II was already assigned and competent to manage allegations of interference in Case 06; (ii) the President gave the Single Judge a "standing" mandate over investigative matters, a role not foreseen by the Law or the Rules, which instead envisage that any assignment shall be temporary; and (iii) the President assigned as Pre-Trial Judges in all cases the same two judges who had been seized as Single Judges, in violation of Article 33(1)(a) and (4) of the Law, which provides that a judge may not be assigned in successive roles within the same matter.¹⁶

12. For these reasons, the Thaçi Defence submits that both the Single Judge and the Pre-Trial Judge have acted *ultra vires* and that the Amended Confirmed Indictment is null and void for lack of jurisdiction and should be dismissed.¹⁷

¹⁵ Motion, paras 46-54.

¹⁶ Motion, paras 5, 57-81, 86.

¹⁷ Motion, paras 1, 6, 87-88.

B. SPO RESPONSE

13. In the SPO's submission, the Thaçi Defence Motion should be dismissed in its entirety as it abuses the Rule 97 procedure, lacks legal basis, and raises inapt and inadmissible matters.¹⁸

14. More specifically, the SPO first advances that the Motion is not a jurisdictional challenge within the meaning of Rule 97(1)(a) of the Rules, but a challenge to the competence and/or legality of the appointment of the Single Judge(s) and Pre-Trial Judge(s).¹⁹

15. Second, regarding the first ground raised by Mr Thaçi, the SPO submits that: (i) the alleged exclusive jurisdiction of Trial Panel II is contrary to the plain text of the Law and the Rules; (ii) the authority to carry out investigations and file indictments lies solely with the SPO; (iii) the Law does not provide for a different procedure for Article 15(2) offences than other crimes within the jurisdiction of the Specialist Chambers; (iv) the Thaçi Defence disregards the applicable law before the Specialist Chambers and imports instead "alien" rules from the ICTY; (v) Trial Panel II's powers to manage proceedings in Case 06 do not extend to other proceedings, involving different charges and separate accused; (vi) Article 33(5) of the Law explicitly bars Trial Panel II Judges from any resulting criminal proceedings arising from violations of Article 15(2) of the Law; and (vii) the Thaçi Defence's assertions that Trial Panel II has been prevented from implementing measures in response to breaches of its orders, that its authority has been undermined or circumvented, and that it can no longer guarantee a fair trial in Case 06 are baseless.²⁰

16. Third, regarding the second ground raised by Mr Thaçi, the SPO submits that: (i) the Pre-Trial Judge has no mandate to review the President's decision

¹⁸ SPO Response, paras 1-2, 37.

¹⁹ SPO Response, paras 3-4.

²⁰ SPO Response, paras 5-17.

assigning the Single Judge in KSC-BC-2018-01; (ii) one of the circumstances in which the assignment of a Single Judge is appropriate is in the context of an investigation prior to the filing of charges, which was precisely the situation at hand; (iii) the Thaçi Defence's claim that the Single Judge's appointment became a "standing mandate" is misleading, misplaced, unsupported and logically flawed; (iv) if the Thaçi Defence wished to challenge the assignment of the Single Judge then also as Pre-Trial Judge, it should have filed a request for disqualification, pursuant to Rule 20 of the Rules, before the President; (v) the Pre-Trial Judge's assignment conforms, in any case, with Article 33(4) of the Law; and (vi) there is no principled reason for separating the Pre-Trial Judge from matters decided upon by the Single Judge.²¹

C. THAÇI DEFENCE REPLY

17. In its Reply, the Thaçi Defence reiterates many of its arguments raised in the Motion²² and further advances that preliminary motions on jurisdiction under Rule 97(1)(a) of the Rules encompass matters concerning the jurisdiction of a particular Panel of the Specialist Chambers.²³

III. APPLICABLE LAW

18. Pursuant to Article 39(1) of the Law, the Pre-Trial Judge shall have the power to review an indictment, rule on any preliminary motions, including challenges to the indictment and jurisdiction, and make any necessary orders or decisions to ensure the case is prepared properly and expeditiously for trial.

²¹ SPO Response, paras 18-37.

²² See Reply, paras 1, 9-26.

²³ Reply, paras 4-8.

19. Pursuant to Rule 95(2)(f) of the Rules, the Pre-Trial Judge shall, *inter alia*, decide on preliminary motions filed pursuant to Rule 97 of the Rules before the transmission of the case file to the Trial Panel.

20. Pursuant to Rule 97(1) of the Rules, the accused may file preliminary motions before the Pre-Trial Judge, in accordance with Article 39(1) of the Law, which: (a) challenge the jurisdiction of the Specialist Chambers; (b) allege defects in the form of the indictment; and (c) seek severance of indictments.

IV. DISCUSSION

A. THE NATURE OF THE THAÇI DEFENCE'S CHALLENGES

21. Before addressing the merits of the Motion, the Pre-Trial Judge finds it necessary to determine the nature of the challenges raised by the Thaçi Defence. The Thaçi Defence has presented its Motion as a challenge to the jurisdiction of the Specialist Chambers under Rule 97(1)(a) of the Rules.²⁴

22. The Pre-Trial Judge recalls that for an issue to fall within the jurisdictional limb of Rule 97(1) of the Rules it must relate to one of the grounds of jurisdiction stipulated in Articles 6 through 9 of the Law, which set out the traditional bases for jurisdiction: subject matter, temporal, territorial and personal.²⁵ Mr Thaçi is not challenging the jurisdiction of the Specialist Chambers as envisaged under Articles 6 through 9 of the Law. Rather, he is challenging the competence of the

²⁴ See Motion, para. 1.

²⁵ See Confirmation Decision, para. 39. See also KSC-BC-2020-06, F00450, Pre-Trial Judge, [Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused](#) ("Case 06 Decision on Motions Challenging Legality") 31 August 2021, public, para. 54. See also KSC-BC-2023-10, F00433/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Preliminary Motions and Related Requests](#) ("Case 10 Decision on Preliminary Motions"), 12 August 2024, public, para. 34.

Pre-Trial Judge to hear the present case. As a result, the Pre-Trial Judge will not assess Mr Thaçi's challenges within the purview of Rule 97(1)(a) of the Rules.

23. That said, the Pre-Trial Judge recalls that Article 39(1) of the Law does not limit preliminary motions to those expressly set out in Rule 97(1) of the Rules, but provides that the Pre-Trial Judge shall have the power to rule on "*any* preliminary motions" (emphasis added).²⁶ Accordingly, the Pre-Trial Judge will entertain Mr Thaçi's Motion pursuant to her power under Article 39(1) of the Law.

B. FIRST GROUND: WHETHER THE PRESENT MATTER SHOULD HAVE BEEN BROUGHT BEFORE TRIAL PANEL II

24. The Pre-Trial Judge will first set out the legal framework governing the powers and responsibilities of the SPO, the Pre-Trial Judge and the Trial Panel at the different stages of the proceedings, against which she will then address the Thaçi Defence's arguments.

25. The Pre-Trial Judge observes that, pursuant to Article 35(1) of the Law, the SPO is responsible for the investigation and prosecution of persons responsible for crimes falling within the jurisdiction of the Specialist Chambers. Articles 35(2) and 38(1) of the Law reinforce this reading, providing that the Specialist Prosecutor and other prosecutors within the SPO have the power and authority to conduct criminal investigations and to take responsibility for new or pending criminal investigations or proceedings within the subject matter jurisdiction of the Specialist Chambers. Importantly for the purposes of this decision, Article 35(2)(g) and (i) of the Law states that the SPO has the authority and responsibility to take decisions on the initiation, continuation or termination of criminal proceedings and has the power to file indictments and

²⁶ See [Case 06 Decision on Motions Challenging Legality](#), paras 54-55; [Case 10 Decision on Preliminary Motions](#), para. 36.

pursue them through all stages of the proceedings. The same principle is reflected also in Article 38(4) of the Law and Rule 86(1) and (2) of the Rules, which regulate the filing of an indictment. After an indictment has been filed and before the charges are confirmed, the SPO may amend the indictment or withdraw it without leave of the Pre-Trial Judge, in accordance with Articles 39(8) and 40(7) of the Law and Rules 90(1)(a) and 91(1)(a) of the Rules.

26. The above provisions reveal that, under the legal framework of the Specialist Chambers, the SPO is the sole entity that is vested with the power to conduct investigations, file indictments and initiate proceedings.²⁷ The Law and the Rules do not give such powers to any other entity or organ. The fact that, prior to the confirmation of the charges, the SPO may amend the indictment or withdraw it altogether without leave of the Pre-Trial Judge reinforces this interpretation. While the Law and the Rules envisage judicial oversight in certain circumstances (such as for the confirmation of charges),²⁸ the decision as such whether to file an indictment – and, with it, to initiate proceedings – is the SPO's prerogative.

27. Once the SPO has filed an indictment, Article 39(1) and (2) of the Law and Rule 86 of the Rules provide that the Pre-Trial Judge shall have the power to review said indictment and to confirm or dismiss the charges in whole or in part. Further, after the charges are confirmed and before the case is assigned to a Trial Panel, the SPO may amend the indictment or withdraw it only with leave of the Pre-Trial Judge, in accordance with Articles 39(8) and 40(7) of the Law and Rules 90(1)(b) and 91(1)(b) of the Rules.

28. The above provisions reveal that, after an indictment has been filed, the SPO's power to pursue it through further stages of the proceedings is subject

²⁷ See also KSC-BC-2020-06, F00010, Pre-Trial Judge, [Order to the Specialist Prosecutor Pursuant to Rule 86\(4\) of the Rules](#), 2 July 2020, public, paras 8, 10.

²⁸ See Article 39(1)-(2) of the Law; see also, for example, Rules 31-41 and 86 of the Rules.

only to the Pre-Trial Judge's oversight. The Pre-Trial Judge is the sole entity that is vested by the legal framework of the Specialist Chambers, at this stage, with the power to review an indictment and confirm or dismiss the charges.²⁹ This reading is not upset by the language of Article 40(6)(a) of the Law, which allows a Trial Panel to exercise any powers of the Pre-Trial Judge, as necessary, or by Article 40(7) of the Law and Rules 90(1)(c) and 91(1)(c) of the Rules, as neither the Law nor the Rules envisage any role for a Trial Panel at the pre-trial stage of the proceedings.

29. Indeed, pursuant to Article 40(1) of the Law, a Trial Panel is responsible for “the conduct of the *trial proceedings*” (emphasis added). A Trial Panel's responsibilities in this regard do not arise until after preliminary motions are disposed of, the SPO and the Defence – if they so wish – file their pre-trial briefs and lists of witnesses, and the case file is transmitted by the Pre-Trial Judge to the Trial Panel, as envisaged in Rules 72(1) and 98(1) of the Rules. While a Trial Panel has broad powers to adopt any measures and procedures that may be necessary to ensure the fair and expeditious conduct of the trial, such powers extend only to the conduct of the *trial proceedings*.³⁰ Furthermore, the Trial Panel may only perform its functions and exercise its powers in the (trial) proceedings it is assigned with. It cannot extend its powers to other (new) proceedings to which it is not assigned.

30. Turning to the *Thaçi* Defence's arguments, the Pre-Trial Judge does not find them persuasive for the following reasons.

²⁹ After the case is assigned to a Trial Panel, the SPO may amend the indictment or withdraw it with leave of the Trial Panel, as provided in Articles 39(8) and 40(7) of the Law and Rules 90(1)(c) and 91(1)(c) of the Rules. The Pre-Trial Judge notes that the powers of the Trial Panel relate only to the amendment or withdrawal of an *existing* indictment, and not the confirmation of an entirely new indictment.

³⁰ See, for example, KSC-BC-2020-05, F00114, President, [Decision Assigning Trial Panel I](#), 5 May 2021, public, para. 4; KSC-BC-2020-06, F01132, President, [Decision Assigning Trial Panel II](#), 30 November 2022, public, para. 4: stating: “The President hereby assigns Trial Panel II [...] to the present case upon transmission of the case file”.

31. First, the Thaçi Defence's submission that the SPO should have brought the matter of the Accused's alleged attempted interference in the proceedings in Case 06 before Trial Panel II to determine whether it warranted the issuance of an indictment and a separate case, is misguided. As shown above, the filing of an indictment and the initiation of proceedings against a suspect is the (exclusive) prerogative of the SPO and is subject only to the Pre-Trial Judge's oversight in the context of the confirmation of charges. Nothing in the Law or the Rules gives a Trial Panel the power to direct (or not) the SPO to seize a Pre-Trial Judge with a new indictment.

32. Second, as mentioned above, a Trial Panel's authority over the trial proceedings and its responsibility to ensure their fairness does not extend *beyond* the case it is seized with. The Thaçi Defence appears to acknowledge it,³¹ but draws the wrong conclusions.³² As any case on alleged offences against the administration of justice, the present one relates to official proceedings before the Specialist Chambers, namely the Case 06 proceedings. However, this does not mean that the present case and Case 06 are the "same case". Notably, they involve different accused persons, different alleged crimes and a different temporal scope. The Thaçi Defence fails to give appropriate weight to this aspect.³³ Trial Panel II's authority over the proceedings in Case 06 cannot justify extending its powers over proceedings in a different case (here, the present one). Doing so would encroach on the powers and responsibilities of the SPO and the

³¹ See Motion, para. 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 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" (emphasis in the original)).

³² The ICC case-law presented by the Thaçi Defence in support of its position that Trial Panel II has exclusive authority "over proceedings" actually demonstrates that Trial Chambers are only competent over matters *within* their assigned case, not other trial proceedings. See Motion, fns 34-38.

³³ See also KSC-BC-2023-12, INV/F00243, Single Judge, *Decision on the Single Judge's Competence to Adjudicate SPO Request F00739* ("Decision on Single Judge Competence"), 24 January 2025, confidential, para. 14.

Pre-Trial Judge, as delineated by the Law and the Rules. The Trial Panel's responsibility to ensure the fairness of the proceedings and the rights of the accused equally does not give it the power to determine whether offences against the administration of justice – which involve four other persons not accused in Case 06 – are going to be prosecuted or not by the SPO. If this were the case, Trial Judges would essentially sit on an Article 15(2) matter arising from proceedings before them, in contravention with Article 33(5) of the Law. Likewise, arguing that Trial Panel II alone should have resorted to sanctions pursuant to Rule 65 of the Rules,³⁴ or should have been responsible for authorising investigative measures,³⁵ unduly and inappropriately limits the functions and powers of the SPO and the Specialist Chambers and generally undercuts their mandate to effectively prosecute allegations of offences against the administration of justice.³⁶ The Taçi Defence's argument is simply a *non sequitur*.

33. Third, the Taçi Defence's submission that the legal texts of the Specialist Chambers do not address how allegations of contempt or witness interference arising from proceedings before the Specialist Chambers should be handled is also misguided. Articles 15(2) and 16(3) of the Law clearly provide that the Specialist Chambers have jurisdiction over offences against the administration of justice where they relate to its official proceedings and officials and that such offences incur individual criminal responsibility. Article 33(5) of the Law reflects the same principle when it speaks about criminal proceedings arising from violations of Article 15(2) of the Law arising from a matter already before the Specialist Chambers. Such Article 15(2) proceedings then follow the exact same process and procedure as any other case before the Specialist Chambers, which are clearly set out in Articles 38(4), 39(1) and (2) and 40(1) of the Law,

³⁴ See Motion, paras 29, 42, 47.

³⁵ See Motion, paras 42.

³⁶ See also para. 37 below.

among others. There are no lacunae in the Law and the Rules in this regard and the Thaçi Defence's resort to the Rules of Procedure and Evidence before the ICTY, ICTY Practice Directions, or opinions of individual ICTY Judges is misplaced.

34. Last but not least, the Thaçi Defence's argument that Trial Panel II is no longer able to ensure Mr Thaçi's fair trial rights and that his rights have been affected is unpersuasive for the following reasons: (i) the fact that the Pre-Trial Judge is seized of the present case does not impinge on Trial Panel II's ability to ensure Mr Thaçi's fair trial rights in Case 06, as the Panel retains full control of the proceedings in Case 06;³⁷ (ii) both Trial Panel II and the Pre-Trial Judge have an obligation to protect Mr Thaçi's rights under the Specialist Chambers' legal framework, within the context of their respective proceedings;³⁸ (iii) the Thaçi Defence raises arguments that have already been addressed before (regarding Mr Thaçi's time and facilities for the preparation of his defence and the two separate regimes of detention he is under);³⁹ and (iv) the Thaçi Defence's submission that Mr Thaçi's fair trial rights have been affected is unsubstantiated, as none of the examples put forward show that this is the case. The Thaçi Defence's speculation that Trial Panel II's findings in Case 06 will become *res judicata* and render the present proceedings moot⁴⁰ ignores the fact that any findings as to the charges in the two cases are entirely different and that Panels conduct their proceedings (and assessments) independently of each other. Notably, Trial Panel II will conduct its credibility assessments of the

³⁷ See Decision on Single Judge Competence, para. 14.

³⁸ Similarly, Decision on Single Judge Competence, para. 14. The Thaçi Defence disposes of legal remedies in both the present case and Case 06 (for example, seeking a stay of proceedings in Case 06).

³⁹ See Motion, paras 51-55; KSC-BC-2023-12, F00135, Pre-Trial Judge, [Decision on Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions](#), 24 January 2025, public, para. 19; F00165, Pre-Trial Judge, [Decision on Review of Detention of Hashim Thaçi](#), 7 February 2025, public, para. 21.

⁴⁰ Motion, para. 48.

witnesses in Case 06 and determine any impact of the alleged (attempted) interference in its own right and based on the evidence before it.

35. For all of these reasons, the Pre-Trial Judge rejects the first ground raised by Mr Thaçi.

C. WHETHER THE SINGLE JUDGE AND THE PRE-TRIAL JUDGE WERE ASSIGNED IN VIOLATION OF THE LAW

36. The Pre-Trial Judge recalls the Thaçi Defence's arguments that both the Single Judge and the Pre-Trial Judge were assigned in violation of the Specialist Chambers' legal framework as: (i) Trial Panel II was already assigned to manage allegations of (attempted) interference with witnesses in Case 06; (ii) the President assigned a "standing" Single Judge, a role not foreseen by the Law and the Rules; and (iii) the President assigned as Pre-Trial Judges the same judges who sat as Single Judges on the investigation of the allegations that gave rise to the Amended Confirmed Indictment.⁴¹

37. First, insofar as the Thaçi Defence claims that Trial Panel II was the assigned panel to oversee the investigation into allegations of (attempted) witness interference,⁴² the Pre-Trial Judge refers to the above findings that this position unduly and inappropriately limits the functions and powers of the SPO and the Specialist Chambers.⁴³ Contrary to the Thaçi Defence's submissions,⁴⁴ the SPO was correct in approaching the Single Judge, who is assigned with "any request for judicial authorisation and related matters submitted by the Specialist Prosecutor prior to the filing of an indictment".⁴⁵

⁴¹ Motion, paras 57-81.

⁴² See Motion, paras 62, 69.

⁴³ See para. 32 above.

⁴⁴ Motion, para. 63.

⁴⁵ See KSCPR-2018, F00004, President, [*Decision Assigning a Single Judge Pursuant to Article 33\(2\) of the Law*](#), 29 May 2018, public, para. 16 and Disposition. It is noted that the undersigned succeeded Judge

38. Second, the assignment of Judges falls squarely within the powers and responsibilities of the President, pursuant to Article 33 of the Law. To the extent that the Thaçi Defence takes issue with the validity of the Single Judge's assignment (whether as a "standing" Judge or not),⁴⁶ the Pre-Trial Judge does not have the competence to pronounce herself on this matter, as that would mean sitting in judgment of the President's decision in this regard.

39. Third, the Thaçi Defence's assertion that the assignment of one and the same judge as Single Judge and Pre-Trial Judge was improper falls squarely within the scope of Rule 20 of the Rules on the "Recusal or Disqualification of Judges". If the Thaçi Defence believed that there were grounds for the disqualification of the Single Judge/Pre-Trial Judge, it could and should have raised this matter following the procedure set out in Rule 20(3) of the Rules.⁴⁷ Yet, it did not do so. The Thaçi Defence cannot circumvent this procedure and applicable time limits by raising this matter now, in the context of a preliminary motion.

40. Lastly, beyond this procedural argument, the Pre-Trial Judge finds that the Thaçi Defence makes sweeping and unsubstantiated arguments in the abstract and fails to concretely demonstrate how her assignment as Single and Pre-Trial Judge could have affected or appeared to affect her impartiality. In this regard, the Pre-Trial Judge notes that, as Single Judge, she was assigned to consider any requests for judicial authorisation and related matters submitted by the SPO prior to the filing of an indictment. Her role as Single Judge was and is strictly

Nicolas Guillou as Single Judge on 6 June 2024 "in the present proceedings" without her mandate being confined to a specific request or matter; *see* KSC-BC-2018-01, F00697, President, *Decision Assigning a Single Judge*, 6 June 2024, public. Contrary to what the Thaçi Defence avers in the Motion, para. 63, the Single Judge derives her jurisdiction from the President's assignment decision, within the confines of the Law, and not from the SPO presenting a request.

⁴⁶ Motion, paras 57, 65-69, 82, 87-88; *but see* Reply, para. 17.

⁴⁷ Rule 20(3) of the Rules provides that a Party may apply to the President for the disqualification of a Judge immediately, but no later than ten (10) days after the grounds on which the application is based become known to the Party.

defined. Further, as Pre-Trial Judge, her role is not to “serve as a [...] check” on investigative matters taken prior to her assignment or to “bring a fresh mind to the proceedings”, as claimed by the Thaçi Defence,⁴⁸ but to review the indictment and prepare the case for trial. The Thaçi Defence’s submissions are also contradictory and disingenuous when arguing that the Pre-Trial Judge’s impartiality has been affected by her being involved in investigative matters as Single Judge, while the impartiality of Trial Panel II judges would not be. Moreover, the Thaçi Defence’s submission that, as Single Judge, the Pre-Trial Judge has gained access to documents that are not part of the present case and are inaccessible to the Defence is misleading, as: (i) the Confirmation Decision is based exclusively on material and submissions made by the SPO in the present proceedings, which have been disclosed and made available to the Defence; (ii) following the confirmation of the indictment, requests concerning investigative measures strictly connected with the present case have been transferred by the Single Judge to the present proceedings⁴⁹ and future requests will continue to be addressed by the Pre-Trial Judge;⁵⁰ and (iii) relevant filings and decisions issued in the investigation file which concern the Accused have been copied and transferred into the record of the present case.⁵¹

41. For the above reasons, the second ground raised by the Thaçi Defence is rejected.

⁴⁸ Motion, paras 74, 77-78.

⁴⁹ Decision on Single Judge Competence, paras 17-18. It is noteworthy that the sole concrete example provided by the Thaçi Defence does not support its submissions, as it relates to a request that was not ruled upon by the Single Judge prior to the confirmation of the indictment, but by the Pre-Trial Judge after such confirmation. Furthermore, even if the Thaçi Defence’s submissions would stand – which they do not – the Pre-Trial Judge observes that, as a matter of fact, in the particular circumstances of this case, the vast majority of investigative measures authorised prior to the confirmation of the indictment were authorised by the previously assigned Single Judge. Thus, the Thaçi Defence’s arguments also fail on the circumstances of this case. The Pre-Trial Judge therefore does not see the prejudice caused.

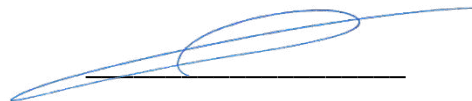
⁵⁰ KSC-BC-2023-12, INV/F00003, Single Judge, [Order for Transfer of Documents](#) (“Order for Transfer”), 27 January 2025, public, para. 14(i).

⁵¹ [Order for Transfer](#), paras 5-6.

V. DISPOSITION

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

- a. **REJECTS** the Thaçi Defence's Motion;
- b. **RECALLS** that the procedure envisaged in Article 45(2) of the Law and Rule 77 of the Rules applies to the present decision; and
- c. **ORDERS** the Thaçi Defence to file a public redacted version of its Reply (F00318), or request its reclassification as public, by no later than **Thursday, 26 June 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Thursday, 19 June 2025

At The Hague, the Netherlands.