



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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 Prosecutor's Office

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**Public redacted version of 'Prosecution request to modify detention conditions
with confidential Annex 1'**

Specialist Prosecutor's Office

Kimberly P. West

Specialist Counsel for Hashim Thaçi

Sophie Menegon

Specialist Counsel for Bashkim Smakaj

Jonathan Elystan Rees

Specialist Counsel for Isni Kilaj

Iain Edwards

Specialist Counsel for Fadil Fazliu

David A. Young

Specialist Counsel for Hajredin Kuçi

Alexander Admiraal

I. INTRODUCTION

1. Pursuant to Articles 21 and 41 of the Law¹ and Rules 23(7) and 56(6) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests the imposition of certain restrictions on Hashim THAÇI's non-privileged visits at the Kosovo Specialist Chambers' ('KSC') Detention Centre. The requested restrictions are limited in scope and necessary to safeguard against any further attempts by THAÇI to obstruct KSC proceedings.

2. Specifically, the SPO requests that the individuals identified in Annex 1 ('Visitors of Concern') be prohibited from visiting THAÇI at the KSC Detention Centre for the remainder of these and the *Thaçi et al.* (KSC-BC-2020-06, 'Case 6') proceedings.³ As detailed below, each Visitor of Concern participated in one or more of the non-privileged Detention Centre visits during which THAÇI and his visitors engaged in obstructive conduct as charged in this case.

3. In addition, the SPO requests that any discussions related to this case and Case 6 during non-privileged visits be prohibited.

4. The requested measures are not punitive. Rather, they place limited, reasonable restrictions on THAÇI's privilege to receive visitors during his continued detention, which is not a fundamental right, and which THAÇI brazenly and repeatedly abused during non-privileged visits.

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 See Annex 1.

II. SUBMISSIONS

4. It is established that THAÇI does not have an absolute right to custodial visits, particularly with respect to visitors who are not close relatives.⁴ As held by Trial Panel II, limiting THAÇI's contacts with the outside world is compatible with Article 8 of the European Convention on Human Rights ('ECHR') provided the measures (i) are in accordance with the law; (ii) pursue one of the legitimate aims listed in Article 8(2) of the ECHR; and (iii) are necessary and proportionate under the circumstances.⁵ Each requirement is met here.

5. First, the legal basis for the requested measures is provided in Rules 56(6) and 116(4)(d), as well as in the internal regulations of the Registry.⁶ The Pre-Trial Judge is responsible for the conditions and nature of THAÇI's detention in this case and is thus empowered to set any necessary conditions for 'the purposes of protecting witnesses or victims, confidential information or the integrity of the proceedings, including on

⁴ *Specialist Prosecutor v. Thaçi et al.*, 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 ('Decision on Detention Conditions'), para.45.

⁵ Decision on Detention Conditions, KSC-BC-2020-06/F01977, paras 45-46. *See also Specialist Prosecutor v. Mustafa*, Public redacted version of Decision on Specialist Prosecutor's request for segregation and other measures, KSC-BC-2020-05/F00162/RED, 2 August 2021 ('Mustafa Segregation Decision'), para.32 (where, based on *the risk* of interference with the integrity of proceedings, Trial Panel I ordered the accused segregated and limited his contacts with the outside world). Trial Panel I also found and reiterated that restrictive measures including, the segregation of the Accused in detention – a more severe restriction than currently being sought by the SPO – may be necessary to minimise the risk of divulging confidential information in relation to witnesses and guarantee the integrity of the proceedings (*See Mustafa Segregation Decision*, KSC-BC-2020-05/F00162/RED, para.24; *Specialist Prosecutor v. Mustafa*, Public redacted version of Decision on the review of the segregation regime and other measures imposed on Salih Mustafa, KSC-BC-2020-05/F00262/RED, 19 November 2021, para.15; *Specialist Prosecutor v. Mustafa*, Public redacted version of Second decision on the review of the segregation regime and other measures imposed on Salih Mustafa, KSC-BC-2020-05/F00323/RED, 18 February 2022, para.22.).

⁶ Decision on Detention Conditions, KSC-BC-2020-06/F01977, paras 47-48; Registry Practice Direction on Detainees: Visits and Communications, KSC-BD-09-Rev1, 23 September 2020, Articles 6-7, 12-13, 15, 17, 19; Registry Practice Direction on Detainees: Counsel Visits and Communications, KSC-BD-10-Rev1, 23 September 2020, Articles 14-18.

the imposition of necessary and proportionate restrictions on the communications of a detained person',⁷ which can include segregation of the Accused.⁸

6. Second, the requested measures are necessary to prevent further criminal acts of obstruction by THAÇI, which corresponds to one of the legitimate aims listed under Article 8(2) of the ECHR.

7. Indeed, in deciding that THAÇI's arrest and pre-trial detention are necessary in this case, the Pre-Trial Judge has made findings demonstrating precisely why these additional restrictions are necessary. The Pre-Trial Judge found that, during the charged period and while already subject to the rules and regulations of detention, THAÇI exercised a leadership role over three separate groups of visitors to the KSC Detention Centre (along with a separate visit by Hajredin KUÇI) to coordinate attempts to interfere with the testimony of SPO witnesses in Case 6.⁹ The Pre-Trial Judge has further found that THAÇI's 'actions and conduct are part of a broader pattern of efforts to interfere with the testimony of SPO witnesses in Case 6' and demonstrate 'persistence in furthering obstruction efforts in SC proceedings even *from within the SC Detention Facilities*.'¹⁰ The Pre-Trial Judge reiterated these findings in THAÇI's first detention review,¹¹ and again on 14 April 2025 when she found that THAÇI 'repeatedly and purposefully reveal[ed], without authorisation, protected information' and 'unmistakably encourage[ed]' multiple visitors 'to receive and

⁷ Rule 56(6).

⁸ See for example Mustafa Segregation Decision, KSC-BC-2020-05/F00162/RED, para.15.

⁹ 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'), para.50.

¹⁰ Decision on Arrest, KSC-BC-2023-12/F00037/RED, para.50 (emphasis added).

¹¹ See Decision on Review of Detention of Hashim Thaçi, KSC-BC-2023-12/F00165, 7 February 2025 ('Thaçi Detention Decision'), para.29.

memorise his precise instructions and to contact certain witnesses for the purpose of unlawfully influencing' their testimony.¹²

8. Critically, THAÇI's incentive to interfere with witnesses or obstruct the progress of proceedings exists in *both* this case and Case 6. First, the existing risk of THAÇI's interference in this case has only increased with the disclosure of incriminating evidence.¹³ More acutely, the risk of THAÇI's *continued* attempts to interfere with witnesses and witness testimony in Case 6 is heightened as the prosecution case recently closed and witnesses – including those THAÇI has already targeted – face pressure to recant or alter their inculpatory testimony before a final judgment is reached.

9. Trial Panel II has already recognised this reality,¹⁴ which the confirmed charges in this case lay bare. Further, the history of international tribunals provides notable illustrations of accused, convicted persons, and others attempting to interfere with witnesses' prior testimony, both pre- and post-judgement. The motive is clear: to undermine the evidence presented, either reducing the chances of a guilty verdict or undermining earlier findings of culpability. For example, at the Special Court for Sierra Leone ('SCSL'), 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.¹⁵ Similarly, and over a sustained period between 2015-2018 following

¹² Decision Amending the 'Decision on the Confirmation of the Indictment' and Setting a Date for the Submission of Preliminary Motions, KSC-BC-2023-12/F00260, 14 April 2025, para.21.

¹³ Thaçi Detention Decision, KSC-BC-2023-12/F00165, para.30.

¹⁴ See for example *Specialist Prosecutor v. Thaçi et al.*, Decision on Specialist Prosecutor's Request Concerning Post-Testimony Witness Contact, KSC-BC-2020-06/F01960, 27 November 2023, paras 20, 25. See also *Specialist Prosecutor v. Shala*, Public redacted version of Decision on Seventeenth Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00838, 17 May 2024, paras 24-25.

¹⁵ SCSL, *Independent Counsel v. Eric Koi Senessie*, SCSL-2011-01-T, Judgment in Contempt Proceedings, 16 August 2012.

a final appeal judgment against Mr Augustin Ngirabatware, the accused and a group of his associates engaged in an 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.¹⁶ Finally, Dritan Goxhaj's [REDACTED] – including his encouragement to intimidate and retaliate against any who support the KSC and the SPO – is another relevant example of attempted interference with the administration of justice arising directly from individuals' status as a KSC witness.¹⁷

10. The requested restrictions are also consistent with the Pre-Trial Judge's finding that THAÇI's charged conduct is part of a broader pattern of efforts to interfere with the testimony of SPO witnesses in Case 6,¹⁸ which extends beyond the five visits at centre of this case.¹⁹ Specifically, during his non-privileged visits on 1 July 2023, 4 August 2023, 12 August 2023, 15 September 2023, 22 September 2023, and 1 October 2023 – which each included one or more Visitors of Concern – THAÇI and his visitors repeatedly spoke in whispers/lowered voices, and THAÇI provided instructions to be conveyed to SPO witnesses and/or revealed confidential witness information.²⁰

¹⁶ International Residual Mechanism for Criminal Tribunals ('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 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).

¹⁷ [REDACTED]. See also *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of 'Prosecution submission pertaining to periodic detention review of Hashim Thaçi', KSC-BC-2020-06/F01813/RED, 25 September 2023, para.12.

¹⁸ Thaçi Detention Decision, KSC-BC-2023-12/F00165, para.29; Second Decision on Review of Detention of Hashim Thaçi, KSC-BC-2023-12/F00250, 7 April 2025, para.28.

¹⁹ The visits on 2 July, 3 September, 9 September, 6 October, and 7 October 2023.

²⁰ See for example 114024 010723-072909-103046-TR-AT Revised-ET, pp. 189-190, 196-205 (1 July 2023 visit during which THAÇI, *inter alia*, discussed, at minimum, the testimony of one SPO protected witness);

11. The audio recordings of each of these non-privileged visits have been disclosed to the Accused in this case.²¹ And, although certain measures have already been imposed to reduce the risk of such conduct,²² the SPO understands from publicly available sources that several of the Visitors of Concern continue to visit THAÇI at the KSC Detention Centre. In an analogous situation in this case, which supports the requested measures, the Pre-Trial Judge ordered KUÇI to refrain from any contact with numerous Visitors of Concern including Messrs SHALA, BEHRAMI, KRYEZIU, [REDACTED].²³

12. Finally, the requested measures are proportionate to the above aim. To be sure, the risk that THAÇI may convey illicit messages and instructions during non-privileged visits can never be eliminated entirely, even in the KSC Detention Centre.²⁴ This fact was demonstrated as recently as February 2025 when it was publicly

114548 040823-075244-121616-TR-AT Revised 1-ET, pp. 306-310, 315-320, 384-389, 394-95 (4 August 2023 visit during which THAÇI and visitors discussed witnesses' testimony, including confidential information and SPO witness proofing procedures, and THAÇI instructed visitors what one or more witnesses should say); 114642 120823-085000-111000-TR-AT Revised 1-ET, pp. 13-35 (12 August 2023 visit during which THAÇI provided instructions about how a witness should testify, including how to approach a witness, invoking the memory of the witnesses' deceased family member and modifications a witness should make to testimony); 115343 150923-075500-115854-TR-AT Revised 2-ET, pp. 150, 181-190, 204-206, 231-233 (15 September 2023 visit during which THAÇI explicitly told his visitors the full name of a protected witness who had testified, as well as the names of witnesses he deemed 'the main ones' who were yet to testify, and provided instructions about how a witness should testify, including modifications the witness should make to his statement during preparation); 115629 220923-121435-135935-TR-AT Revised-ET, pp. 6, 21-28, 36-40, 76-77, 95 (22 September 2023 visit during which THAÇI provided instructions about how a protected witness should testify, including modifications the witness should make to his statement during preparation and evidence the witness should give, and discussed other witnesses, including those that did not testify in public); 115859 011023-075517-115809-TR-AT-ET, pp. 8-13 (1 October 2023 visit during which THAÇI provided instructions on how witnesses should testify, minimising their evidence with regards to his culpability, as well as discussing the testimony of witnesses, whose testimony THAÇI acknowledged was not public).

²¹ See Annex 1.

²² Thaçi Detention Decision, KSC-BC-2023-12/F00165, para.39. See also Decision on Detention Conditions, KSC-BC-2020-06/F01977, para.51.

²³ See Decision on Prosecution Request for Variation of Conditions on Hajredin Kuçi, KSC-BC-2023-12/F00094, 19 December 2024, Confidential, para.14.

²⁴ Thaçi Detention Decision, KSC-BC-2023-12/F00165, para.39.

reported that THAÇI apparently participated in another detainee's video-call,²⁵ an action which runs contrary to the conditions already imposed on him.²⁶ However, permitting the Visitors of Concern – who each have either actively or passively participated in and/or acquiesced to THAÇI's obstructive acts²⁷ – to continue to visit THAÇI poses an entirely avoidable risk of further criminal acts assailing the integrity of KSC proceedings.

13. For the same reasons as above, it is also necessary to prohibit THAÇI from discussions related to this case and Case 6 during non-privileged visits. Indeed, prohibiting case-related discussions will both facilitate monitoring and enforcement of the Pre-Trial Judges' rulings and help minimise the risk of confidential information being disclosed to unauthorised persons, whether deliberately or otherwise. This measure is therefore necessary for the effective minimisation of the already established, and manifested, risks and consequently the protection of witnesses and victims in this case and preservation of integrity of the proceedings.

14. The SPO notes that the same request is submitted before Trial Panel II in Case 6.

²⁵ See Prosecution submissions on review of detention of Hashim Thaçi with corrected version of public Annex 1, KSC-BC-2023-12/F00220, 14 March 2025, para.5.

²⁶ Decision on Detention Conditions, KSC-BC-2020-06/F01977, para.55.

²⁷ See Annex 1 to these submissions, as to the material which substantiates that the listed Visitors of Concern participated in and/or acquiesced to obstructive acts.


III. CLASSIFICATION

15. This filing and Annex 1 are confidential pursuant to Rule 82(4) and because they contain sensitive and confidential information. To ensure the effectiveness of the requested relief and considering its sensitive nature and the Visitors of Concern, the SPO exceptionally does not intend to file a public redacted version of the request until after its resolution.

IV. CONCLUSION

16. For the foregoing reasons, the SPO requests the Pre-Trial Judge to prohibit discussions related to this case and Case 6 during non-privileged visits as well as the Visitors of Concern from visiting THAÇI until the completion of these proceedings as these measures are necessary and proportionate to the legitimate aim of preventing any further attempts by THAÇI to obstruct ongoing KSC proceedings.

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Kimberly P. West

Specialist Prosecutor

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At The Hague, The Netherlands.