



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2023-12/IA005

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Emilio Gatti
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 4 August 2025

Original language: English

Classification: Public

Decision on Admissibility of KSC-BC-2023-12/IA005/F00001

Specialist Prosecutor's Office:
Kimberly P. West

Counsel for Hashim Thaçi:
Sophie Menegon

THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal by Mr Hashim Thaçi (respectively, “Appeal” and “Thaçi” or “Defence”) of a Pre-Trial Judge decision concerning a preliminary motion in KSC-BC-2023-12 (“Case 12”).² The Appeals Panel is also seised of a request by the Specialist Prosecutor’s Office (“SPO”) to dismiss the Appeal *in limine*, contained within its 4 July 2025 response, which relates exclusively to the admissibility of the Appeal (“SPO Response on Admissibility”).³ On 11 July 2025, Thaçi replied to the SPO Response on Admissibility.⁴

I. BACKGROUND

1. On 29 November 2024, the Pre-Trial Judge confirmed, in part, an indictment against Thaçi and four other accused for offences against the administration of justice and public order for alleged interference in the KSC-BC-2020-06 proceedings before Trial Panel II in which Thaçi is also an accused.⁵ On 8 April 2025, Thaçi filed a preliminary motion in Case 12 wherein he challenged the “jurisdiction” of the Pre-Trial Judge (“Thaçi Preliminary Motion”), arguing, *inter alia*, that Trial Panel II,

¹ IA005/F00002, Decision Assigning a Court of Appeals Panel, 4 July 2025 (confidential and *ex parte*).

² IA005/F00001/RED/COR, Corrected Version of Public Redacted Version of Appeal against Decision on the Thaçi Defence Preliminary Motion on Jurisdiction, 7 July 2025 (confidential and *ex parte* version filed on 2 July 2025, uncorrected redacted version filed on 4 July 2025) (“Appeal”).

³ IA005/F00003, Prosecution response on admissibility of Thaçi’s ‘Appeal against Decision on the Thaçi Defence Preliminary Motion on Jurisdiction’, 4 July 2025 (confidential and *ex parte*) (“SPO Response on Admissibility”).

⁴ IA005/F00004, Thaçi Defence Reply to Prosecution Response on Admissibility of the Appeal, 11 July 2025 (confidential and *ex parte*) (“Reply”).

⁵ F00036/RED, Public Redacted Version of Decision on the Confirmation of the Indictment, 12 February 2025 (confidential version filed on 29 November 2024). The Case 12 indictment was later amended pursuant to an order by the Pre-Trial Judge. See F00264, Specialist Prosecutor, Submission of Amended Confirmed Indictment, 16 April 2025, with Annexes 1 and 2 (the latter of which contained the public redacted version of the amended confirmed indictment).

rather than the Pre-Trial Judge, has “exclusive jurisdiction over all matters concerning Case 06” including in respect of oversight of contempt allegations.⁶ On 19 June 2025, the Pre-Trial Judge issued a decision rejecting the Thaçi Preliminary Motion (“Impugned Decision”), considering, *inter alia*, that while Thaçi presented his motion as a challenge to the jurisdiction of the Specialist Chambers, “Thaçi is not challenging the jurisdiction of the Specialist Chambers as envisaged under Articles 6 through 9 of the Law” and is, rather, challenging the competence of the Pre-Trial Judge to adjudicate in Case 12 pre-trial proceedings.⁷ Thaçi contends that the Pre-Trial Judge erred in the Impugned Decision in five respects in relation to which he seeks appellate intervention.⁸

2. In the SPO Response on Admissibility, the SPO requested, *inter alia*, that the Panel “[s]uspend the time limit for the SPO to respond to the merits of the Appeal pending the [Panel’s] determination of its admissibility”⁹ as the Appeal “does not meet the requirements for an automatic right of appeal pursuant to Articles 45(2) of the Law and Rule 97(3) of the Rules”.¹⁰ On 10 July 2025, the Appeals Panel suspended the time limit for the SPO to respond to the merits of the Appeal until after the Appeals Panel determines the admissibility of the Appeal.¹¹

3. Simultaneously to the Appeal, Thaçi filed a request for certification to appeal before the Pre-Trial Judge, asking that her determination be stayed pending the Court of Appeals Panel’s determination of the admissibility of the Appeal (“Request for

⁶ F00290/RED, Public Redacted Version of Thaçi Defence Preliminary Motion on Jurisdiction, 12 May 2025 (confidential and *ex parte* version filed on 8 May 2025), Sections III(B), III(C).

⁷ F00343, Decision on the Thaçi Defence Preliminary Motion on Jurisdiction, 19 June 2025 (“Impugned Decision”), paras 22, 42. The Pre-Trial Judge further considered that Thaçi “is challenging the competence of the Pre-Trial Judge to hear the present case”. See Impugned Decision, paras 21-22.

⁸ Appeal, paras 20-72.

⁹ SPO Response on Admissibility, para 17. See also SPO Response on Admissibility, para. 2.

¹⁰ SPO Response on Admissibility, para. 1.

¹¹ CRSPD91, Email from Court of Appeals Panel to SPO and Thaçi Defence Counsel re SPO Request within F00003, 10 July 2025.

Certification”).¹² On 23 July 2025 the Pre-Trial Judge rejected Thaçi’s request to defer consideration of the Request for Certification and granted leave to appeal the Impugned Decision with respect to three issues.¹³

II. APPLICABLE LAW

4. The Appeals Panel recalls the below provisions of the Law and the Rules that are relevant to the question of the admissibility of the Appeal.

Article 45, Interlocutory Appeals

1. A Court of Appeals Panel shall hear interlocutory appeals from an accused or from the Specialist Prosecutor in accordance with this Law and the Rules of Procedure and Evidence.

2. Interlocutory appeals shall lie as of right from decisions or orders relating to detention on remand or any preliminary motion challenging the jurisdiction of the Specialist Chambers. Any other interlocutory appeal must be granted leave to appeal through certification by the Pre-Trial Judge or Trial Panel on the basis that it involves an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of the Pre-Trial Judge or Trial Panel, an immediate resolution by a Court of Appeals Panel may materially advance proceedings.

Rule 97, Preliminary Motions

(1) 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 the severance of indictments pursuant to Rule 89(2).

(2) [...]

¹² Appeal, para. 6. See also F00355/RED, Public Redacted Version of Thaçi Defence Request for Certification to Appeal “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction”, 4 July 2025 (confidential and *ex parte* version filed on 6 June 2025), paras 2, 35.

¹³ F00391, Decision on the Thaçi Defence Request for Certification to Appeal the “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction”, 23 June 2025, paras 6-35.

(3) Appeals against decisions on preliminary motions under paragraph (1)(a) shall lie as of right pursuant to Article 45(2) of the Law. For all other decisions rendered under paragraph (1), Rule 77 shall apply.

III. DISCUSSION

A. PRELIMINARY MATTER

5. This decision will only address the admissibility of the Appeal. Mindful of the potential for overlap between the question of the admissibility of the Appeal and the merits of the Appeal, the present decision will, to the extent possible, only address those arguments in the Appeal that the Appeals Panel understands to concern specifically the question of admissibility under Article 45(2) of the Law.

B. ADMISSIBILITY OF THE APPEAL

1. Submissions of the Parties

6. In the Appeal, as it concerns admissibility, Thaçi accepts that interlocutory appeals lie as of right for any preliminary motion “challenging the jurisdiction of the Specialist Chambers”.¹⁴ Thaçi contends that, as a matter of principle and judicial economy, “it is appropriate for this matter to be determined by the Court of Appeals Panel”.¹⁵ The Appeal itself does not contain further submissions specifically on admissibility under Article 45(2) of the Law. As summarised below, further submissions by Thaçi on the admissibility of the Appeal are contained in the Reply to the SPO Response on Admissibility.

7. The SPO submits that the Appeal is not properly before the Panel as an automatic appeal (an appeal for which no leave has to be sought) pursuant to Article 45(2) of the Law because such appeals are confined to jurisdictional matters.¹⁶

¹⁴ Appeal, para. 7.

¹⁵ Appeal, paras 12-19.

¹⁶ SPO Response on Admissibility, paras 8-9.

In the SPO's view, the Appeal is therefore inadmissible.¹⁷ To this end, the SPO argues that the Court of Appeals Chamber has repeatedly and clearly held that the phrase "challenging the jurisdiction of the Specialist Chambers" contained within Article 45(2) of the Law limits jurisdictional challenges to matters related to the personal, territorial, temporal or subject-matter jurisdiction of the Specialist Chambers.¹⁸

8. The SPO contends that Thaçi's arguments contrary to this interpretation of the Rules are unpersuasive.¹⁹ Concerning two decisions of the *ad hoc* Tribunals to which Thaçi refers wherein a wider notion of jurisdiction is recognised,²⁰ the SPO contends that these decisions pre-date an amendment to the respective rules which explicitly narrowed jurisdictional challenges to those concerning the personal, territorial, temporal and subject-matter jurisdiction of the respective tribunals.²¹

9. Concerning Thaçi's proposition that "jurisdiction" and "competence" are interchangeable, the SPO responds that the express language of the Law and the Rules does not support such a conclusion and that Thaçi ignores the fact that the legal framework of the Specialist Chambers stipulates that a challenge must be to the jurisdiction of the "Specialist Chambers" not to individual panels. Thus, in the SPO's view, even if "jurisdiction" and "competence" are interchangeable, this would not extend an automatic right of appeal to challenges to the competence of an individual panel.²²

¹⁷ SPO Response on Admissibility, para. 1.

¹⁸ SPO Response on Admissibility, paras 8-9.

¹⁹ SPO Response on Admissibility, paras 10-12.

²⁰ Reply, paras 8-12, referring to to ICTY, *Prosecutor v. Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ("*Tadić* Decision on Interlocutory Appeal on Jurisdiction") and ICTR, *Prosecutor v. Kanyabashi*, ICTR-96-15-T, Decision on the Defence Motion on Jurisdiction, 18 June 1997 ("*Kanyabashi* Decision on Jurisdiction Appeal").

²¹ SPO Response on Admissibility, para. 11.

²² SPO Response on Admissibility, para. 12.

10. The SPO requests that the Appeals Panel rule on the admissibility of the Appeal prior to determining the merits and to dismiss, *in limine*, the Appeal, thereby allowing the matter to proceed before the Pre-Trial Judge.²³ In its view, allowing the Appeal to proceed would undermine the object and purpose of the restrictions on interlocutory appeals contained in Article 45(2) of the Law.²⁴

11. Thaçi replies that the Court of Appeals Chamber's prior decisions do not settle the question at hand as they dealt with issues "entirely different" to those in the Appeal.²⁵ That is, in Thaçi's view, the previous decisions did not concern the jurisdiction of the Specialist Chambers in the narrow sense adopted by the Pre-Trial Judge – the competence of the Pre-Trial Judge to hear Case 12²⁶ – or the broad sense for which he advocates – extending to a judicial body's powers to determine a particular matter.²⁷

12. Concerning two decisions from the *ad hoc* Tribunals, Thaçi replies that no provisions have been adopted by the Specialist Chambers to constrain the scope of direct jurisdictional appeals equivalent to the amendments that were made in the respective rules of the ICTY and the ICTR narrowing the scope of jurisdiction.²⁸ Thus, Thaçi contends that the reasoning in these two decisions, which pre-date the relevant

²³ SPO Response on Admissibility, paras 1, 13-14, 17.

²⁴ SPO Response on Admissibility, para. 15.

²⁵ See Reply, paras 2, 5.

²⁶ Reply, para. 3, referring to Impugned Decision, paras 21-22 wherein the Pre-Trial Judge held, *inter alia*, that "Mr Thaçi is not challenging the jurisdiction of the Specialist Chambers as envisaged under Article 6 through 9 of the Law. Rather, he is challenging the competence of the Pre-Trial Judge to hear the present case".

²⁷ Reply, para. 3, referring to Appeal, paras 25-34 wherein Thaçi contends that jurisdiction "of course encompasses notions of subject matter, temporal, territorial and personal jurisdiction, but also extends beyond those, to include any matter going to a judicial body's powers to determine a particular matter". See also Reply, para. 7 wherein Thaçi submits that "'jurisdiction' under the relevant provisions must be understood as encompassing both the jurisdiction of the [Specialist Chamber] itself under Articles 6 to 9 of the Law, and the jurisdiction of the special judicial formation which, in a given matter, exercises the jurisdiction of the [Specialist Chambers] itself".

²⁸ Reply, para. 10 wherein Thaçi refers to the *Tadić* Decision on Interlocutory Appeal on Jurisdiction and the *Kanyabashi* Decision on Jurisdiction Appeal.

amendments to the respective rules of the ICTY and ICTR remains sound and should be applied by the Appeals Panel.²⁹

13. Concerning whether “jurisdiction” and “competence” are interchangeable, Thaçi replies that case law from Kosovo supports this position. He submits in this regard that the terms are used interchangeably when referring to the authority of a given panel.³⁰

14. Concerning the SPO’s argument that finding the Appeal admissible undermines the object and purpose of the restrictions on interlocutory appeals contained in Article 45(2) of the Law, Thaçi responds that the object and purpose of this provision favours judicial economy rather than leaving a determination of “a case’s entire jurisdictional basis until after trial judgment”.³¹

2. Assessment of the Court of Appeals Panel

15. The Court of Appeals Chamber has previously held that “according to a combined reading of Article 6 to 9 of the Law and Rule 97(1)(a) of the Rules [...], a challenge to the jurisdiction of the Specialist Chambers pertains to the personal, territorial, temporal or subject-matter jurisdiction of the Specialist Chambers”.³² The Appeals Panel further recalls that pursuant to Article 45(2) of the Law, interlocutory appeals that “lie as of right” are limited to orders and decisions relating to detention on remand or “any preliminary motion challenging the jurisdiction of the Specialist Chambers”. Any matters that do not fall within the scope of appeals that “lie as of right” pursuant to Article 45(2) of the Law are therefore inadmissible. This

²⁹ Reply, paras 8-13. Thaçi also contends that the reasoning in these two decisions from the *ad hoc* Tribunals was equally endorsed by the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia. Reply, para. 11.

³⁰ Reply, para. 14.

³¹ Reply, para. 16.

³² KSC-BC-2020-06, AI009/F00030, Decision on Appeals Against “Decision on Motions Challenging the Jurisdiction of the Specialist Chambers”, 23 December 2021 (“*Thaçi et al.* Decision on Motion Challenging Jurisdiction”), para. 230.

interpretation has previously been confirmed by the Court of Appeals Chamber.³³ Pursuant to Article 45(2) of the Law, where a matter is not admissible as an appeal “as of right” because it is not an appeal relating to detention on remand or a preliminary motion challenging the jurisdiction of the Specialist Chambers, the Party may apply to the Pre-Trial Judge or Trial Panel, as relevant, for certification to appeal.

16. The Appeals Panel recalls in this regard that in the interests of legal certainty and predictability, an appeals panel is expected to follow previous decisions by the Court of Appeals Chamber and should only depart from them for cogent reasons in the interests of justice.³⁴ Therefore, a party requesting such departure must demonstrate that it is justified by cogent reasons.³⁵ Cogent reasons may exist “where the previous decision has been decided on the basis of a wrong legal principle or [in] cases where a previous [...] judicial decision [...] has been ‘wrongly decided, usually because the judge or judges were ill-informed about the applicable law’”.³⁶

17. Nonetheless, the Appeals Panel considers that the principle that the Court of Appeals Chamber should follow its own *ratio decidendi* only applies in similar cases or substantially similar cases, meaning where the question raised by the facts in the subsequent case is the same as the question decided by the legal principle in the previous decision(s).³⁷ Thus, in view of the Court of Appeals Chambers’ prior

³³ See KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, 9 December 2020 (“*Gucati and Haradinaj* Appeal Decision on Gucati’s Arrest and Detention”), para. 17; KSC-BC-2020-07, IA003/F00005, Decision on Admissibility of Appeal and Joinder Against Decision on Preliminary Motions, 12 May 2021 (“*Gucati and Haradinaj* Appeal Decision on Admissibility of Appeal on Preliminary Motions”), para. 14; “*Thaçi et al.* Decision on Motion Challenging Jurisdiction”, paras 231, 236.

³⁴ KSC-CA-2024-03/F00069/RED, Public Redacted Version of Appeal Judgment, 14 July 2025 (confidential version filed on 14 July 2025) (“*Shala* Appeal Judgment”), para. 50; KSC-CA-2023-02/F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023 (confidential version filed on 14 December 2024), (“*Mustafa* Appeal Judgment”), para. 41. See also ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski* Appeal Judgement”), para. 107.

³⁵ *Shala* Appeal Judgment, para. 50; *Mustafa* Appeal Judgment, para. 41.

³⁶ *Aleksovski* Appeal Judgment, paras 107-111.

³⁷ *Aleksovski* Appeal Judgement, para. 110.

jurisprudence interpreting Articles 6 to 9 and 45(2) of the Law and Rule 97(1)(a) of the Rules, in order for Thaçi's appeal to be admissible, he must either: (i) demonstrate cogent reasons for the Panel to depart from its prior jurisprudence; or (ii) distinguish the matter on the basis that the question raised by the facts in this instance is different than the question decided by the legal principle in the Court of Appeals Chamber's previous decisions.

18. Concerning whether the question raised by the facts in the Appeal is distinguishable, the Appeals Panel notes Thaçi's argument that the "issues [...] are entirely different" from those previously found not to be jurisdictional in nature (while he does not contest the correctness of the prior Court of Appeals Chamber rulings).³⁸ The Appeals Panel understands the essence of Thaçi's argument to be that the prior rulings of the Court of Appeals Chamber on "jurisdiction" were fact-specific and that, when presented with a factually distinct matter, like the subject of the Appeal, the Appeals Panel should take a wider interpretation of "jurisdiction" than that previously pronounced.³⁹

19. The Appeals Panel notes that, for the purposes of an admissibility assessment, the matter to be resolved is the jurisdictional nature of the argument in the Appeal that the Pre-Trial Judge erred in determining that Thaçi's challenge to the competence of the Pre-Trial Judge to adjudicate in Case 12 pre-trial proceedings is not a challenge to the jurisdiction of the Specialist Chambers under Rule 97(1)(a) of the Rules.⁴⁰ To put it simply, the matter at issue concerns the powers of the Pre-Trial Judge under the Specialist Chambers' legal framework.

³⁸ Reply, para. 5. See also Reply, paras 3-4, 6.

³⁹ See Reply, para 2-7.

⁴⁰ See Appeal, Ground 1 (paras 20-35); Impugned Decision, para. 22.

20. The Appeals Panel recalls that the Court of Appeals Chamber has previously considered that challenges concerning the legality of an arrest,⁴¹ the sufficiency of the evidentiary basis for the confirmation of an indictment,⁴² and the applicability of the mode of liability JCE III to special intent crimes did not concern jurisdiction.⁴³ These matters do not *stricto sensu* pertain to the personal, territorial, temporal or subject-matter jurisdiction of the Specialist Chambers. The matter raised in the appeal similarly does not, *stricto sensu*, pertain to the personal, territorial, temporal or subject-matter jurisdiction of the Specialist Chambers (although the Panel acknowledges that the matter has a closer bearing on the competence of a Panel to act in a given case). Thus, the Appeals Panel does not consider that the nature of the matter raised in the Appeal is, in this sense, distinguishable from those previously addressed. Accordingly, the Appeals Panel is not persuaded by Thaçi's argument that the Appeal presents "entirely different" issues and that therefore the Panel should adopt a wider interpretation of "jurisdiction" than that previously pronounced.

21. For completeness, the Appeals Panel will now turn to whether Thaçi has advanced any cogent reasons for the Panel to depart from the Court of Appeals Chamber's prior holding that the phrase "challenging the jurisdiction of the Specialist Chambers" contained within Article 45(2) of the Law limits interlocutory appeals on jurisdictional challenges to matters related to the personal, territorial, temporal or subject-matter jurisdiction of the Specialist Chambers.

22. Concerning two decisions from the *ad hoc* Tribunals,⁴⁴ the Appeals Panel notes that these were issued prior to amendments to the respective ICTY and ICTR Rules which narrowed the scope of what may constitute a jurisdictional matter to subject-matter, territorial, personal or temporal jurisdiction. The Appeals Panel further notes

⁴¹ *Gucati and Haradinaj* Appeal Decision on Gucati's Arrest and Detention, para. 17.

⁴² *Gucati and Haradinaj* Appeal Decision on Admissibility of Appeal on Preliminary Motions, para. 14.

⁴³ *Thaçi et al.* Decision on Motion Challenging Jurisdiction, paras 231, 236.

⁴⁴ See above, fn. 28.

Thaçi's position that these precedents "remain sound" and should be applied by the Appeals Panel.⁴⁵ In this regard, the Appeals Panel observes that the Court of Appeals Chambers' prior jurisprudence refers to ICTY cases that post-date the amendments to the ICTY rules which, in terms of preliminary motions challenging jurisdiction and the related scope of an appeal as of right, narrowed jurisdiction as described above.⁴⁶ The Court of Appeals Chamber was therefore presumably aware that (i) the ICTY rules explicitly narrowed interlocutory appeals concerning jurisdiction to those challenging the personal, territorial, temporal or subject-matter jurisdiction and (ii) no identical provisions are contained in the Rules of the Specialist Chambers.⁴⁷ Nonetheless, the Court of Appeals Chamber held that a challenge to the jurisdiction of the Specialist Chambers under its legal framework was equally narrow despite not having the same explicit provisions to this effect in the Rules.⁴⁸ On this basis, the Appeals Panel considers that there is no indication that the Court of Appeals Chamber intended to leave the door open to a broadening of the scope of what may constitute a jurisdictional matter under the Rules. In view of the above, the Appeals Panel considers that the two cases from the *ad hoc* Tribunals relied upon by Thaçi fail to

⁴⁵ Reply, paras 8-13.

⁴⁶ *Gucati and Haradinaj* Appeal Decision on Gucati's Arrest and Detention, fn. 25, referring to ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-AR72.2, Decision on Zdravko Tolimir's Appeal Against the Decision on Submissions of the Accused Concerning Legality of Arrest, 12 March 2009, paras 11-13; *Gucati and Haradinaj* Appeal Decision on Admissibility of Appeal on Preliminary Motions, fn. 28, referring to ICTY, *Prosecutor v. Delić*, IT-04-83-AR72, Decision on Interlocutory Appeal Challenging the Jurisdiction of the Tribunal, 8 December 2005, para. 11. The ICTY Appeals Chamber in the *Delić* and *Tolimir* cases, respectively, referred to Rule 72(B)(i) of the ICTY Rules (respectively, IT/32/Rev.36, 21 July 2005 and IT/32/Rev.42, 4 November 2008, concerning interlocutory appeals of preliminary motions challenging jurisdiction), in relation to which Rule 72(D) of the ICTY Rules clarifies that: "For the purpose of [...] [preliminary motions challenging jurisdiction], a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to: (i) any of the persons indicated in Articles 1, 6, 7 and 9 of the Statute; (ii) the territories indicated in Article 1, 8 and 9 of the Statute; (iii) the period indicated in Article 1, 8 and 9 of the Statute; (iv) any of the violations indicated in Articles 2, 3, 4, 5 and 7 of the Statute".

⁴⁷ See above, fn. 46 (referring to ICTY to Rule 72(B)(i) and ICTY Rule 72(D)).

⁴⁸ The Appeals Panel further notes that the legal framework of the Specialist Chambers (both the Law and the Rules) narrow "jurisdiction" to the "jurisdiction of the Specialist Chambers". See Article 45(2) of the Law and Rule 97(1) of the Rules.

provide a cogent justification to depart from the Court of Appeals Chamber's prior jurisprudence.

23. Concerning Thaçi's argument that case law from Kosovo supports the position that "jurisdiction" and "competence" are interchangeable, the Appeals Panel recalls that the Specialist Chambers function in an autonomous manner, in accordance with their own established legal framework.⁴⁹ The Appeals Panel further recalls that, pursuant to Article 3(2)(b) and (c) of the Law, the Specialist Chambers shall adjudicate in accordance with, *inter alia*, the Law as the *lex specialis* and other provisions of Kosovo law expressly incorporated and applied by the Law. Moreover, pursuant to Article 3(4) of the Law, any other Kosovo law, or regulation which has not been expressly incorporated into the Law shall not apply to the jurisdiction of the Specialist Chambers.⁵⁰ Thaçi has not drawn the Appeals Panel's attention to any Kosovo law relevant to the present matter that has been expressly incorporated and applied by the Law. Accordingly, the Appeals Panel does not consider that the case law from Kosovo, as referenced by Thaçi, provides cogent reasons to depart from the Court of Appeals Chamber's prior jurisprudence.

24. The Appeals Panel now turns to Thaçi's argument that a finding of inadmissibility would undermine the object and purpose of Article 45(2) of the Law in that this provision favours judicial economy rather than leaving a determination of "a case's entire jurisdictional basis until after trial judgment".⁵¹ As explained above, the Appeals Panel is not persuaded that the matter at hand is "jurisdictional" within the meaning of Article 45(2) of the Law and Rule 97(1)(a) of the Rules. The Appeals Panel therefore rejects the premise of Thaçi's position that the "entire jurisdictional basis" of Case 12 would be left for determination after the trial judgment.

⁴⁹ KSC-CC-2024-27, F00011, Judgment on the Referral of Salih Mustafa Concerning Fundamental Rights Guaranteed by Article 31 and 33 of the Kosovo Constitution and Article 6 and 7 of the European Convention on Human Rights, 17 April 2025, para. 113.

⁵⁰ *Mustafa* Appeal Judgment, para. 469.

⁵¹ Reply, para. 16.

Furthermore, the Appeals Panel recalls that, pursuant to Rule 45(2) of the Law, another procedural avenue is available to Thaçi of which he has already availed himself.

25. In view of the above, the Appeals Panel considers that Thaçi has failed to both distinguish the matter in the Appeal from those previously addressed by the jurisprudence of the Court of Appeals Chamber on Article 45(2) of the Law and to demonstrate cogent reasons for the Appeals Panel to depart from the Court of Appeals Chamber's prior jurisprudence on Article 45(2) of the Law.

26. Concerning the public nature of filings before the Specialist Chambers, the Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel. The Appeals Panel files the present Decision as public as it does not contain any confidential information.

27. The Panel notes that Thaçi has filed a public redacted version of the Appeal. The Panel further notes that neither the SPO nor Thaçi object to the reclassification to public of the SPO Response on Admissibility and the Reply, respectively.⁵² As these filings do not contain any confidential information, the Panel therefore considers that they can be reclassified as public.


⁵² SPO Response on Admissibility, para. 16; Reply, para. 17.

28. For these reasons, pursuant to Article 45(2) of the Law, the Court of Appeals Panel:

FINDS, the Appeal inadmissible;

GRANTS the SPO's request to dismiss the Appeal *in limine*; and

ORDERS the Registry to reclassify the SPO Response on Admissibility (IA005/F00003) and the Reply (IA005/F00004), currently classified as confidential and *ex parte*, as public.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 4 August 2025

At The Hague, the Netherlands