



**In:** KSC-BC-2023-12/IA006 & IA007

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

**Registrar:** Fidelma Donlon

**Date:** 28 October 2025

**Original language:** English

**Classification:** Public

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**Decision on Appeals Against “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction” and “Decision on Preliminary Motions for Adjournment and Severance of the Proceedings”**

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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),<sup>1</sup> 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 two appeals (“Appeal on Adjournment”, “Appeal on Jurisdiction”, and collectively, “Appeals”) by Mr Hashim Thaçi (“Thaçi”, “Accused” or “Defence”)<sup>2</sup> against the Pre-Trial Judge’s “Decision on Preliminary Motions for Adjournment and Severance of the Proceedings” (“Impugned Decision on Adjournment”) and the “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction” (“Impugned Decision on Jurisdiction”) (collectively, “Impugned Decisions”).<sup>3</sup> The Specialist Prosecutor’s Office (“SPO”) responded to the Appeal on Adjournment on 28 August 2025 (“Response to Adjournment Appeal”) and to the Appeal on Jurisdiction on 29 August 2025 (“Response to Jurisdiction Appeal”) (collectively, “Responses”), submitting that the Appeals should be rejected in their entirety.<sup>4</sup> Thaçi replied to the Appeal on

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<sup>1</sup> IA006/F00002, Decision Assigning a Court of Appeals Panel, 25 July 2025; IA007/F00002, Decision Assigning a Court of Appeals Panel, 25 July 2025.

<sup>2</sup> IA006/F00004/RED, Public Redacted Version of Thaçi Defence Appeal against “Decision on Preliminary Motions for Adjournment and Severance of the Proceedings”, 20 August 2025 (confidential and *ex parte* version filed on 18 August 2025, confidential redacted version filed on 20 August 2025) (“Appeal on Adjournment”); IA007/F00004/RED, Public Redacted Version of Thaçi Defence Appeal against “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction”, 20 August 2025 (confidential and *ex parte* version filed on 18 August 2025, confidential redacted version filed on 20 August 2025) (“Appeal on Jurisdiction”) (collectively, “Appeals”). On 28 July 2025, the Appeals Panel granted Thaçi an extension until 18 August 2025 to file the Appeals. See IA006/F00003, Decision on Thaçi Defence Requests for Variation of Time Limit for the Filing of Appeals, 28 July 2025; IA007/F00003, Decision on Thaçi Defence Requests for Variation of Time Limit for the Filing of Appeals, 28 July 2025. See also IA006/F00001, Thaçi Defence Request for Variation of Time Limit for the Filing of Appeals, 25 July 2025; IA007/F00001, Thaçi Defence Request for Variation of Time Limit for the Filing of Appeals, 25 July 2025.

<sup>3</sup> F00354/RED, Public Redacted Version of Decision on Preliminary Motions for Adjournment and Severance of the Proceedings, 1 July 2025 (confidential version filed on 30 June 2025) (“Impugned Decision on Adjournment”); F00343, Decision on the Thaçi Defence Preliminary Motion on Jurisdiction, 19 June 2025 (“Impugned Decision on Jurisdiction”).

<sup>4</sup> IA006/F00005, Prosecution response to ‘Thaçi Defence Appeal against “Decision on Preliminary Motions for Adjournment and Severance of the Proceedings”’, 28 August 2025 (confidential and *ex parte*) (“Response to Adjournment Appeal”); IA007/F00005, Prosecution response to ‘Thaçi Defence

Adjournment on 2 September 2025 ("Reply on Adjournment Appeal") and to the Appeal on Jurisdiction on 3 September 2025 ("Reply on Jurisdiction Appeal").<sup>5</sup>

## I. BACKGROUND

1. In relation to the KSC-BC-2020-06 proceedings ("Case 06"), on 1 May 2024, the SPO filed a request seeking to add to its exhibit list material produced as a result of special investigative measures authorised by the Single Judge in relation to, *inter alia*, Thaçi, for obstruction offences under Article 15(2) of the Law allegedly committed in the detention facilities of the Specialist Chambers ("Obstruction Material").<sup>6</sup> On 22 August 2024, Trial Panel II issued a decision granting the SPO's request.<sup>7</sup> On 15 April 2025, the SPO filed a motion seeking, *inter alia*, admission of the Obstruction Material into evidence.<sup>8</sup> On 29 May 2025, Trial Panel II issued a decision granting, in part, the SPO's motion and admitted the Obstruction Material ("Case 06 Obstruction Material Decision").<sup>9</sup>

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Appeal against "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction", 29 August 2025 (confidential and *ex parte*) ("Response to Jurisdiction Appeal").

<sup>5</sup> IA006/F00007, Thaçi Defence Reply to Prosecution Response to Appeal against "Decision on Preliminary Motions for Adjournment and Severance of the Proceedings", 2 September 2025 (confidential and *ex parte*) ("Reply on Adjournment Appeal"); IA007/F00006, Thaçi Defence Reply to Prosecution Response to Appeal against "Decision on Preliminary Motions on Jurisdiction", 3 September 2025 (confidential and *ex parte*) ("Reply on Jurisdiction Appeal").

<sup>6</sup> KSC-BC-2020-06, F02279/RED, Public Redacted Version of 'Prosecution Request to amend the Exhibit List with confidential Annex 1', 6 September 2024 (confidential version filed on 1 May 2024).

<sup>7</sup> KSC-BC-2020-06, F02501/RED, Public Redacted Version of Decision on Prosecution Request to Amend the Exhibit List (F02279) and on Thaçi Defence Motion for Exclusion of Materials *in Limine*, 20 December 2024 (confidential version filed on 22 August 2024).

<sup>8</sup> KSC-BC-2020-06, F03120, Prosecution motion for admission of obstruction related materials, 15 April 2025.

<sup>9</sup> KSC-BC-2020-06, F03216/RED, Public Redacted Version of Decision on Prosecution Motion for Admission of Obstruction Related Materials, 26 August 2025 (confidential version filed on 29 May 2025) ("Case 06 Obstruction Material Decision").

2. In relation to Case 12, on 6 June 2024, the President assigned Judge Masselot as the Single Judge in the KSC-BC-2018-01 proceedings.<sup>10</sup> Also on 6 June 2024, the President assigned Judge Masselot as the Pre-Trial Judge in Case 12.<sup>11</sup>

3. On 29 November 2024, the Pre-Trial Judge confirmed, in part, an indictment against Thaçi and his co-accused Mr Bashkim Smakaj ("Smakaj"), Mr Isni Kilaj ("Kilaj"), Mr Fadil Fazliu ("Fazliu") and Mr Hajredin Kuçi ("Kuç"), for offences against the administration of justice and public order concerning alleged interference in Case 06 before Trial Panel II, in which Thaçi is also an accused ("Confirmation Decision").<sup>12</sup>

4. On 14 April 2025, the Pre-Trial Judge amended the Confirmation Decision and ordered the SPO to file an amended confirmed indictment and set the date of 8 May 2025 for the Defence to file any preliminary motions.<sup>13</sup>

5. On 16 April 2025, the SPO filed the amended confirmed indictment ("Amended Confirmed Indictment").<sup>14</sup>

6. On 7 May 2025, Thaçi filed a preliminary motion seeking (i) the adjournment of the proceedings against him in Case 12 until the closure of the Case 06 proceedings and (ii) the severance of the Amended Confirmed Indictment as between Thaçi and

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<sup>10</sup> KSC-BC-2018-01, F00697/COR, Corrected Version of Decision Assigning a Single Judge, 12 July 2024 (uncorrected version filed on 6 June 2024) ("Single Judge Assignment Decision"). The Appeals Panel notes that Judge Masselot was assigned as the Single Judge in the KSC-BC-2018-01 proceedings to replace Judge Guillou, following his resignation from the Specialist Chambers Roster of International Judges ("Roster of Judges"). See Single Judge Assignment Decision, para. 3, Disposition.

<sup>11</sup> F00015, Decision Assigning a Pre-Trial Judge, 6 June 2024 (confidential, reclassified as public on 11 December 2024) ("Pre-Trial Judge Assignment Decision").

<sup>12</sup> F00036/RED, Public Redacted Version of Decision on the Confirmation of the Indictment, 12 February 2025 (strictly confidential and *ex parte* version filed on 29 November 2024, reclassified as confidential on 13 December 2024) ("Confirmation Decision").

<sup>13</sup> F00260, Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions, 14 April 2025 ("Decision on Submission of Preliminary Motions").

<sup>14</sup> F00264, Submission of Amended Confirmed Indictment, 16 April 2025; F00264/A02, Annex 2 to Submission of Amended Confirmed Indictment, 16 April 2025.

his co-Accused in Case 12 ("Thaçi Preliminary Motion on Adjournment and Severance").<sup>15</sup> Thaçi alleged, *inter alia*, that: (i) holding two concurrent trials against him would result in overlapping findings and violate defence fair trial rights,<sup>16</sup> and (ii) adjournment of the Case 12 trial until the close of the Case 06 trial and severance are necessary to protect the rights of his co-Accused in Case 12 to be tried without undue delay.<sup>17</sup>

7. On the same day, the Defence for Smakaj, Kilaj, Fazliu and Kuçi jointly filed a preliminary motion ("Joint Preliminary Motion on Adjournment and Severance"), supporting Thaçi's application for an adjournment of the proceedings against him in Case 12 until the conclusion of the trial in Case 06, and requesting the severance of the Amended Confirmed Indictment such that their trial may continue expeditiously without Thaçi in order to protect their right to be tried without undue delay.<sup>18</sup>

8. On 8 May 2025, Thaçi filed a second preliminary motion wherein he challenged the jurisdiction of the Pre-Trial Judge on two grounds ("Thaçi Preliminary Motion on Jurisdiction"), arguing that Trial Panel II, rather than the Pre-Trial Judge, has "exclusive jurisdiction over all matters concerning Case 06" including regarding the oversight of contempt allegations.<sup>19</sup> Thaçi further argued that the President assigned

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<sup>15</sup> F00285, Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings concerning Mr Thaçi, 7 May 2025 ("Thaçi Preliminary Motion on Adjournment and Severance"), paras 1-3, 52-55, 59, 70, 75, 83. See also Thaçi Preliminary Motion on Adjournment and Severance, paras 17-19.

<sup>16</sup> Thaçi Preliminary Motion on Adjournment and Severance, paras 27, 33-55, 60-74.

<sup>17</sup> Thaçi Preliminary Motion on Adjournment and Severance, paras 56-59, 75-82.

<sup>18</sup> F00286, Joint Defence Preliminary Motion Pursuant to Rule 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 7 May 2025 ("Joint Preliminary Motion on Adjournment and Severance"), paras 3, 10-23. See also Thaçi Preliminary Motion on Adjournment and Severance, para. 76.

<sup>19</sup> 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) ("Thaçi Preliminary Motion on Jurisdiction"), paras 21-56.

the Pre-Trial Judge in violation of the Law, as the same Pre-Trial Judge was previously assigned as Single Judge on the same matter.<sup>20</sup>

9. On 19 June 2025, the Pre-Trial Judge issued the Impugned Decision on Jurisdiction, rejecting the Thaçi Preliminary Motion on Jurisdiction.<sup>21</sup>

10. On 30 June 2025, the Pre-Trial Judge issued the Impugned Decision on Adjournment, rejecting the Thaçi Preliminary Motion on Adjournment and Severance and the Joint Preliminary Motion on Adjournment and Severance.<sup>22</sup>

11. On 30 June 2025, Thaçi filed a request for certification to appeal the Impugned Decision on Jurisdiction before the Pre-Trial Judge (“Request for Certification on Jurisdiction”).<sup>23</sup>

12. On 2 July 2025, Thaçi also appealed the Impugned Decision on Jurisdiction directly pursuant to Article 45(2) of the Law, arguing that any preliminary motion challenging the jurisdiction of the Specialist Chambers is an appeal as of right and requesting that the Pre-Trial Judge stay her determination of the Request for Certification on Jurisdiction pending the Appeals Panel’s decision (“Direct Appeal on Admissibility”).<sup>24</sup> On 4 July 2025, the SPO requested that the Appeals Panel dismiss the Direct Appeal on Admissibility *in limine*.<sup>25</sup> On 4 August 2025, the Appeals Panel found the Direct Appeal on Admissibility inadmissible pursuant to Article 45(2) of the

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<sup>20</sup> Thaçi Preliminary Motion on Jurisdiction, paras 57-81.

<sup>21</sup> Impugned Decision on Jurisdiction, para. 42.

<sup>22</sup> Impugned Decision on Adjournment, para. 77.

<sup>23</sup> 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 30 June 2025) (“Request for Certification on Jurisdiction”), paras 1, 35.

<sup>24</sup> 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 (uncorrected public redacted version filed on 4 July 2025, confidential and *ex parte* version filed on 2 July 2025) (“Direct Appeal on Admissibility”), paras 1, 7, 12-19.

<sup>25</sup> 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*, reclassified as public on 4 August 2025), paras 1, 17(a).

Law, on the basis that, *inter alia*, the matter raised on appeal did not *stricto sensu* pertain to the personal, territorial, temporal or subject-matter jurisdiction of the Specialist Chambers (“Appeal Decision on Direct Appeal on Admissibility”).<sup>26</sup>

13. On 23 July 2025, the Pre-Trial Judge rejected Thaçi’s request to defer consideration of the Request for Certification on Jurisdiction and granted leave to appeal the Impugned Decision on Jurisdiction with respect to three out of four issues, defined as follows:<sup>27</sup>

- (a) Whether the Pre-Trial Judge erred in law by applying an incorrect understanding of the principle of *res judicata* (“First Certified Issue” or “Ground 1”);<sup>28</sup>
- (b) Whether the Pre-Trial Judge erred in law by considering that she is not able to review the legality of her assignment and giving insufficient reasons therefor (“Second Certified Issue” or “Ground 2”);<sup>29</sup> and
- (c) Whether the Pre-Trial Judge erred in law by finding that Rule 20 of the Rules bars the Defence from challenging, through a preliminary motion, the practice of appointing the same judge as both Single Judge and Pre-Trial Judge and giving insufficient reasons therefor (“Third Certified Issue” or “Ground 3”).<sup>30</sup>

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<sup>26</sup> IA005/F00005, Decision on Admissibility of KSC-BC-2023-12/IA005/F00001, 4 August 2025 (“Appeal Decision on Direct Appeal on Admissibility”), paras 15-20, 28. See also Appeal Decision on Direct Appeal on Admissibility, paras 21-25. The Appeals Panel recalls that it noted that in the Appeal Decision on Direct Appeal on Admissibility, it would, to the extent possible, only address the arguments regarding the specific question of admissibility contained in the Direct Appeal on Admissibility, but not the merits of the Direct Appeal on Admissibility. See Appeal Decision on Direct Appeal on Admissibility, para. 5.

<sup>27</sup> F00391, Decision on the Thaçi Defence Request for Certification to Appeal the “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction”, 23 July 2025 (“Certification Decision on Jurisdiction”), paras 19-35.

<sup>28</sup> Certification Decision on Jurisdiction, paras 27-30, 35.

<sup>29</sup> Certification Decision on Jurisdiction, paras 31-35.

<sup>30</sup> Certification Decision on Jurisdiction, paras 31-35.

14. On 8 July 2025, Thaçi filed an application requesting leave to appeal the Impugned Decision on Adjournment ("Request for Certification on Adjournment").<sup>31</sup>

15. On 23 July 2025, the Pre-Trial Judge granted the Request for Certification on Adjournment and certified the following issue: "Whether the Pre-Trial Judge applied an incorrect understanding of *res judicata*" ("Certified Issue").<sup>32</sup>

## II. STANDARD OF REVIEW

16. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.<sup>33</sup>

## III. PUBLIC FILINGS

17. The Appeals Panel notes that the Impugned Decision on Jurisdiction was filed publicly. The Panel notes that the Impugned Decision on Adjournment was initially filed confidentially, and that a public redacted version was subsequently filed. The Panel further notes that while Thaçi initially filed the Appeals as confidential and *ex parte*, confidential redacted versions and public redacted versions of the Appeals were subsequently filed on 20 August 2025. The Response to Adjournment Appeal, Response to Jurisdiction Appeal, Reply on Adjournment Appeal and Reply on Jurisdiction Appeal were filed as confidential and *ex parte* pursuant to Rule 82(4) of

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<sup>31</sup> F00367/RED, Public Redacted Version of Thaçi Defence Request for Certification to Appeal "Decision on Preliminary Motions for Adjournment and Severance of the Proceedings", 16 July 2025 (confidential version filed on 8 July 2025) ("Request for Certification on Adjournment").

<sup>32</sup> F00390/RED, Public Redacted Version of the Decision on the Thaçi Defence Request for Leave to Appeal the "Decision on Preliminary Motions for Adjournment and Severance of the Proceedings", 23 July 2025 (confidential version filed on 23 July 2025) ("Certification Decision on Adjournment"), paras 6, 22-23.

<sup>33</sup> KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, paras 4-14.

the Rules, but the Parties indicated that these filings could be reclassified as public, as they do not contain any confidential information.<sup>34</sup>

18. 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.<sup>35</sup> The Panel therefore grants the SPO Request for Reclassification and the Thaçi Request for Reclassification and further orders the Response to Adjournment Appeal, Response to Jurisdiction Appeal, the Reply on Adjournment Appeal, the Reply on Jurisdiction Appeal, the SPO Request for Reclassification and the Thaçi Request for Reclassification to be reclassified as public.

#### IV. DISCUSSION

##### A. ALLEGED FAILURE TO CORRECTLY APPLY THE PRINCIPLE OF *RES JUDICATA* (GROUND 1)

19. As a preliminary matter, the Appeals Panel notes that the First Certified Issue relating to the Impugned Decision on Jurisdiction and the Certified Issue relating to the Impugned Decision on Adjournment substantially overlap and therefore the Panel will consider these certified issues together under a consolidated “Ground 1”.

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<sup>34</sup> IA006/F00006, Prosecution request for reclassification of IA006/F00005, 29 August 2025 (confidential and *ex parte*) (“SPO Request for Reclassification”), para. 1; Response to Jurisdiction Appeal, para. 36; IA006/F00008, Thaçi Defence Request for Reclassification of IA006/F00007, 16 October 2025 (confidential and *ex parte*) (“Thaçi Request for Reclassification”), para. 1; Reply on Adjournment Appeal, para. 23; Reply on Jurisdiction Appeal, para. 24. The Panel also notes that the SPO and Thaçi, respectively, have no objection to the reclassification of the SPO Request for Reclassification and the Thaçi Request for Reclassification as public. See SPO Request for Reclassification, para. 2; Thaçi Request for Reclassification, para. 2.

<sup>35</sup> See e.g. KSC-BC-2020-06, IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

## 1. Submissions of the Parties

20. Thaçi submits that the Pre-Trial Judge erroneously found that *res judicata* does not apply between Case 06 and Case 12, on the basis that they are not the same case, they involve different accused persons, different alleged offences and a different temporal scope, and therefore, there could be no overlap of issues between the two cases.<sup>36</sup> According to Thaçi, the Pre-Trial Judge wrongly applied a “same case” test to determine the applicability of *res judicata*,<sup>37</sup> and in so doing, misstated the requirements of *res judicata* which are well settled in the jurisprudence of international courts,<sup>38</sup> and have been similarly applied by the Kosovo Constitutional Court.<sup>39</sup>

21. On the basis of this error, Thaçi argues that the Pre-Trial Judge wrongly focused on the fact that the indictments in Case 06 and Case 12 concern different offences, rather than assessing whether the respective trial panels will have to determine any of the same issues.<sup>40</sup> In the Defence’s view, the Pre-Trial Judge appears to conflate *res judicata* with the doctrine of *non bis in idem* by limiting its application to the “same charges”, while in fact any issue common to two rulings can engage *res judicata*.<sup>41</sup>

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<sup>36</sup> Appeal on Adjournment, paras 20-23, 25-27, 30, 46; Appeal on Jurisdiction, paras 13-14, 18-23, 60.

<sup>37</sup> Appeal on Adjournment, paras 22-23, 26, 30. The Panel notes that in the Appeal on Jurisdiction, Thaçi does not specifically refer to a “same case” test, but he argues that the Pre-Trial Judge applied a narrow concept of *res judicata*, which requires the charges in two cases to be the same. See Appeal on Jurisdiction, para. 14.

<sup>38</sup> Appeal on Adjournment, paras 22, 24; Appeal on Jurisdiction, paras 14-16.

<sup>39</sup> Appeal on Adjournment, para. 24, referring to Kosovo, Constitutional Court, *Constitutional review of Decision Ae. No. 287/18 of the Court of Appeals of 27 May 2019 and Decision I.EK. No. 330/2019 of the Basic Court in Prishtina, Department for Commercial Matters, of 1 August 2019, KI195/19, Judgment, 31 May 2021* (“Kosovo Constitutional Court Judgment of 31 May 2021”), para. 102.

<sup>40</sup> Appeal on Adjournment, paras 22, 30; Appeal on Jurisdiction, para. 18. See also Reply on Adjournment Appeal, para. 8.

<sup>41</sup> Appeal on Adjournment, paras 25, 31, 33-35; Appeal on Jurisdiction, paras 14-17 (emphasis in original). In this regard, the Defence adds that the Pre-Trial Judge provides no authority in support of such an approach. See Appeal on Adjournment, paras 23, 33; Reply on Adjournment Appeal, para. 8; Reply on Jurisdiction Appeal, para. 5.

22. The Defence further argues that this approach is consistent with decisions of the European Court of Human Rights ("ECtHR") and the Kosovo Constitutional Court, which refer to a court's final determination of an "issue".<sup>42</sup>

23. In Thaçi's view, there is clearly an identity of issues between Case 06 and Case 12,<sup>43</sup> necessitating not only the severance of the Amended Confirmed Indictment and an adjournment of the proceedings against Thaçi until the conclusion of the Case 06 proceedings,<sup>44</sup> but also the dismissal of the Case 12 Indictment.<sup>45</sup> In this regard, Thaçi explains that Trial Panel II admitted as evidence in Case 06 material obtained during investigations into alleged witness interference, finding it relevant to the existence of a "climate of intimidation" and the credibility of witnesses.<sup>46</sup> The Defence avers that Trial Panel II is "expected to make findings" in relation to questions of alleged witness interference, which are at the heart of the charges in Case 12.<sup>47</sup>

24. Thaçi argues that there exists a real risk that the respective trial panels will make conflicting factual findings should Case 06 and Case 12 proceed in parallel, in violation of Thaçi's right to legal certainty and his presumption of innocence in Case 12.<sup>48</sup> In this regard, Thaçi argues that had the Pre-Trial Judge correctly applied *res judicata*, she would have concluded that Thaçi's fair trial rights required Trial

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<sup>42</sup> Appeal on Adjournment, para. 37; Appeal on Jurisdiction, para. 17. In both Appeals, Thaçi refers to ECtHR, *Brumărescu v. Romania*, no. 28342/95, Judgment, 28 October 1999 ("Brumărescu v. Romania Judgment"), para. 61; Kosovo Constitutional Court Judgment of 31 May 2021, para. 100.

<sup>43</sup> Appeal on Adjournment, para. 38; Appeal on Jurisdiction, para. 11. See also Appeal on Jurisdiction, paras 10, 22.

<sup>44</sup> Appeal on Adjournment, paras 44, 46, 48. See also Appeal on Adjournment, paras 12-13.

<sup>45</sup> Appeal on Jurisdiction, paras 21-23, 60.

<sup>46</sup> Appeal on Adjournment, para. 14; Appeal on Jurisdiction, para. 11. In both Appeals, Thaçi refers to the Case 06 Obstruction Material Decision, paras 34-38.

<sup>47</sup> Appeal on Adjournment, paras 15, 17, 38-39; Appeal on Jurisdiction, paras 11-12, 22. See also Reply on Adjournment Appeal, para. 2; Reply on Jurisdiction Appeal, para. 2.

<sup>48</sup> Appeal on Adjournment, paras 38-39, 43-44, 46; Appeal on Jurisdiction, paras 12, 22-23. See also Appeal on Adjournment, paras 12-13; Reply on Adjournment Appeal, paras 3-4.

Panel II to maintain control over the matters which have become the subject of Case 12.<sup>49</sup>

25. Thaçi next argues that the Pre-Trial Judge “wrongly imported a requirement” that all parties between two proceedings must be the same for *res judicata* to apply to any of them.<sup>50</sup> Accordingly, Thaçi asserts that *res judicata* is engaged with respect to himself and the SPO, who are parties to both proceedings, irrespective of the fact that his co-Accused in Case 12 are not parties to Case 06.<sup>51</sup>

26. The SPO responds that the Appeals are based upon “a fundamentally mistaken understanding” of the principle of *res judicata* and should be dismissed.<sup>52</sup> Specifically, the SPO argues that none of the conditions for *res judicata* are satisfied, as: (i) Case 12 and Case 06 concern different parties; (ii) the charges are substantively different; and (iii) no other Panel has made any final determination in relation to the Case 12 indictment allegations.<sup>53</sup> According to the SPO, Thaçi’s interpretation that *res judicata* extends to any finding – as opposed to one that stands to be decisively resolved in the judicial cause under examination – runs contrary to its traditional and proper application.<sup>54</sup> Moreover, the SPO contends that in the Appeals, Thaçi requests the Appeals Panel to engage in an “abstract and hypothetical exercise” by prospectively predicting Trial Panel II’s findings, which is neither how *res judicata* is to be assessed nor the function of retrospective appellate review.<sup>55</sup>

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<sup>49</sup> Appeal on Jurisdiction, paras 21-22.

<sup>50</sup> Appeal on Adjournment, paras 22, 26-29. In the Appeal on Adjournment, the Defence also argues that relevant jurisprudence at the International Criminal Tribunal for the former Yugoslavia (“ICTY”) further supports the premise that *res judicata* can apply with respect to some, but not all, of the parties to a case. See Appeal on Adjournment, para. 28.

<sup>51</sup> Appeal on Adjournment, paras 27, 29. See also Appeal on Adjournment, paras 18-19.

<sup>52</sup> Response to Adjournment Appeal, paras 1, 4, 6; Response to Jurisdiction Appeal, paras 1, 3, 6. See also Response to Jurisdiction Appeal, para. 21.

<sup>53</sup> Response to Adjournment Appeal, paras 2, 6, 29; Response to Jurisdiction Appeal, paras 2, 6, 22.

<sup>54</sup> Response to Adjournment Appeal, paras 3, 6; Response to Jurisdiction Appeal, paras 3, 6.

<sup>55</sup> Response to Adjournment Appeal, para. 4; Response to Jurisdiction Appeal, para. 3.

27. In support, the SPO submits that the Pre-Trial Judge did not misstate or impose a “same case” test, but rather clearly articulated and applied the *res judicata* test, correctly finding that it was inapplicable.<sup>56</sup> First, as regards the “same issues” requirement, the SPO asserts that the subject matter of the two cases differ in their material scope.<sup>57</sup> According to the SPO, *res judicata* does not extend to any and all issues that may be considered in a judicial ruling, but only applies to the substantive issues that have been fully litigated and decided on the merits,<sup>58</sup> and which are essential to deciding the judicial cause under examination.<sup>59</sup>

28. As it relates to the “same party” requirement, the SPO asserts that, while Thaçi is a co-Accused in both cases, Case 06 and Case 12 involve different accused persons.<sup>60</sup> In this regard, the SPO avers that *res judicata* only applies to proceedings where the same actors are involved,<sup>61</sup> and is not generally understood to apply singly across two different multi-accused cases where all parties are not common to both proceedings.<sup>62</sup>

29. The SPO responds that, as regards the “finality of decision” requirement, Thaçi’s arguments are premature, as there has been no final determination in Case 06, including any appeal that would engage *res judicata*.<sup>63</sup> In the SPO’s view, Thaçi makes hypothetical assumptions that Trial Panel II will enter future findings touching upon criminal responsibility charged in Case 12.<sup>64</sup>

30. Ultimately, the SPO maintains that Trial Panel II may legitimately consider the Obstruction Material in assessing witness credibility and the climate of interference,

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<sup>56</sup> Response to Adjournment Appeal, paras 5, 28; Response to Jurisdiction Appeal, paras 5, 21.

<sup>57</sup> Response to Adjournment Appeal, para. 14; Response to Jurisdiction Appeal, para. 8.

<sup>58</sup> Response to Adjournment Appeal, para. 15; Response to Jurisdiction Appeal, para. 9.

<sup>59</sup> Response to Adjournment Appeal, paras 15-18; Response to Jurisdiction Appeal, paras 9-12. See also Response to Adjournment Appeal, para. 19; Response to Jurisdiction Appeal, para. 13. Both Responses refer to ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3029, Decision on “Prosecution’s Application to Submit Additional Evidence”, 2 April 2014 (“*Bemba* Additional Evidence Decision”), paras 26-31.

<sup>60</sup> Response to Adjournment Appeal, para. 7; Response to Jurisdiction Appeal, para. 7.

<sup>61</sup> Response to Adjournment Appeal, para. 7; Response to Jurisdiction Appeal, para. 7.

<sup>62</sup> Response to Adjournment Appeal, paras 7-13; Response to Jurisdiction Appeal, para. 7.

<sup>63</sup> Response to Adjournment Appeal, paras 22-23; Response to Jurisdiction Appeal, paras 15-16.

<sup>64</sup> Response to Adjournment Appeal, paras 24-27; Response to Jurisdiction Appeal, paras 17-20.

and this would not constitute “litigating matters in parallel”,<sup>65</sup> nor would it violate Thaçi's presumption of innocence in Case 12.<sup>66</sup> To the contrary, the SPO avers that the Case 06 indictment limits Trial Panel II's determination to the allegations contained therein, and given that different offences fall to be determined in each case, there is no prospect of engaging *res judicata* in Case 12.<sup>67</sup>

31. Regardless, the SPO asserts that even if Trial Panel II were to make such findings, they would not be essential for the resolution of Case 06 and thus would not engage *res judicata*.<sup>68</sup>

32. In reply, Thaçi clarifies that he does not argue that *res judicata* is already engaged, but rather that there is a likelihood of conflicting factual findings that will have a future *res judicata* effect on Thaçi in Case 12.<sup>69</sup> As regards the “identity of issues” requirement, the Defence submits that, while it does not disagree with the SPO that an issue must have been litigated and decided, no authority in international criminal law jurisprudence has differentiated between “essential” issues and others in this context.<sup>70</sup> In Thaçi's view, any factual finding in a trial judgment is “essential” if it informs the verdict on any charge.<sup>71</sup> With respect to the “identity of parties”

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<sup>65</sup> Response to Adjournment Appeal, para. 20; Response to Jurisdiction Appeal, para. 13.

<sup>66</sup> Response to Jurisdiction Appeal, para. 13. In this regard, the SPO submits that Thaçi misconstrues Trial Panel II's reasons for admitting the obstruction-related material, which it clearly stated would only be considered for the purpose of assessing witness credibility and the climate of intimidation. See Response to Adjournment Appeal, paras 24-25; Response to Jurisdiction Appeal, paras 17-18.

<sup>67</sup> Response to Adjournment Appeal, para. 21; Response to Jurisdiction Appeal, para. 14.

<sup>68</sup> Response to Adjournment Appeal, para. 26; Response to Jurisdiction Appeal, para. 19.

<sup>69</sup> Reply on Adjournment Appeal, paras 1-3; Reply on Jurisdiction Appeal, paras 1-2. In the Reply on Adjournment Appeal, the Defence specifies that, given the present pace of Case 12, an adjournment is necessary to avoid the negative consequences of holding two interrelated trials at the same time. See Reply on Adjournment Appeal, para. 4.

<sup>70</sup> Reply on Adjournment Appeal, para. 7; Reply on Jurisdiction Appeal, para. 4.

<sup>71</sup> Reply on Adjournment Appeal, para. 7; Reply on Jurisdiction Appeal, para. 4. In the Reply on Adjournment Appeal, the Defence also submits that the decisions cited in the Appeal on Adjournment are instances where *res judicata* was found not to apply on distinguishable grounds, supporting the conclusion that the Case 06 Judgment will have *res judicata* effect in Case 12. The Defence further argues that the decision of the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia in Case 002 demonstrates that *res judicata* may attach to factual findings, including in the context of different charges. See Reply on Adjournment Appeal, paras 9-16.

requirement, Thaçi replies that the SPO's argument that *res judicata* requires that all parties be identical is unsupported and groundless.<sup>72</sup>

## 2. Assessment of the Court of Appeals Panel

33. In the Impugned Decisions, the Pre-Trial Judge found that the principle of *res judicata* is not engaged in these proceedings because: (i) Case 06 and Case 12 "involve different accused persons, different alleged crimes and a different temporal scope"; (ii) any findings as to the charges in the two cases are entirely different and Panels conduct their proceedings and assessments independently of each other; (iii) the core of the charges in Case 12 do not concern the allegation of witness interference itself, but rather "the attempted obstruction intended to bring about such interference"; and (iv) Trial Panel II will conduct its own credibility assessments of the witnesses in Case 06 and determine any impact of the alleged interference in its own right based on the evidence before it.<sup>73</sup>

34. At the outset, the Court of Appeals Panel observes that *res judicata* is the general principle that a judgment rendered by a judicial body has binding force between the parties to a dispute.<sup>74</sup> The Panel further observes that the following three general requirements are necessary for *res judicata* to be engaged between two cases: (i) identity of parties, (ii) identity of issues, and (iii) a final determination of those issues in the previous decision by a court competent to decide them.<sup>75</sup> The Panel

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<sup>72</sup> Reply on Adjournment Appeal, paras 17-21; Reply on Jurisdiction Appeal, paras 6-8.

<sup>73</sup> See Impugned Decision on Jurisdiction, paras 32, 34; Impugned Decision on Adjournment, paras 58-59.

<sup>74</sup> ICJ, *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, ICJ Reports 1954 (p. 47), 13 July 1954, p. 53.

<sup>75</sup> IRMCT, *Prosecutor v. Uwinkindi*, MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016 ("Uwinkindi Appeal Decision"), para. 29; ICC, *Prosecutor v. Ngudjolo Chui*, ICC-01/04-02/12-271-Corr, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", 7 April 2015 ("Ngudjolo Appeal Judgment"), para. 246; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgement, 16 November 1998 ("Delalić et al. Trial Judgement"), para. 228; ICTR, *Kajelijeli v. Prosecutor*, ICTR-98-44A-A, Judgement, 23 May 2005 ("Kajelijeli Appeal Judgement"), para. 202. See also ECtHR, *Ryabykh v. Russia*, no. 52854/99, Judgment, 24 July 2003 ("Ryabykh v. Russia Judgment"), para. 52.

highlights that by preventing parties from re-litigating final decisions save in exceptional circumstances,<sup>76</sup> the *res judicata* doctrine serves to ensure legal certainty<sup>77</sup> and protect the finality of judicial determinations and the effectiveness of the judicial process.<sup>78</sup>

(a) Identity of issues

35. The Panel will first address Thaçi's argument that it is not necessary that the charges in Case 06 and Case 12 are the same, but rather that any issue common to two rulings can engage *res judicata*.<sup>79</sup> In Thaçi's view, the Pre-Trial Judge's finding that *res judicata* does not apply because the two cases involve "different alleged offences/crimes and a different temporal scope" reflects her misunderstanding of the requirements, as it is clear that not only the *charges*, but any *issue* common to two rulings can engage *res judicata*.<sup>80</sup>

36. At the outset, the Panel agrees with Thaçi's assertion that the identity of *issues* is relevant to determine whether *res judicata* is engaged between two cases.<sup>81</sup> Before addressing the substance of Thaçi's argument, the Panel finds that it is important to

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<sup>76</sup> ECtHR, *Ponomaryov v. Ukraine*, no. 3236/03, Judgment, 3 April 2018, para. 40; ECtHR, *Trapeznikov and Others v. Russia*, nos. 5623/09, 12460/09, 33656/09 and 20758/10, Judgment, 5 April 2016, para. 23; *Ryabykh v. Russia* Judgment, para. 52. See also ECCC, *Co-Prosecutors v. Samphân*, 002/19-09-2007-ECCC/SC, Appeal Judgment, 23 December 2022, paras 634-635; *Kajelijeli* Appeal Judgement, para. 202.

<sup>77</sup> *Brumărescu v. Romania* Judgment, paras 61-62; IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Decision on a Motion for Redacted Versions of Decisions Issued under Rule 75(H) of the ICTY Rules, 18 July 2016, p. 4.

<sup>78</sup> See ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-568, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence", 13 October 2006, Dissenting Opinion of Judge Pikis ("Lubanga Dissenting Opinion"), para. 16. See also Ambos, K., *Treatise on International Criminal Law: Volume I: Foundations and General Part* (Second Edition), Oxford University Press 2021, Chapter VIII, D.(2)(a) (National *ne bis in idem*), p. 519; Ambos, K., *Treatise on International Criminal Law: Volume III: International Criminal Procedure* (Second Edition), Oxford University Press 2025, Chapter I, D.(3)(j) (*Ne bis in idem* (double jeopardy rule)), pp. 93-94.

<sup>79</sup> See Appeal on Jurisdiction, paras 14-17; Appeal on Adjournment, paras 33-37. See also Reply on Jurisdiction Appeal, para. 5; Reply on Adjournment Appeal, paras 9, 15.

<sup>80</sup> Appeal on Jurisdiction, para. 15; Appeal on Adjournment, paras 30-33.

<sup>81</sup> See above, para. 34.

note the distinction between a *charge* and an *issue* in this case since, in the Panel's view, limiting the assessment to whether common charges exist between two cases would unfairly limit the *res judicata* scope. In that regard, the Panel observes that the reference to a *charge* must be understood as "a formal accusation of" a crime "as a preliminary step to prosecution".<sup>82</sup> An *issue* on the other hand is broader. It is "not merely a question over which there is disagreement or conflicting opinion", but rather, it refers to "a subject the resolution of which is essential for determination of matters arising in the judicial cause under examination".<sup>83</sup>

37. Providing further clarification on the "identity of issues" requirement, the Kosovo Constitutional Court has held that for *res judicata* to apply, the circumstances of the cases must be substantively the same and central to the decision, and the issues must be "essential" for deciding the matter.<sup>84</sup> As additional support, the Panel observes jurisprudence from the *ad hoc* tribunals, finding that *res judicata* bars the same parties from re-litigating the "same issues on substantially the same basis", referring

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<sup>82</sup> Garner, Bryan A. (ed.), *Black's Law Dictionary*, Thomson Reuters 2019 (11th ed.), p. 291. See also 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. 194 (stressing that a count or charge made in an indictment is "the legal characterisation of the material facts which support that count or charge"); KSC-CC-2019-05, F00012, Decision on the Referral of Mahir Hasani Concerning Prosecution Order of 20 December 2018, 20 February 2019, paras 29-31; KSC-BC-2020-06, IA030/F00009, Decision on Krasniqi and Selimi Appeals against "Decision on Prosecution Motion for Admission of Accused's Statements", 31 May 2024, paras 19-20 (both decisions highlighting that the ECtHR has confirmed that "a 'criminal charge' exists from the moment that a person is officially notified by the competent authority of an allegation that he or she has committed a criminal offence", or when "his or her situation has been substantially affected by actions taken by the authorities" on the basis of suspicion).

<sup>83</sup> The Panel acknowledges that the definition of "issue" stated here was not provided in relation to a *res judicata* analysis but finds that it is relevant regardless of the specific context in which it was made. For full quotation and context, see *Lubanga* Dissenting Opinion, para. 22, referring to ICC, *Situation in the Democratic Republic of the Congo*, ICC-01/04-168, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, para. 9.

<sup>84</sup> See Kosovo Constitutional Court Judgment of 31 May 2021, paras 115, 117-118, 125, 133.

to issues that have been fully litigated and decided on the merits.<sup>85</sup> This approach is consistent with the jurisprudence of the ECtHR.<sup>86</sup>

38. As for Thaçi's argument that the ECtHR found that *res judicata* attaches to "any issue finally determined",<sup>87</sup> the Panel observes that while the ECtHR in the *Brumărescu v. Romania* case referred to the application of *res judicata* when courts have "finally determined an issue",<sup>88</sup> this reference has to be read in the context of the specific circumstances of the case where the ECtHR was in fact referring, not to any kind of issue but rather to a "judicial decision" that was "irreversible" and had, moreover, been executed.<sup>89</sup> In the Panel's view, although Thaçi appears to focus on "any issue", what was determinative in the *Brumărescu v. Romania* case was that the issue was substantive (a judicial decision) and fully litigated.<sup>90</sup>

39. Accordingly, the Panel considers that *res judicata* does not extend to any and all issues that may be considered in a judicial ruling, but only applies to the substantive issues that have been fully litigated and decided on the merits, and which are essential for deciding the matter.<sup>91</sup>

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<sup>85</sup> See *Delalić et al.* Trial Judgement, para. 228; *Kajelijeli* Appeal Judgement, para. 202. See also ICTR, *Prosecutor v. Karemra et al.*, ICTR-98-44-T, Decision on Joseph Nzirorera's Application for Certification to Appeal the Decision Denying his Motion to Admit Testimony of Elizaphan Ntakirutimana, 24 March 2009, para. 14.

<sup>86</sup> See *Brumărescu v. Romania* Judgment, para. 61; ECtHR, *Poghosyan v. Armenia*, no. 62356/09, Judgment, 31 March 2016, para. 44; ECtHR, *Şamat v. Turkey*, no. 29115/07, Judgment, 21 January 2020, para. 53.

<sup>87</sup> Appeal on Adjournment, para. 37; Appeal on Jurisdiction, para. 17. In both Appeals, Thaçi refers notably to *Brumărescu v. Romania* Judgment, para. 61. Thaçi further refers to the Kosovo Constitutional Court Judgment of 31 May 2021, para. 100. The Panel notes that this judgment is also relying on the *Brumărescu v. Romania* jurisprudence. In addition, it is clear from the conclusion of this judgment that the Kosovo Constitutional Court interpreted the ECtHR jurisprudence as applying to "final and binding court decisions" rather to "any issue finally determined", as alleged by Thaçi. See Kosovo Constitutional Court Judgment of 31 May 2021, para. 132.

<sup>88</sup> See *Brumărescu v. Romania* Judgment, para. 61.

<sup>89</sup> See *Brumărescu v. Romania* Judgment, para. 62.

<sup>90</sup> See *Brumărescu v. Romania* Judgment, para. 62.

<sup>91</sup> See above, para. 37.

40. Turning to whether the Pre-Trial Judge erroneously focused on *charges* rather than on *issues essential for deciding the matter*, contrary to Thaçi's assertion,<sup>92</sup> a review of the Pre-Trial Judge's findings shows that she was clearly aware of the applicable standard. Notably, she found that the admission of the Obstruction Material for the purposes authorised by Trial Panel II (assessment of credibility of witnesses and the existence of a climate of witness intimidation) "does not create an overlap of issues between the two cases", as each Panel is seised with "different and distinct issues".<sup>93</sup> Having found no error in the Pre-Trial Judge's considerations, the Panel does not need to address Thaçi's related argument that the Pre-Trial Judge appears to conflate *res judicata* with the doctrine of *non bis in idem* by limiting its application to the "same charges".<sup>94</sup>

41. As to whether the evidence contained in the Obstruction Material qualifies as "identical issues" between Case 06 and Case 12 for the purposes of the *res judicata* test, the Panel notes that Thaçi refers to "matters such as whether Mr Thaçi divulged confidential information".<sup>95</sup> He argues that these questions, including that he provided "information and instructions" to unauthorised third parties, concern allegations central to Case 12 and, moreover, that Trial Panel II has indicated its willingness to decide upon these questions in Case 06.<sup>96</sup>

42. At the outset, the Panel finds that Thaçi's allegation that Trial Panel II indicated its willingness to decide upon these questions in Case 06 misrepresents the relevant findings. The Panel notes that Trial Panel II admitted the Obstruction Material for the limited purpose of assessing the credibility of witnesses and the existence of a general

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<sup>92</sup> See Appeal on Adjournment, paras 22, 25, 30-31, 33-34; Appeal on Jurisdiction, paras 14-18. See also Reply on Adjournment Appeal, para. 8.

<sup>93</sup> Impugned Decision on Adjournment, para. 59.

<sup>94</sup> See Appeal on Adjournment, paras 25, 33-34; Appeal on Jurisdiction, paras 14-15.

<sup>95</sup> See Appeal on Adjournment, para. 38.

<sup>96</sup> See Appeal on Adjournment, paras 38-39, referring to Case 06 Obstruction Material Decision, paras 36-38; Appeal on Jurisdiction, paras 10-12, 18, 22-23. See also Appeal on Adjournment, paras 14-17.

climate of witness intimidation.<sup>97</sup> The Panel also observes that in admitting the Obstruction Material into evidence, Trial Panel II specifically stressed that it would refrain from making any assessment or inference on whether this material is demonstrative of Thaçi's criminal conduct under the Specialist Chambers' legal framework, and also made clear that any further inference as to Thaçi's criminal responsibility for the issues arising from the material would not be Trial Panel II's prerogative.<sup>98</sup> The Appeals Panel moreover observes that Trial Panel II declined to admit the Obstruction Material for the purposes of any potential sentencing assessment, finding that it would be inappropriate as it "would require the Panel to make an assessment going to the essence of the criminal charges which will be adjudicated in Case 12".<sup>99</sup> In light of this, the Panel agrees with the Pre-Trial Judge's finding that it "forcefully demonstrates that Trial Panel II also considers Case 06 to be separate and independent from the present case".<sup>100</sup>

43. The Defence acknowledges that the impugned issues are relevant in different ways to the two cases.<sup>101</sup> In Case 12, these issues need to be decided upon in order to assess the individual criminal responsibility of Thaçi for certain alleged offences. In Case 06, Trial Panel II decided that it considers them relevant to the credibility of witnesses, the reliability of evidence and the existence of a climate of intimidation of witnesses surrounding the proceedings. In Thaçi's view, this does not, however,

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<sup>97</sup> Case 06 Obstruction Material Decision, paras 36-38, 65, 72(c).

<sup>98</sup> Case 06 Obstruction Material Decision, para. 35. See also Impugned Decision on Adjournment, para. 59. The Appeals Panel observes that, in any event, according to Article 33(5) of the Law, Trial Panel II cannot sit on any matter involving a violation of Article 15(2) of the Law arising from the proceedings in Case 06.

<sup>99</sup> Case 06 Obstruction Material Decision, para. 40. See also Impugned Decision on Adjournment, para. 59. The Appeals Panel notes that Trial Panel II further reiterated with regard to the "SPO's attempt to infer that the state of mind of Mr Thaçi in Case 12 informs the requisite *mens rea* in this case", that it would "refrain from making conflating assessments between this case and a case with which it is not seized". See Case 06 Obstruction Material Decision, para. 39.

<sup>100</sup> See Impugned Decision on Adjournment, para. 59. See also Impugned Decision on Adjournment, para. 60.

<sup>101</sup> See Appeal on Adjournment, para. 40.

change the fact that the factual issues in question are common between the two proceedings.<sup>102</sup>

44. The Panel agrees that some factual issues are common between the two proceedings. However, factual overlap between two trials does not trigger *res judicata* unless it is demonstrated that the relevant issues are substantive issues that have been fully litigated and decided on the merits, and which are essential to deciding the matter.<sup>103</sup> Based on the above, the Panel finds that the issues between Case 06 and Case 12 are not identical for the purposes of engaging *res judicata* and dismisses Thaçi's challenges in this regard.

(b) Final determination of issues

45. The Panel turns next to the requirement of *res judicata* that there must be a final determination of the relevant issues by a court competent to decide them.<sup>104</sup> The Panel observes that it is a well-recognised principle that there must be a final ruling on the merits of the issues at stake between two cases to engage *res judicata*.<sup>105</sup> The Panel notes that there is no final judgment in either Case 06 or Case 12 and therefore this requirement is not met.

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<sup>102</sup> See Appeal on Adjournment, para. 40.

<sup>103</sup> See above, para. 37. The Panel notes that in the *Bemba* case at the International Criminal Court, where a main case and related proceedings concerning offences against the administration of justice overlapped, the Trial Chamber found that the obstruction material related to witness credibility that was submitted by the Prosecution was not "necessary for the determination of the truth of the charges before it" in relation to the main case. See *Bemba* Additional Evidence Decision, para. 30. In the *Lukić and Lukić* case, the ICTY Appeals Chamber found that although the Trial Chamber did not consider evidence of bribery as being sufficient to trigger separate contempt proceedings, it "was within its discretion to consider that evidence in assessing the credibility of [witnesses in the main case]". See ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-A, Judgement, 4 December 2012, paras 77-79.

<sup>104</sup> See above, para. 34.

<sup>105</sup> See *Kajelijeli* Appeal Judgement, para. 202. See also ECtHR, *Sergey Zolotukhin v. Russia*, no. 14939/03, Judgment, 10 February 2009, paras 107-108; *Ngudjolo* Appeal Judgment, para. 246; *Uwinkindi* Appeal Decision, para. 29; *Ryabykh v. Russia* Judgment, para. 52; ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ Reports 2007 (p. 43), Judgment, 26 February 2007, para. 138; STL, *Prosecutor v. El Sayed*, CH/AC/2012/03, Decision on the Prosecution's Partial Appeal of the Pre-Trial Judge's Order of 20 February 2012, 18 April 2012, para. 19.

46. The Panel observes that Thaçi, in replying to the SPO arguments, recognises that *res judicata* is not already engaged at this point of the proceedings, but rather submits that there is a likelihood of a *future* effect in Case 12.<sup>106</sup> The Panel acknowledges that, absent an adjournment in the Case 12 proceedings, Thaçi will not have an opportunity to invoke *res judicata* in the event there are conflicting findings entered in Case 06 and Case 12 if these cases proceed to judicial deliberations in parallel.<sup>107</sup> However, in considering its finding above that the issues to be decided on between Case 06 and Case 12 are not the same, and moreover, that Trial Panel II stressed that it would not make findings on Thaçi's criminal conduct as alleged in Case 12, the Panel is of the view that *res judicata* will not be engaged between the proceedings in Case 06 and Case 12. The Panel therefore finds that, in light of those considerations and also given the lack of a final judgment in both cases, Thaçi has not demonstrated an error in the Pre-Trial Judge's application of *res judicata*.

47. The Panel observes that all three elements – identity of parties, identity of issues and a final determination of the issues – must be cumulatively present to engage *res judicata*; or, in other words, if one of the requirements is not met, *res judicata* does not apply between two cases.<sup>108</sup> Given that the Panel has found no error in the Pre-Trial Judge's conclusion that there is no identity of issues between Case 06 and Case 12 and no final determination of the issues, the errors Thaçi alleges with regard to the "same party" requirement,<sup>109</sup> need not be addressed. The Panel considers that any findings by the Panel on these arguments would not have an impact on the outcome of the Impugned Decisions.

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<sup>106</sup> See Reply on Jurisdiction Appeal, paras 1-2 (emphasis added); Reply on Adjournment Appeal, paras 1-2 (emphasis added).

<sup>107</sup> See Certification Decision on Adjournment, para. 20; Reply on Adjournment Appeal, para. 4.

<sup>108</sup> See e.g. *Uwinkindi* Appeal Decision, para. 29. See also above, para. 34.

<sup>109</sup> See Appeal on Adjournment, paras 22, 26-29.

48. Likewise, Thaçi's submissions regarding the alleged prejudice to him as a result of the Pre-Trial Judge not applying the *res judicata* principle in these proceedings,<sup>110</sup> are moot. Ultimately, the Appeals Panel recalls that, when an accused asserts a violation of his fair trial rights on appeal, he must demonstrate that he has suffered actual prejudice from the violation, which significantly restricts his right to an effective defence, and not raise merely a speculative or hypothetical risk of prejudice.<sup>111</sup>

49. Accordingly, the Appeals Panel finds that Thaçi has failed to demonstrate that the Pre-Trial Judge erred by applying an incorrect understanding of the principle of *res judicata* between the proceedings in Case 06 and Case 12. The Appeals Panel therefore dismisses Ground 1 of the Appeals.

## B. ALLEGED ERRORS IN ASSESSING THE LEGALITY OF THE ASSIGNMENT OF THE PRE-TRIAL JUDGE AND THE APPLICABILITY OF RULE 20 OF THE RULES (GROUNDS 2 AND 3)

### 1. Submissions of the Parties

50. Thaçi first argues that the President's assignment of Judge Masselot to serve as both a standing Single Judge on all pre-indictment investigative matters, and as Pre-Trial Judge, violated Article 33 of the Law.<sup>112</sup> Thaçi submits that the Pre-Trial Judge

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<sup>110</sup> See Appeal on Adjournment, paras 43-44, 46; Appeal on Jurisdiction, paras 10, 21-23.

<sup>111</sup> See KSC-BC-2020-04, IA001/F00005/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Provisional Release, 20 August 2021 (confidential version filed on 20 August 2021), para. 17.

<sup>112</sup> Appeal on Jurisdiction, para. 24. See also Appeal on Jurisdiction, paras 25-29. According to Thaçi, the President's assignment of one judge to both roles of Single Judge and Pre-Trial Judge is in contravention of: (i) Article 33(4) of the Law, which provides that "a judge may not sit on another panel at a different phase of the same matter"; and (ii) the scheme foreseen by Article 33(1) of the Law under which a Pre-Trial Judge is not assigned until an indictment is filed. See Appeal on Jurisdiction, paras 25-28. See also Appeal on Jurisdiction, para. 29. Moreover, Thaçi argues that such a dual role of Single Judge and then Pre-Trial Judge in the same proceedings was first held by Judge Guillou, and after his resignation, by Judge Masselot. See Appeal on Jurisdiction, para. 26.

refused to rule on the merits of these arguments, “giving two bases for that refusal”, which are the subject of Grounds 2 and 3 of his Appeal on Jurisdiction.<sup>113</sup>

51. Under Ground 2, Thaçi argues that the Pre-Trial Judge erred in holding that she is unable to review the legality of her assignment, which according to Thaçi involves two errors.<sup>114</sup> The first error according to Thaçi is that in the Thaçi Preliminary Motion on Jurisdiction, he requested that the Amended Confirmed Indictment be dismissed based on the invalidity of Judge Masselot’s assignment as Pre-Trial Judge – not her assignment as Single Judge – and that the Impugned Decision on Jurisdiction is silent on the former.<sup>115</sup> The second error Thaçi raises in this regard is that, even if the reasoning in the Impugned Decision on Jurisdiction had applied to Judge Masselot’s assignment as Pre-Trial Judge, Judge Masselot did not consider the Defence’s arguments regarding Article 33 of the Law, holding that she has no power to review her assignment as Pre-Trial Judge for conformity with Article 33 of the Law.<sup>116</sup> Thaçi claims that, instead, the Pre-Trial Judge erroneously identified an application for disqualification under Rule 20 of the Rules as the only available avenue.<sup>117</sup>

52. According to Thaçi, if an assigned judge is not competent to evaluate the lawfulness of his or her own assignment, the result would be that there is no forum to challenge the President’s assignments and would render Article 33 of the Law “unenforceable and meaningless”.<sup>118</sup> In addition, he argues that such an interpretation violates Thaçi’s rights under the Kosovo Constitution and the European Convention of Human Rights (“ECHR”), and that in the absence of a forum to challenge the lawfulness of the court trying him, the general principle of “competence-competence”

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<sup>113</sup> Appeal on Jurisdiction, para. 30.

<sup>114</sup> Appeal on Jurisdiction, para. 31.

<sup>115</sup> Appeal on Jurisdiction, para. 32, referring to Thaçi Preliminary Motion on Jurisdiction, para. 87.

<sup>116</sup> Appeal on Jurisdiction, paras 33, 56, 58. See also Appeal on Jurisdiction, para. 38.

<sup>117</sup> Appeal on Jurisdiction, paras 33, 56-58. See also Appeal on Jurisdiction, paras 38, 40-43.

<sup>118</sup> Appeal on Jurisdiction, para. 33. See also Appeal on Jurisdiction, para. 38.

should be applied pursuant to which the Pre-Trial Judge possesses the inherent jurisdiction to determine her own competence.<sup>119</sup>

53. Under Ground 3, Thaçi argues that the Pre-Trial Judge erred in ruling that Rule 20 of the Rules bars the Defence from challenging through a preliminary motion the practice of appointing the same Judge as both Single Judge and Pre-Trial Judge.<sup>120</sup> He further claims that the Pre-Trial Judge's finding on the Defence argument regarding her dual assignment "falling squarely" under Rule 20 of the Rules is unreasoned – providing "no reasons which explained her conclusion that Rule 20 applied" – and legally wrong.<sup>121</sup> Thaçi submits that a motion based on a violation of Article 33 of the Law is entirely different from a recusal or disqualification request under Rule 20 of the Rules, as questions regarding the impartiality of a judge are not relevant to his or her proper assignment.<sup>122</sup> According to Thaçi, some violations of Article 33 of the Law may also involve issues of partiality under Rule 20 of the Rules, but the failure to challenge a judge's partiality does not affect whether he or she was properly assigned.<sup>123</sup> Regarding the timing of such a request, Thaçi argues that the effect of a violation of Article 33 of the Law by the President is that a judge has no competence, and this would be the case regardless of the timing of any challenge.<sup>124</sup> Moreover, Thaçi submits that the Rules are subsidiary to the Law and that Rule 20 of

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<sup>119</sup> Appeal on Jurisdiction, paras 34-37. See also Reply on Jurisdiction Appeal, paras 17-18. Thaçi further argues that the fact that the Pre-Trial Judge possessed the inherent jurisdiction to determine her own competence would "mean sitting in judgment of the President's decision" is "beside the point", according to the Appeals Chamber of the ICTY in *Tadić*, as competence-competence enabled the ICTY to review the lawfulness of its own creation, even where it necessitated determining the legality of the United Nations ("UN") Security Council. See Appeal on Jurisdiction, para. 37, referring to ICTY, *Prosecutor v. Tadić*, IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ("Tadić Appeal Decision on Jurisdiction"), paras 17-22.

<sup>120</sup> Appeal on Jurisdiction, paras 41-42, 51. See also Appeal on Jurisdiction, paras 39-40.

<sup>121</sup> Appeal on Jurisdiction, paras 42-44.

<sup>122</sup> Appeal on Jurisdiction, paras 45-46, 48. See also Reply on Jurisdiction Appeal, para. 19. Thaçi also submits that the procedure under Rule 20 of the Rules provides for an opportunity for the judge in question to be heard personally, which would be "entirely out of place" if the issue in question is a violation of Article 33 of the Law. See Appeal on Jurisdiction, para. 47.

<sup>123</sup> Appeal on Jurisdiction, para. 48. See also Appeal on Jurisdiction, para. 49; Reply on Jurisdiction Appeal, paras 19-21.

<sup>124</sup> Appeal on Jurisdiction, paras 46-47.

the Rules is intended to introduce an additional protection, not reduce those established in the Law.<sup>125</sup>

54. Finally, Thaçi contends that while the Pre-Trial Judge purported to go on to consider the merits of the Defence arguments, she focused on whether or not she is impartial, rather than whether her assignment violated Article 33 of the Law, thus continuing the erroneous reasoning by conflating Thaçi's arguments on these provisions.<sup>126</sup>

55. In response to Ground 2, the SPO submits that the Pre-Trial Judge correctly held that she cannot review the legality of her own assignment and provided sufficient reasoning in doing so.<sup>127</sup> The SPO responds to Thaçi's argument that the Pre-Trial Judge failed to explicitly address his submissions, asserting that she directly addressed his arguments in the Impugned Decision on Jurisdiction.<sup>128</sup> In particular, the SPO points to the Pre-Trial Judge's finding that: (i) she is competent to preside over Case 12, (ii) the assignment of judges is within the President's purview under Article 33 of the Law, and (iii) the propriety of the Pre-Trial Judge's assignment falls within the scope of Rule 20 of the Rules, and the proper procedure for seeking the disqualification of a judge is set out therein.<sup>129</sup> The SPO argues that Thaçi should have applied to the President within the applicable time limit under Rule 20 of the Rules, and that failure to do so does not translate into a deprivation of his right (or lack of a forum) to challenge the assignment decision of the President in violation of Article 13 of the ECHR.<sup>130</sup>

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<sup>125</sup> Appeal on Jurisdiction, para. 50; Reply on Jurisdiction Appeal, paras 21-22.

<sup>126</sup> Appeal on Jurisdiction, paras 52-58, referring to Impugned Decision on Jurisdiction, para. 40. See also Reply on Jurisdiction Appeal, para. 23.

<sup>127</sup> Response to Jurisdiction Appeal, paras 23, 30. See also Response to Jurisdiction Appeal, paras 28-29.

<sup>128</sup> Response to Jurisdiction Appeal, paras 23, 29-30.

<sup>129</sup> Response to Jurisdiction Appeal, paras 23, 30, referring to Impugned Decision on Jurisdiction, paras 36-40.

<sup>130</sup> Response to Jurisdiction Appeal, paras 23-24. See also Response to Jurisdiction Appeal, para. 32. The SPO also highlights that Thaçi was indisputably familiar with the procedure for disqualification of a

56. The SPO further argues that the “competence-competence” principle does not apply here to the Pre-Trial Judge’s powers and competence to review her own assignment, as the President orders the composition of a panel in a particular case, as an administrative matter, and the appointed judges have no role in such determination.<sup>131</sup> Furthermore, the SPO submits that the Court of Appeals already clarified in the Appeal Decision on Direct Appeal on Admissibility that issues of the power and competence of the Pre-Trial Judge are not matters of jurisdiction.<sup>132</sup> Ultimately, the SPO avers that the relevant issue under Ground 2 is whether the Pre-Trial Judge has the power to review her assignment *now* in the context of ruling on a preliminary motion and, in the SPO’s view, the legal framework of the Specialist Chambers does not grant her any competence to review decisions of the President.<sup>133</sup>

57. With respect to Ground 3, the SPO submits that the Pre-Trial Judge was correct to find that Rule 20 of the Rules is the applicable provision.<sup>134</sup> In particular, the SPO responds that Thaçi overlooks that Rule 20 of the Rules provides for non-exhaustive circumstances which can give rise to recusal or disqualification of a judge on the basis of “any involvement” that affects impartiality or the integrity of the proceedings, and is the proper provision under which Thaçi should have alleged any irregularities of prior judicial involvement that potentially affect the integrity of the proceedings.<sup>135</sup> The SPO finally argues that, in any event, even if Rule 20 of the Rules was inapplicable, Thaçi could have challenged the President’s decisions under Article 45 of the Law and

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judge under Rule 20 of the Rules as he relied upon this provision twice in seeking Judge Guillou’s removal. See Response to Jurisdiction Appeal, para. 24, referring to KSC-BC-2018-01, F00615, Thaçi Defence Request for Substitution or Recusal of a Judge, 14 March 2024 (“Request for Judge Recusal of 14 March 2024”), paras 1, 12; KSC-BC-2018-01, F00687, Thaçi Defence Request for Substitution or Disqualification of a Judge, 28 May 2024 (“Request for Judge Disqualification of 28 May 2024”), paras 1, 12.

<sup>131</sup> Response to Jurisdiction Appeal, para. 26.

<sup>132</sup> Response to Jurisdiction Appeal, para. 26.

<sup>133</sup> Response to Jurisdiction Appeal, para. 27 (emphasis in original).

<sup>134</sup> Response to Jurisdiction Appeal, para. 32. See also Response to Jurisdiction Appeal, paras 23, 31.

<sup>135</sup> Response to Jurisdiction Appeal, para. 32.

Rules 75, 77 and/or 79 of the Rules before the competent Panel at the appropriate time, and he failed to do so.<sup>136</sup>

58. Thaçi replies first to the SPO argument that other avenues existed for review of the Pre-Trial Judge's assignment, submitting that Article 45 of the Law does not permit appeals of decisions of the President.<sup>137</sup> Thaçi adds that the Specialist Chambers' Rules on Assignment of Judges indicate that the President's choice of a judge is not reviewable and further submits that he did not find any instance of an international criminal tribunal where a President's judicial assignment was appealed.<sup>138</sup> Regarding whether the "competence-competence" principle applies, Thaçi replies that (i) the Appeal Decision on Direct Appeal on Admissibility did not concern this principle,<sup>139</sup> (ii) there is nothing to suggest that this principle should be limited in the same way as Rule 97(1) of the Rules which refers to the jurisdiction of the Specialist Chambers,<sup>140</sup> and (iii) nothing in the Law excludes "competence-competence", while numerous international criminal tribunals have found this principle to apply when not expressly referenced in their statutes.<sup>141</sup>

59. Thaçi further replies that it is illogical if Rule 20 of the Rules limits the requirements of Article 33 of the Law, such that they only operate where actual or perceived bias can be demonstrated and are nullified in the absence of an objection by a party.<sup>142</sup>

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<sup>136</sup> Response to Jurisdiction Appeal, paras 25, 34.

<sup>137</sup> Reply on Jurisdiction Appeal, para. 11.

<sup>138</sup> Reply on Jurisdiction Appeal, paras 12-13, referring to KSC-BD-02, Rules on the Assignment of Specialist Chambers Judges from the Roster of International Judges, 14 March 2017 ("Rules on Assignment of Judges"), Rule 3(4).

<sup>139</sup> Reply on Jurisdiction Appeal, para. 14.

<sup>140</sup> Reply on Jurisdiction Appeal, para. 15. Thaçi further submits that Judge Masselot herself has acted *proprio motu* to determine her own powers on a specific issue, exercising "competence-competence" on matters which fall outside of Rule 97(1) of the Rules. See Reply on Jurisdiction Appeal, para. 16.

<sup>141</sup> Reply on Jurisdiction Appeal, paras 17-18.

<sup>142</sup> Reply on Jurisdiction Appeal, para. 22.

## 2. Assessment of the Court of Appeals Panel

60. The Panel notes that on 6 June 2024, the President assigned Judge Masselot as the Single Judge in the KSC-BC-2018-01 proceedings and Thaçi was notified on the same day.<sup>143</sup> Also on 6 June 2024, the President assigned Judge Masselot as the Pre-Trial Judge in Case 12, and Thaçi was notified of that decision on 11 December 2024.<sup>144</sup>

61. The Panel further notes that on 14 April 2025, the Pre-Trial Judge set the date of 8 May 2025 for the Defence to file preliminary motions in Case 12 pursuant to Rule 97(1) of the Rules and Article 39(1) of the Law which: (i) challenge the jurisdiction of the Specialist Chambers; (ii) allege defects in the form of the indictment; or (iii) seek severance of indictments pursuant to Rule 89(2) of the Rules.<sup>145</sup>

62. In the Impugned Decision on Jurisdiction, the Pre-Trial Judge *inter alia* found that: (i) she does not herself have the competence to pronounce on her assignment, which falls squarely within the powers and responsibilities of the President of the Specialist Chambers; and (ii) 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.<sup>146</sup>

63. At the outset, the Appeals Panel recalls that it found inadmissible Thaçi's Direct Appeal on Admissibility – filed as an appeal as of right – in which he took issue with the Pre-Trial Judge's finding that a challenge to her competence to adjudicate in Case 12 pre-trial proceedings did not constitute a jurisdictional challenge under Rule 97(1)(a) of the Rules.<sup>147</sup> The Panel found, *inter alia*, that such a challenge to the

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<sup>143</sup> See Single Judge Assignment Decision.

<sup>144</sup> See Pre-Trial Judge Assignment Decision. The Panel notes that the Pre-Trial Judge Assignment Decision was issued as confidential on 6 June 2024, and that on 11 December 2024, this decision was reclassified as public and notified to Thaçi.

<sup>145</sup> Decision on Submission of Preliminary Motions, paras 11, 30, 31(h).

<sup>146</sup> Impugned Decision on Jurisdiction, paras 38-39. See also Impugned Decision on Jurisdiction, paras 37, 40-41.

<sup>147</sup> Appeal Decision on Direct Appeal on Admissibility, paras 19-23. See Direct Appeal on Admissibility, paras 20-35.

Pre-Trial Judge's competence and authority did not *stricto sensu* pertain to the personal, territorial, temporal or subject-matter jurisdiction of the Specialist Chambers under Article 45(2) of the Law and therefore does not constitute a jurisdictional challenge according to Rule 97(1)(a) of the Rules.<sup>148</sup>

64. Furthermore, the Appeals Panel notes Thaçi's preliminary submissions in his Appeal on Jurisdiction that assigning Judge Masselot as both Single Judge and Pre-Trial Judge violated Article 33 of the Law.<sup>149</sup> The Panel considers that these submissions fall outside of the scope of the Second and Third Certified Issues,<sup>150</sup> and recalls that the scope of the Panel's review lies strictly within the confines of the issues certified by the lower panel.<sup>151</sup> The Panel therefore declines to consider these arguments and formally dismisses them.<sup>152</sup>

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<sup>148</sup> See Appeal Decision on Direct Appeal on Admissibility, para. 20. The Panel recalls that it observed in this decision that it would not deal with the merits of Thaçi's appeal, to the extent possible, and would only address the arguments regarding the specific question of admissibility. See Appeal Decision on Direct Appeal on Admissibility, para. 5.

<sup>149</sup> See Appeal on Jurisdiction, paras 24-30. See also Appeal on Jurisdiction, paras 49, 54; Reply on Jurisdiction Appeal, para. 19.

<sup>150</sup> See Certification Decision on Jurisdiction, paras 31-35, wherein the Second Certified Issue is defined as: "[w]hether the Pre-Trial Judge erred in law by considering that she is not able to review the legality of her assignment and giving insufficient reasons therefore" and the Third Certified Issue is defined as: "[w]hether the Pre-Trial Judge erred in law by finding that Rule 20 of the Rules bars the Defence from challenging, through a preliminary motion, the practice of appointing the same judge as both Single Judge and Pre-Trial Judge and giving sufficient reasons therefore". See also above, para. 13.

<sup>151</sup> See KSC-BC-2020-06, IA036/F00011, IA037/F00011, IA038/F00011, IA040/F00011, Decision on Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211 and F03213, 8 October 2025, para. 16; KSC-BC-2020-06, IA031/F00005/RED, Public Redacted Version of Decision on Appeal Against Oral Order of 5 December 2024, 11 April 2025 (confidential version filed on 11 April 2025), para. 10.

<sup>152</sup> In this regard, the Panel observes that the President clarified the issue challenged by Thaçi in a decision appointing Judge Guillou as the first Single Judge, finding that "[i]n accordance with Article 33(4) of the Law, the Single Judge hereunder assigned may not sit on a panel at a different phase of the same matter *other than as a Pre-Trial Judge*" and that "[a]ccording to Articles 25(1)(f) and 33(2) of the Law interpreted jointly, Chambers may include individual judges performing other functions required under the Law, to deal with matters which, in the view of the President, require the assignment of a Judge other than the Pre-Trial Judge. The purpose of these provisions is thus to capture those instances where an individual Judge needs to be assigned in order to deal with a specific matter without the conditions for the assignment of a Pre-Trial Judge under Article 33(1)(a) of the Law being triggered." See KSCPR-2018/F00004, Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law, 29 May 2018 (strictly confidential and *ex parte*, reclassified as public on 28 September 2020), paras 11, 17 (emphasis added).

(a) Ground 2

65. Turning first to Ground 2 of Thaçi's Appeal on Jurisdiction, the Panel understands him to be challenging the assignment of Judge Masselot as Pre-Trial Judge.<sup>153</sup> In particular, Thaçi challenges the Pre-Trial Judge's findings in the Impugned Decision on Jurisdiction that the assignment of judges is within the sole purview of the President pursuant to Article 33 of the Law and that, as such, 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".<sup>154</sup>

66. With respect to Thaçi's arguments regarding the validity of the Pre-Trial Judge's assignment, the Panel first observes that Thaçi already challenged the issue relating to the President's discretion in assigning Judges from the Roster of Judges during the pre-trial phase of the Case 06 proceedings.<sup>155</sup> In this regard, the Panel notes that the Pre-Trial Judge in Case 06 considered that the President "is endowed" with the power to assign Judges from the Roster of Judges pursuant to Articles 32(3) and 33 of the Law, in conjunction with the Rules on Assignment of Judges which "guide the President in this area".<sup>156</sup> The Pre-Trial Judge further considered that "the framework for the assignment of Judges at the [Specialist Chambers] provides pre-established, general, and objective criteria which safeguard against assignments for

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<sup>153</sup> The Panel observes that Thaçi argues that in the Impugned Decision on Jurisdiction, the Pre-Trial Judge addressed the validity of her assignment as Single Judge while his challenge related to her assignment as Pre-Trial Judge. However, the Panel also notes Thaçi's submission that, even applying the same reasoning in the Impugned Decision to her assignment as Pre-Trial Judge, she erred for the same reasons regardless of whether it applied to her assignment as Single Judge or Pre-Trial Judge. See Appeal on Jurisdiction, paras 32 (referring to Thaçi Preliminary Motion on Jurisdiction, para. 87), 33, 56-58; Impugned Decision on Jurisdiction, para. 38. See also Appeal on Jurisdiction, paras 31, 38, 40-43. Based on these submissions, the Panel will address Thaçi's challenges as they relate to Judge Masselot's assignment as Pre-Trial Judge.

<sup>154</sup> See Appeal on Jurisdiction, paras 31, 33, 38. See Impugned Decision on Jurisdiction, para. 38.

<sup>155</sup> See KSC-BC-2020-06, F00450, Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused, 31 August 2021 ("Thaçi *et al.* Decision on Legality Challenge"), para. 90. See also KSC-BC-2020-06, F00217, Motion challenging jurisdiction on the basis of violations of fundamental rights enshrined in the Constitution, 12 March 2021, para. 48.

<sup>156</sup> *Thaçi et al.* Decision on Legality Challenge, para. 106.

improper motives”, finding that the Specialist Chamber’s framework in relation to the President’s role in the assignment of Judges “does not call into question the independence and impartiality” of the Specialist Chambers.<sup>157</sup> The Appeals Panel agrees with these findings by the Pre-Trial Judge in Case 06 in light of the relevant provisions in the Law and similarly considers that the assignment of Judges falls within the sole purview of the President pursuant to Article 33 of the Law.

67. The Panel will now address the possibility of review of the President’s assignment of Judges for conformity with Article 33 of the Law. At the outset, the Panel observes that, pursuant to Rule 3(4) of the Rules on Assignment of Judges, the President’s assignment decision is “not subject to judicial review” as such and therefore, under the legal framework of the Specialist Chambers, the Pre-Trial Judge does not have the competence to review the decisions of the President.<sup>158</sup> However, the Panel will address Thaçi’s arguments that, in the absence of a specific provision in the Specialist Chambers’ legal framework, the “competence-competence” principle of law applies, giving the Pre-Trial Judge the alleged inherent jurisdiction to review her own competence.<sup>159</sup>

68. The Panel notes Thaçi’s submission that the ICTY Appeals Chamber in the *Tadić* case relied on the “competence-competence” principle to review the lawfulness of the ICTY’s creation.<sup>160</sup> The Panel observes that in applying that principle, the ICTY Appeals Chamber found that the ICTY had the authority to “examine the plea against its jurisdiction based on the invalidity of its establishment by the Security Council”.<sup>161</sup>

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<sup>157</sup> *Thaçi et al.* Decision on Legality Challenge, para. 106. See also KSC-BC-2020-06, IA013/F00012, Decision on Defence Appeals Against Decision on Motions Challenging the Legality of the Specialist Chambers and the Specialist Prosecutor’s Office and Alleging Violations of Certain Constitutional Rights of the Accused, 20 May 2022, paras 45-49.

<sup>158</sup> See Rules on Assignment of Judges, Rule 3(4).

<sup>159</sup> See Appeal on Jurisdiction, paras 34-37. See also Reply on Jurisdiction Appeal, paras 14-18.

<sup>160</sup> See Appeal on Jurisdiction, para. 37, referring to *Tadić* Appeal Decision on Jurisdiction, paras 17-22.

<sup>161</sup> *Tadić* Appeal Decision on Jurisdiction, para. 22. Compare *Tadić* Appeal Decision on Jurisdiction, para. 22 with STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR90.1, Decision on the Defence Appeals

69. The Panel observes that the jurisprudence on the “competence-competence” principle concerns a tribunal’s competence to determine its own jurisdiction.<sup>162</sup> It relates to a tribunal’s inherent power to review its own jurisdiction. The Appeals Panel considers, however, that this principle does not apply to the question of whether an individual judge can review his or her own *assignment* or standing. In this regard, the Panel also recalls its finding that Thaçi’s challenge regarding the Pre-Trial Judge’s competence to adjudicate in Case 12 pre-trial proceedings is not a jurisdictional challenge under Rule 97(1)(a) of the Rules.<sup>163</sup> The Panel therefore rejects Thaçi’s argument that the competence-competence principle applies.

70. The Panel turns to address Thaçi’s contention that if an assigned judge is not competent to evaluate the lawfulness of his or her own assignment, there would be no forum to challenge the President’s assignments under Article 33 of the Law, which is in violation of Thaçi’s rights under the Kosovo Constitution and ECHR.<sup>164</sup> Contrary to what Thaçi argues and, as developed further below in relation to Ground 3, the Panel observes that the Specialist Chambers’ legal framework is not silent on an avenue for

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Against the Trial Chamber’s “Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal”, 24 October 2012, paras 40-45 (wherein the Appeals Chamber of the Special Tribunal for Lebanon noted that the *Tadić* case was the exception, in light of other international case law, to hold that it had the authority to judicially review the actions of the UN Security Council, finding the reasoning in the *Tadić* case to be unpersuasive and declining to follow it).

<sup>162</sup> The Panel observes that the “competence-competence” principle (also referred to as “*compétence de la compétence*” or “*Kompetenz-Kompetenz*”) refers to the inherent jurisdiction of any judicial or arbitral tribunal, or the “jurisdiction to determine its own jurisdiction”. See *Tadić* Appeal Decision on Jurisdiction, para. 18. Under this principle, international courts have found that “in the absence of any agreement to the contrary, an international tribunal has the right to decide as to its own jurisdiction and has the power to interpret for this purpose the instruments which govern that jurisdiction”. See ICJ, *Nottebohm case (Liechtenstein v. Guatemala)*, Preliminary Objection, ICJ Reports 1953 (p. 111), Judgment, 18 November 1953, p. 119; ICC, ICC-RoC46(3)-01/18-37, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, 6 September 2018, paras 30-33, and references cited therein; STL, *In the matter of El Sayed*, CH/AC/2010/02, Decision on Appeal of Pre-Trial Judge’s Order Regarding Jurisdiction and Standing, 10 November 2010 (“*El Sayed* Appeal Decision”), para. 43. See also *El Sayed* Appeal Decision, paras 44-49, and references cited therein.

<sup>163</sup> See Appeal Decision on Direct Appeal on Admissibility, paras 19-20. As the Panel found that the competence-competence principle does not apply in the current circumstances, it will not further address Thaçi’s submissions in reply concerning this principle. See Reply on Jurisdiction Appeal, paras 14-18.

<sup>164</sup> Appeal on Jurisdiction, paras 33-36. See also Appeal on Jurisdiction, para. 38.

a party to challenge the President's assignment of a judge, as Rule 20 of the Rules provides the appropriate forum. The Panel considers that given this forum, there is no violation of Thaçi's rights under the Kosovo Constitution and the ECHR and the Panel therefore dismisses Thaçi's arguments.

(b) Ground 3

71. The Panel will now turn to Thaçi's arguments under Ground 3. The Panel notes first Thaçi's challenges to the Pre-Trial Judge's finding in the Impugned Decision on Jurisdiction that Thaçi could have, and should have, brought this matter – that the assignment of one and the same Judge as Single Judge and Pre-Trial Judge was improper – following the procedure set out in Rule 20(3) of the Rules and cannot circumvent the procedure and time limits at this late stage.<sup>165</sup>

72. The Panel notes that 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”. The Panel also observes that Rule 20(1) of the Rules provides a non-exhaustive list of grounds (“*may include*”) for recusal or disqualification of judges.<sup>166</sup> The Panel further notes the language in Rule 20(1)(d) of the Rules, which provides that a ground for disqualification may include “any other reason which could reasonably appear to

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<sup>165</sup> See Impugned Decision on Jurisdiction, para. 39.

<sup>166</sup> See Rule 20(1) of the Rules (emphasis added). The Panel notes that Rule 20(1) of the Rules provides: A Judge shall not sit in any case in which he or she has a personal interest or has or has had any involvement which may affect or may appear to affect his or her impartiality, judicial independence or the integrity of the proceedings. The grounds for recusal or disqualification may include:

- (a) personal interest in the case, including a spousal, parental or other immediate family interest, a personal, professional or subordinate relationship, with any of the Parties or Victims' Counsel, or situations that may reasonably be perceived as giving rise to conflict of interest;
- (b) involvement other than as a Judge of the Specialist Chambers in any legal proceedings in which the suspect or Accused was or is a party;
- (c) performance of functions, prior to his or her assignment, during which the Judge could have formed an opinion on the case in question, that could advertently affect the Judge's required impartiality; and
- (d) any other reason which could reasonably appear to affect the Judge's impartiality.

affect the Judge's impartiality". In the Panel's view, the language of Rule 20 of the Rules provides for broad, encompassing grounds pursuant to which a Party can apply for the disqualification of a judge at the Specialist Chambers. In this regard, the Panel considers that such grounds for disqualification are not as limited as alleged by Thaçi – to only a potential conflict of interest or impartiality of a judge – but rather include any involvement affecting the impartiality, judicial independence or integrity of the proceedings.<sup>167</sup> The Panel therefore agrees with the Pre-Trial Judge's finding that Thaçi's assertion that the assignment of the same judge as Single Judge and Pre-Trial Judge was improper falls within the scope of Rule 20 of the Rules.

73. As to Thaçi's submission that a motion based on a violation of Article 33 of the Law is entirely different from a recusal or disqualification request under Rule 20 of the Rules, as questions regarding the impartiality of a judge are not relevant to his or her proper assignment,<sup>168</sup> the Panel finds this submission unpersuasive for the following reasons. First, the Panel recalls its earlier finding that the Pre-Trial Judge does not have the competence to review decisions of the President under Article 33 of the Law.<sup>169</sup> Second, as found above, the Panel recalls that the applicable Rule 20 of the Rules does not limit the requirements of Article 33 of the Law such that they "only operate where actual or perceived bias can be demonstrated",<sup>170</sup> in light of the non-exhaustive list of grounds for recusal or disqualification of judges.<sup>171</sup> In this regard,

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<sup>167</sup> See Appeal on Jurisdiction, paras 33, 45-46, 48. See also Reply on Jurisdiction Appeal, para. 19. The Panel notes that in the Thaçi Preliminary Motion on Jurisdiction, Thaçi initially challenged the assignment of the same judge as Single Judge and later as Pre-Trial Judge, arguing a lack of objectivity and impartiality by Judge Masselot (and before her, Judge Guillou) due to her prior involvement as Single Judge. See Thaçi Preliminary Motion on Jurisdiction, paras 70-81. The Panel observes that, in the Appeal on Jurisdiction, Thaçi appears to move away from this challenge and instead focuses on the invalid judicial assignment of Judge Masselot in violation of Article 33 of the Law. See Reply on Jurisdiction Appeal, para. 19. See also Appeal on Jurisdiction, paras 33, 45-46, 48.

<sup>168</sup> Appeal on Jurisdiction, paras 45-46, 48. See also Reply on Jurisdiction Appeal, para. 19. Thaçi also submits that the procedure under Rule 20 of the Rules provides for an opportunity for the judge in question to be heard personally, which would be "entirely out of place" if the issue in question is a violation of Article 33 of the Law. See Appeal on Jurisdiction, para. 47.

<sup>169</sup> See above, paras 67-69.

<sup>170</sup> See Reply on Jurisdiction Appeal, para. 22.

<sup>171</sup> See above, para. 72.

the Panel agrees with Thaçi's submission that Rule 20 of the Rules is not intended to reduce the protections established in Article 33 of the Law.<sup>172</sup> Since the Panel found that the Pre-Trial Judge could not review her assignment under Article 33 of the Law, it will not further consider Thaçi's arguments regarding the timing of such potential review applications and the relationship between Article 33 and Rule 20 in terms of such review.<sup>173</sup>

74. The Panel further notes Thaçi's submission that if an assigned judge is not competent to evaluate the lawfulness of his or her own assignment, the result would be that there is no forum to challenge the President's assignments and, moreover, that the President's choice of a judge is not reviewable.<sup>174</sup> However, the Panel highlights that Rule 20(3) of the Rules provides a forum to challenge the President's assignment decision. Under this provision, a party may directly apply to the President who, except for when a request for disqualification is summarily dismissed if, *inter alia*, vexatious or frivolous, "shall assign a Panel of three Judges to determine whether the Judge should be disqualified". In the Panel's view, Thaçi could have availed himself of this opportunity to challenge the President's assignment decision of the Pre-Trial Judge and failed to do so.

75. In this regard, the Panel observes that Thaçi has employed the procedure under Rule 20 of the Rules twice to apply for the recusal and disqualification of the Single Judge, Judge Guillou, in the KSC-BC-2018-01 proceedings.<sup>175</sup> The Panel considers that, in particular given this precedent of similar requests by Thaçi, in which he specifically refers to the timing requirement under Rule 20 of the Rules,<sup>176</sup> it is clear that he was

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<sup>172</sup> See Appeal on Jurisdiction, para. 50.

<sup>173</sup> See Appeal on Jurisdiction, paras 46-47; Reply on Jurisdiction Appeal, para. 22.

<sup>174</sup> See Appeal on Jurisdiction, paras 33, 38; Reply on Jurisdiction Appeal, paras 12-13, referring to Rules on Assignment of Judges, Rule 3(4).

<sup>175</sup> Request for Judge Recusal of 14 March 2024; Request for Judge Disqualification of 28 May 2024.

<sup>176</sup> Request for Judge Recusal of 14 March 2024, paras 18-20; Request for Judge Disqualification of 28 May 2024, paras 19-21. The Panel further notes that in both applications, Thaçi requested that the President assign a panel of three judges to determine his requests for the recusal and disqualification,

well-aware of the avenues to challenge Judge Masselot's assignment as Pre-Trial Judge in the present proceedings, as well as the correct timing within which to apply.<sup>177</sup>

76. Regarding the Parties' arguments on alternative avenues to the procedure under Rule 20(3) of the Rules which Thaçi could have employed to challenge the Pre-Trial Judge's assignment in these proceedings,<sup>178</sup> the Panel will not consider these in light of its findings above on Rule 20(3) of the Rules being the proper avenue.

77. Finally, in relation to Thaçi's argument that the Pre-Trial Judge provided "no reasons" as to why Rule 20 of the Rules applied regarding her appointment as Single Judge and Pre-Trial Judge,<sup>179</sup> the Panel notes the following relevant findings by the Pre-Trial Judge, namely that: (i) if Thaçi believed there were grounds for her disqualification, he could and should have raised this matter following the procedure set out in Rule 20(3) of the Rules and did not do so; (ii) he cannot now circumvent that procedure and applicable time limits by raising the matter through a preliminary motion; (iii) beyond the procedural argument, Thaçi made "sweeping and unsubstantiated arguments in the abstract" and failed to concretely demonstrate how her assignment as Single and Pre-Trial Judge could have affected or appeared to affect her impartiality; and (iv) Thaçi's submissions were contradictory and disingenuous

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respectively, of Judge Guillou pursuant to Rule 20(3) of the Rules. See Request for Judge Recusal of 14 March 2024, paras 21-35, 37; Request for Judge Disqualification of 28 May 2024, paras 22-33. The Panel notes that the Request for Judge Recusal of 14 March 2024 and the Request for Judge Disqualification of 28 May 2024 were dismissed by the President on 8 April 2024 and 6 June 2024, respectively. See KSC-BC-2018-01, F00630, Decision on Defence Requests for Substitution or Recusal of a Judge, 8 April 2024; KSC-BC-2018-01, F00698, Decision on Hashim Thaçi Request for Substitution or Disqualification of a Judge, 6 June 2024.

<sup>177</sup> The Appeals Panel notes that Thaçi should have applied to the President challenging Judge Masselot's appointment as Pre-Trial Judge within ten days of when he was notified of the President's decision on 11 December 2024. See above, para. 60. Instead, Thaçi waited to challenge the Pre-Trial Judge's appointment in the form of a preliminary motion on 8 May 2025. See above, paras 8, 61.

<sup>178</sup> See Response to Jurisdiction Appeal, paras 25, 34, referring to Article 45 of the Law and Rules 75, 77 and/or 79 of the Rules; Reply on Jurisdiction Appeal, paras 11-13 (arguing that Article 45 of the Law does not permit appeals of decisions of the President and that the Rules on Assignment of Judges indicate that the President's choice of a judge is not reviewable).

<sup>179</sup> See Appeal on Jurisdiction, paras 42-43.

when arguing that her impartiality has been affected by her being involved in investigative matters, while the impartiality of the Trial Panel II Judges would not be.<sup>180</sup>

78. The Panel observes that the Pre-Trial Judge considered and addressed the relevant underlying Defence arguments to the Impugned Decision on Jurisdiction, including reasoning as to why she found that Rule 20 of the Rules applied to Thaçi's challenge to her dual appointment as Single Judge and Pre-Trial Judge, and not Article 33 of the Law.<sup>181</sup> While the Pre-Trial Judge did not refer to every argument the Defence raised in reply to the SPO's response to the Thaçi Preliminary Motion on Jurisdiction,<sup>182</sup> the Panel recalls that it is not required for a panel to articulate every step of its reasoning and to discuss each submission, as long as it provides reasoning in support of its findings on the substantive considerations relevant for a decision.<sup>183</sup> In light of this, the Panel finds that the Pre-Trial Judge provided sufficient reasoning for her finding as to the application of Rule 20 of the Rules in relation to Thaçi's challenge and dismisses Thaçi's argument in this regard.

79. Accordingly, the Appeals Panel finds that Thaçi has failed to demonstrate that the Pre-Trial Judge erred in her assessment of the legality of her assignment or of the applicability of Rule 20 of the Rules thereto. The Appeals Panel therefore dismisses Grounds 2 and 3 of the Appeal on Jurisdiction.

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<sup>180</sup> See Impugned Decision on Jurisdiction, paras 39-40.

<sup>181</sup> See Impugned Decision on Jurisdiction, paras 38-40, referring to Thaçi Preliminary Motion on Jurisdiction, paras 57, 65-69, 74, 77-78, 82, 87-88.

<sup>182</sup> See Appeal on Jurisdiction, para. 40. See also Appeal on Jurisdiction, paras 39, 42; Impugned Decision on Jurisdiction, paras 38-40; F00318, Thaçi Defence reply to SPO response to Preliminary Motion on Jurisdiction, 30 May 2025 (confidential and *ex parte*, reclassified as public on 27 June 2025), paras 18-25.

<sup>183</sup> See e.g. *Shala* Appeal Judgment, para. 43; KSC-BC-2020-06, IA009/F00030, Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers", 23 December 2021, para. 154.

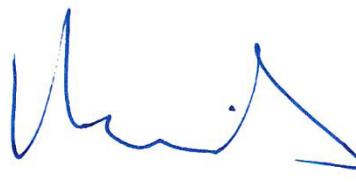
## V. DISPOSITION

80. For these reasons, the Court of Appeals Panel:

**DENIES** the Appeals in their entirety;

**GRANTS** the SPO Request for Reclassification and the Thaçi Request for Reclassification; and

**INSTRUCTS** the Registry to execute the reclassification of the Response to Adjournment Appeal (IA006/F00005), the Response to Jurisdiction Appeal (IA007/F00005), the Reply on Adjournment Appeal (IA006/F00007), the Reply on Jurisdiction Appeal (IA007/F00006), the SPO Request for Reclassification (IA006/F00006) and the Thaçi Request for Reclassification (IA006/F00008) as public, pursuant to Rule 82(5) of the Rules.

A handwritten signature in blue ink, appearing to read "M. PICARD", is positioned above a horizontal line.

**Judge Michèle Picard,  
Presiding Judge**

Dated this Tuesday, 28 October 2025

At The Hague, the Netherlands