

**In:** KSC-BC-2023-12

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

**Before:** **Single Trial Judge**  
Judge Christopher Gosnell

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 8 December 2025

**Language:** English

**Classification:** Public

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**Public redacted version of Thaçi Defence Response to Prosecution Submissions on Detention Restrictions (F00588)**

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## I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby responds to the Prosecution submissions<sup>1</sup> requesting that the Single Trial Judge maintain the detention conditions imposed on Mr Thaçi by the Decisions F00382<sup>2</sup> and F00504, which prohibit non-privileged in-person visits by eleven individuals (“Restricted Visitors” and ‘Case 12 Restrictions”, respectively).<sup>3</sup> The Defence submits that the SPO has failed to demonstrate that such restrictions remain necessary or proportionate.

## II. PROCEDURAL BACKGROUND

2. The Defence incorporates by reference the procedural background described in the Defence’s prior submissions on the restrictions of Mr Thaçi’s detention conditions.<sup>4</sup>

## III. APPLICABLE LAW

3. Pursuant to Article 3(2) of the Law, the KSC shall adjudicate and function in accordance with the Constitution of the Republic of Kosovo (“Constitution”) and international human rights law, including the European Convention on Human Rights (“ECHR”). Article 22 of the Constitution incorporates the ECHR and renders it applicable before the KSC. Article 8 of the ECHR protects the right to respect for private and family life.

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<sup>1</sup> KSC-BC-2023-12/F00588, *Prosecution Submissions pursuant to Decision F00504*, 1 December 2025, [public](#) (“**SPO Submissions**”).

<sup>2</sup> KSC-BC-2023/12/F00382/COR/RED, *Public Redacted Version of Corrected Version of Decision on Specialist Prosecutor’s Request for Modification of Hashim Thaçi’s detention conditions*, 18 August 2025, [public](#) (Original dated 18 July 2025) (“**Decision F00382**”).

<sup>3</sup> KSC-BC-2023-12/F00504/RED, *Public Redacted Version of Decision on Hashim Thaçi’s Detention Conditions*, 7 November 2025 (Original dated 16 October 2025), [public](#) (“**Decision F00504**”).

<sup>4</sup> KSC-BC-2023-12/F00480, *Thaçi Defence Response to “Prosecution Submissions pursuant to Decision F00382”*, 3 October 2025, confidential and *ex parte* ([public redacted version](#) of 20 October 2025) (“**Response F00480**”), paras 2-10.

4. Pursuant to Article 39(11) and (13) of the Law and Rule 95(2)(g) of the Rules, the Panel shall ensure that proceedings are not unduly delayed and shall take all necessary measures for the expeditious preparation of the case for trial and to protect the Accused, witnesses and victims. This may include, pursuant to Rules 56(1) and (6) of the Rules, modifying the Accused's conditions of detention and related matters, and imposing necessary and proportionate restrictions on his communications, for the purpose of protecting witnesses or victims, confidential information or the integrity of the proceedings. In assessing requested restrictions to an Accused's detention conditions, the Panel must consider whether such restrictions continue to be necessary and proportionate, taking into account the detention regime as a whole, as well as the cumulative effects of the measures sought and any counterbalancing measures.<sup>5</sup> Such measures must remain compatible with the rights of the Accused.<sup>6</sup>

#### IV. SUBMISSIONS

5. The Defence submits that the Case 12 Restrictions are not necessary or proportionate, particularly in light of (i) the imminent closure of the evidentiary phase in Case 06;<sup>7</sup> (ii) the imminent start of the trial in Case 12 and the nature of the evidence tendered by the SPO in Case 12; (iii) the fact that no incidents of concern have been reported by the Registry during Mr Thaçi's detention visits since December 2023 and since the Decision F00504.

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<sup>5</sup> Decision F00382, para. 22; Decision F00594, para. 22.

<sup>6</sup> KSC-BC-2020-06/F03442, *Decision on Second Prosecution Request to Modify Detention Conditions*, 3 September 2025, confidential and *ex parte* ([public redacted version](#) of 10 October 2025) ("**Decision F03442**"), para. 18.

<sup>7</sup> KSC-BC-2020-06 ("**Case 06**").

### *Impact of the imminent closure of the evidentiary phase in Case 06*

6. Between 26 November 2025 and 2 December 2025, Trial Panel II issued its last decisions on the admission of evidence tendered by the parties in Case 06, rendering unnecessary the recall of any witness.<sup>8</sup> On the same day, the Thaçi Defence and the Krasniqi Defence notified the closure of their cases.<sup>9</sup> On 5 December 2025, the SPO applied to tender one document as rebuttal evidence, without seeking to recall any witness.<sup>10</sup> Trial Panel II has indicated that it does not intend to call any evidence pursuant to Rule 132.<sup>11</sup> Final trial briefs are due on 19 January 2026 and closing statements are scheduled for 9-13 February 2026,<sup>12</sup> with additional days reserved until 18 February 2025.
7. Accordingly, since no witnesses will be recalled in Case 06, any risk of interference with Case 06 proceedings and/or Case 06 witnesses is extremely reduced.<sup>13</sup> Mr Thaçi has neither incentive nor will to retaliate against Case 06 witnesses and there is no reason for him to incentivise any witness to recant at the final stage of Case 06 proceedings<sup>14</sup> as this would now have no evidentiary value. The Defence further submits that the risk of disclosure of confidential information is similarly reduced:<sup>15</sup> most of the Case 06 trial transcripts have already been released in public redacted versions, therefore a large part, if not most, of the evidence discussed in Case 06 is now in the public domain; and all

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<sup>8</sup> In particular, on 26 November 2025, Trial Panel II admitted the prior statements of W04752 in writing, which renders unnecessary the need to recall him; see KSC-BC-2020-06/F03600, *Decision on Thaçi Request Related to W04752*, 26 November 2025, [public](#).

<sup>9</sup> KSC-BC-2020-06/F03609, *Thaçi Defence Notice pursuant to Rule 131*, 2 December 2025, [public](#).

<sup>10</sup> KSC-BC-2020-06/F03616, *Prosecution request to present and for admission of rebuttal evidence with confidential Annex 1*, 5 December 2025, [public](#).

<sup>11</sup> KSC-BC-2020-06-F03597, *Order Pursuant to Rules 134(b), (d) and 159(6) and Related Matters*, 21 November 2025, [public](#), para. 20.

<sup>12</sup> *Ibid.*, para. 39.

<sup>13</sup> KSC-BC-2023-12/F00597, *Sixth Decision on Review of Detention of Hashim Thaçi*, 3 December 2025, [public](#), para. 18 (“**Decision F00597**”).

<sup>14</sup> The SPO has not presented any information or evidence capable of supporting the conclusion that Mr Thaçi will attempt to interfere with a witness to induce them to recant, or try to seek revenge against a witness who has testified.

<sup>15</sup> See *contra*, SPO Submissions, para. 7.

the witnesses called by the parties have completed their testimonies. The permanent active monitoring of Mr Thaçi's non-privileged in-person visits further limits any risk of disclosure of confidential information.

***Impact of the imminent start of the trial in Case 12 and of the nature of the evidence tendered by the SPO***

8. The Single Trial Judge has now scheduled the start of the trial on 24 February 2025, noting that the prosecution case should not last more than two weeks.<sup>16</sup>
9. Any risk of interference with Case 12 proceedings and/or Case 12 witnesses is extremely reduced, in light of the increased certainty that the SPO will not rely on witnesses who could be subject to influence by Mr Thaçi or anyone likely to act on his behalf.<sup>17</sup> The Single Trial Judge has rightly observed that: (i) the SPO seeks to rely almost exclusively on documentary evidence which cannot plausibly be tampered or interfered with by Mr Thaçi at this stage; (ii) the witnesses who will appear for the SPO, given their circumstances, are not likely to be subject to any influence by Mr Thaçi or anyone who is likely to act on his behalf; (iii) the investigative steps still being pursued by the SPO are beyond the potential influence of Mr Thaçi.<sup>18</sup>
10. A trial date has now been set and an 18 December 2025 deadline imposed for the filing of bar table motions and Rule 154 motions by the SPO.<sup>19</sup> The SPO has expressed no intent to amend its Witness List. It therefore appears extremely unlikely that the nature of the SPO's evidence at trial will change significantly, especially since this would require showing good cause.<sup>20</sup>

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<sup>16</sup> KSC-BC-2023-12/F00602, *Order Scheduling Commencement of Trial*, 4 December 2025, public ("**Decision F00602**"), paras 8, 22.

<sup>17</sup> Decision F00597, para. 18.

<sup>18</sup> Decision F00597, para. 18.

<sup>19</sup> Decision F00602, para. 27.

<sup>20</sup> Pursuant to Rule 118(2).

11. While the Single Trial Judge may have considered that a “real” risk remains that Mr Thaçi may obstruct the progress of the SC proceedings *if released*,<sup>21</sup> any such risk is almost non-existent while Mr Thaçi remains *detained* under the strict regime imposed by Trial Panel II, which includes a permanent active monitoring of all non-privileged in-person visits.<sup>22</sup> Accordingly, the continued prohibition of non-privileged in-person visits with the Restricted Visitors sought by the SPO is not necessary nor proportionate anymore.

*Mr Thaçi’s compliance with the detention conditions imposed upon him since December 2023 and since Decision F00504*

12. The Defence stresses that Mr Thaçi has complied with the detention restrictions imposed on him by Trial Panel II in Case 06<sup>23</sup> (“Case 6 Conditions”), and by the Pre-Trial Judge in Case 12,<sup>24</sup> as shown by the Registry reports related to the monitoring of such conditions.<sup>25</sup>
13. This was acknowledged by the Pre-Trial Judge in her Decision F00504.<sup>26</sup> The Defence further notes that on 3 September 2025, Trial Panel II rejected an SPO application to prohibit non-privileged in-person visits between Mr Thaçi and the Restricted Visitors, considering that such additional detention conditions were not necessary in the present circumstances and observing that “the Registrar, in exercising her discretion, is already empowered to deny visits from any of the Visitors of Concern if there are credible indications that the individual concerned has engaged or could engage in conduct incompatible

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<sup>21</sup> Decision F00597, para. 19.

<sup>22</sup> See Response F00480, para. 2, referring to KSC-BC-2020-06/F01977, Trial Panel II, *Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi*, 1 December 2023, [public](#) (“**Decision F01977**”), and para. 5, [REDACTED].

<sup>23</sup> Decision F01977.

<sup>24</sup> Decision F00382, para. 49; Decision F00504, para. 49.

<sup>25</sup> For Case 06, see [REDACTED] (thereafter, “**Case 06 Detention Reports**”). For Case 12, see [REDACTED].

<sup>26</sup> Decision F00504, para. 29.

with the integrity of proceedings and/or the regulations of detention, and, indeed, has done so”.<sup>27</sup>

14. [REDACTED].<sup>28</sup>

15. The Defence recalls that restrictions on a detainees rights do not satisfy the requirement of necessity and proportionality where other, less intrusive measure could achieve the same aim.<sup>29</sup> The Defence submit that in light of the current stage of the proceedings in Case 06 and Case 12, of the nature of the evidence tendered by the SPO in Case 12, and of the corresponding limited risk of obstruction or disclosure of confidential information, as developed above, the Case 12 Restrictions are not necessary nor proportionate anymore. As shown by the Case 06 Detention Reports, the Case 06 Conditions, which are respected by Mr Thaçi, are sufficient to protect witnesses and victims and safeguard the integrity of proceedings before the KSC while preserving Mr Thaçi’s rights. It is, therefore, clear that less intrusive measures than the Case 12 Restrictions—such as the Case 06 Conditions—can be employed without unacceptably compromising the achievement of the Case 12 Restrictions’ aims. Accordingly, the Case 12 Restrictions are not warranted anymore and should be lifted.

*In the alternative, the Case 12 Restrictions should be lifted with respect to [REDACTED].*

16. In the alternative, the Defence requests that the Single Trial Judge lift the Case 12 Restrictions for [REDACTED], who is one of the “Other Visitors” not listed in the Indictment.<sup>30</sup> The lifting of such restriction *vis-à-vis* [REDACTED] is

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<sup>27</sup> Decision F03442, para. 40.

<sup>28</sup> [REDACTED].

<sup>29</sup> See, e.g., ECtHR, *Hagyó v. Hungary*, App. No. 52624/10, Judgment, 23 April 2013, para. 58; ECtHR, *Danilevich v. Russia*, App. No. 31469/08, Judgment, 19 October 2021, paras 50, 60.

<sup>30</sup> Decision F00382, para. 23

justified in light of the particular stage of Case 06 and Case 12 proceedings, which are particularly intense and stressful for Mr Thaçi, *i.e.* the submission of final brief and closing arguments in Case 06 and the start of the trial in Case 12.

17. The Case 06 [REDACTED]<sup>31</sup> [REDACTED]. Such moral support is now further needed in light of Mr Thaçi's isolation and of the intense period of activity ahead of him, being confronted with the necessity of managing two trials at the same time. The Defence stresses that Mr Thaçi is detained more than 2000km from his home country, and that the time and expenses incurred for such in-person visits in The Hague limit the number of people able to come and comfort him in person. Yet, in person visits are often more comforting than phone calls or video visits.
18. Most importantly, since the issuance of the Decision F01977 in December 2023, each of [REDACTED]'s visits have been actively monitored<sup>32</sup> and the Registry has not reported any incident regarding [REDACTED] in its Case 06 Detention Reports. This demonstrates that Mr Thaçi and [REDACTED] have abided by the Case 06 Conditions during their meetings and that it is neither necessary nor proportionate to prohibit all in-person non-privileged visits between them. The Case 06 Conditions are sufficient to protect witnesses, victims and the integrity of proceedings with respect to [REDACTED]'s in-person non-privileged visits; any further restriction is unjustified.

## V. CLASSIFICATION

19. The present submissions are filed as confidential and *ex parte* since they refer to *ex parte* filings. A confidential redacted version will be filed in due course.

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<sup>31</sup> [REDACTED].

<sup>32</sup> [REDACTED].

**VI. CONCLUSIONS**

20. For the reasons set out above, the Defence requests the Pre-Trial Judge to:

**DISMISS** the SPO's request to maintain the Case 12 Restrictions; and

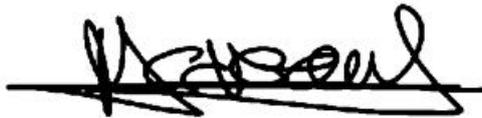
**LIFT** the Case 12 Restrictions;

Or, in the alternative,

**LIFT** the Case 12 Restrictions with respect to [REDACTED].

[Word count: 2523 words]

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sophie Menegon', written over a horizontal line.

**Sophie Menegon**

**Counsel for Hashim Thaçi**

Monday, 8 December 2025

Paris, France