

**In:** KSC-CC-2025-31

**Before:** The President of the Specialist Chambers  
Judge Ekaterina Trendafilova

**Registrar:** Dr Fidelma Donlon

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

**Date:** 29 December 2025

**Language:** English

**Classification:** Public

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**Referral to the Constitutional Court Panel on the violation of Mr Hashim Thaçi's  
fundamental rights**

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## I. INTRODUCTION

1. The Defence of Mr Hashim Thaçi (“Defence”) makes this referral pursuant to Article 113(7) of the Kosovo Constitution (“Constitution”) and Article 49(3) of the KSC Law.<sup>1</sup>
2. Article 33 of the KSC Law establishes the parameters for the assignment of judges in KSC proceedings by the KSC President. It includes – among other things – specific limitations on the assignment of Pre-Trial Judges and Single Judges: *when* such judges may be assigned, *which* judges may be assigned, and for what *duration* they are assigned. The President has violated these provisions:
  - (i) She assigned a standing Single Judge to oversee all investigative matters, even those already falling within the powers of an existing Panel. This violated the requirements that a Single Judge is assigned temporarily and only when there is no existing Panel with power to determine a matter arising (KSC Law, Article 33(2)).
  - (ii) The President then assigned the *same* judge who had been assigned as standing Single Judge to also serve as Pre-Trial Judge in all cases at the KSC, with the result that in any given case (including Case 12), one particular judge has served as a Single Judge handling investigative matters before the filing of an indictment *and* as Pre-Trial Judge. This violated the requirements that a Pre-Trial Judge is assigned only upon the filing of an indictment (KSC Law, Article 33(1)(a)) and that a judge may not sit on panels at two different phases of the same matter (KSC Law, Article 33(4)).

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<sup>1</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“KSC Law”).

3. The judges who were assigned by the President in violation of these requirements of the KSC Law, Judge Guillou and Judge Massellot, issued a range of invasive investigative measures concerning Mr Thaçi and confirmed an indictment against him. Because the judges who took these steps were not assigned in accordance with the law, this violated Mr Thaçi's right to have criminal charges against him determined by a "tribunal established by law" (Constitution, Article 31) and his right to privacy (Constitution, Article 36).

## II. FACTS AND PROCEDURAL HISTORY

### *The violations of Mr Thaçi's rights*

4. On 29 May 2018, the President assigned Judge Guillou as "a Single Judge to consider any request for judicial authorisation and related matters submitted by the Specialist Prosecutor prior to the filing of an indictment".<sup>2</sup>
5. On 26 October 2020, the Case 06<sup>3</sup> indictment was issued against Messrs Thaçi, Veseli, Selimi, and Krasniqi.<sup>4</sup> Pursuant to a Case 06 arrest warrant, Mr Thaçi was transferred to the KSC detention facility on 5 November 2020.<sup>5</sup> He remains in detention. The trial in Case 06 began before Trial Panel II on 3 April 2023, and is ongoing.
6. On 28 March 2023, six days before the start of the Case 06 trial, the SPO filed an *ex parte* submission to Judge Guillou as a Single Judge, alleging that Mr Thaçi and

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<sup>2</sup> KSCPR-2018/F00004, [Decision Assigning a Single Judge Pursuant to Article 33\(2\) of the Law](#), 29 May 2018 (reclassified as public 28 September 2020), p. 2. See also para. 16.

<sup>3</sup> *Prosecutor v Thaçi, Veseli, Selimi, and Krasniqi*, KSC-BC-2020-06 ("Case 06").

<sup>4</sup> KSC-BC-2020-06/F00026/RED, [Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi](#), 26 October 2020 (public redacted version 30 November 2020), Public.

<sup>5</sup> KSC-BC-2020-06/F00053, [Notification of Reception of Hashim Thaçi in the Detention Facilities of the Specialist Chambers and Appointment of Counsel](#), 5 November 2020, (reclassified 20 November 2020), Public.

Mr Veseli were seeking to influence SPO witnesses in Case 06.<sup>6</sup> In that filing, and a series of subsequent submissions,<sup>7</sup> the SPO requested that the Single Judge authorise special investigative measures (“SIMs”).

7. Beginning from 31 March 2023, Single Judge Guillou issued a number of *ex parte* orders granting the SPO’s requests for SIMs as well as other measures.<sup>8</sup> These

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<sup>6</sup> KSC-BC-2023-12/INV/F00004/RED, [Public redacted version of ‘Prosecution requests for Detention Centre information and \[REDACTED\] with strictly confidential and ex parte Annex 1’ \(F00321/RED in KSC-BC-2018-01\)](#), 28 March 2023 (Public redacted version 20 March 2025). This and other filings made in the proceeding KSC-BC-2018-01 have been imported into the case file of the current case pursuant to KSC-BC-2023-12/INV/F00003, [Order for Transfer of Documents](#), 27 January 2025, Public.

<sup>7</sup> KSC-BC-2023-12/INV/F00006/RED, [Public redacted version of ‘Urgent Prosecution supplemental requests in relation to F00318 and F00321 with strictly confidential and ex parte Annexes 1 - 5’ \(F00326/CONF/RED in KSC-BC-2018-01\)](#), 5 April 2023 (Public redacted version 20 March 2025); KSC-BC-2023-12/INV/F00009/RED, [Public redacted version of ‘Prosecution request for special investigative measures with a strictly confidential and ex parte Annex’ \(F00340/RED in KSC-BC-2018-01\)](#), 28 April 2023 (Public redacted version 20 March 2025); KSC-BC-2023-12/INV/F00011/RED, [Public redacted version of ‘Prosecution further submissions in response to KSC-BC-2018-01-F00343’ \(F00344/RED in KSC-BC-2018-01\)](#), 1 May 2023 (Public redacted version 27 February 2025); KSC-BC-2023-12/INV/F00013/RED, [Public redacted version of ‘Supplement to SPO Filing F00340’ \(F00349/RED in KSC-BC-2018-01\)](#), 3 May 2023 (Public redacted version 20 March 2025); KSC-BC-2023-12/INV/F00016/RED, [Public redacted version of ‘Supplemental Request Regarding Prosecution Filings F00340 and F00344’](#), 26 May 2023 (Public redacted version 26 February 2025); KSC-BC-2023-12/INV/F00018/RED, [Public redacted version of ‘Prosecution request for extension of Decision F00330’ \(F00361/RED2 in KSC-BC-2018-01\)](#), 30 May 2023 (Public redacted version 20 March 2025); KSC-BC-2023-12/INV/F00021/RED, [Public redacted version of ‘Further submissions regarding Filing F00358’ \(F00364/RED in KSC-BC-2018-01\)](#), 01 June 2023 (Public redacted version 20 March 2025); KSC-BC-2023-12/INV/F00023/COR2/RED, [Public redacted version of ‘Corrected Version of “Prosecution request for extensions of Decisions F00350 and F00363” KSC-BC-2018-01-F00380-COR’ \(F00380/COR2/RED in KSC-BC-2018-01\)](#), 28 June 2023 (Public redacted version 27 February 2025); KSC-BC-2023-12/INV/F00027/RED, [Public redacted version of ‘Prosecution report pursuant to Decision F00384 and related requests with strictly confidential and ex parte Annex 1’ \(F00435/RED in KSC-BC-2018-01\)](#), 23 August 2023 (Public redacted version 20 March 2025); KSC-BC-2023-12/INV/F00054RED, [Public redacted version of ‘Urgent Prosecution request for order’ \(F00504/RED in KSC-BC-2018-01\)](#), 11 November 2023 (Public redacted version 27 February 2025); KSC-BC-2023-12/INV/F00064RED, [Public redacted version of ‘Prosecution request for preservation orders’ \(F00537/RED in KSC-BC-2018-01\)](#), 13 December 2023 (Public redacted version 20 March 2025).

<sup>8</sup> Including: KSC-BC-2023-12/INV/F00005/CONF/RED, [Public Redacted version of decision on Prosecution Request for Detention Centre Information and \[Redacted\]](#), 31 March 2023 (Public redacted version 5 November 2025); KSC-BC-2023-12/INV/F00007/CONF/RED, [Public Redacted Version of Decision on Urgent Prosecution Supplemental Requests in Relation to F00318 and F00321](#), 14 April 2023 (Public redacted version 5 November 2025); KSC-BC-2023-12/INV/F00012/CONF/RED, [Public Redacted Version of Decision Authorising the Installation of Monitoring Devices in the Detention Facilities](#), 2 May 2023 (Public redacted version 31 October 2025); KSC-BC-2023-12/INV/F00014/COR/CONF/RED, [Redacted Version of Corrected Version of Decision on Prosecution Request for Special Investigative Measures](#), 4 May 2023 (Public redacted version 3 November 2025);

included covert monitoring of non-privileged detention centre visits and telephone calls, search and seizures.

8. On 13 December 2023 the SPO requested the assignment of a Pre-Trial Judge under Article 33(1)(a) of the KSC Law. The President assigned Judge Guillou as Pre-Trial Judge in Case 12.<sup>9</sup> On 15 December 2023, the SPO submitted its first proposed indictment in Case 12.<sup>10</sup>

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KSC-BC-2023-12/INV/F00020/CONF/RED, Confidential Redacted Version of Decision on Prosecution Request for Extension of the Special Investigative Measure Authorised in F00330, 1 June 2023 ([Public redacted version](#) 5 November 2025); KSC-BC-2023-12/INV/F00022/COR/CONF/RED, Confidential Redacted Version of Corrected Version of Decision on Prosecution Supplemental Request Regarding Prosecution Filings F00340 and F00344, 2 June 2023 ([Public redacted version](#) on 3 November 2025); KSC-BC-2023-12/INV/F00025/CONF/RED, Confidential Redacted Version of Decision on Prosecution Request for Extensions of Decisions F00350 and F00363, 30 June 2023 ([Public redacted version](#) on 5 November 2025); KSC-BC-2023-12/INV/F00028/CONF/RED, Confidential Redacted Version of Decision on Prosecution Requests for Extension of Measures Authorised in F00384 and Access to Telephone Recordings, 30 August 2023 ([Public redacted version](#) 10 November 2025); KSC-BC-2023-12/INV/F00057/CONF/RED, Confidential Redacted Version of Decision on Urgent Prosecution Request, 21 November 2023 ([Public redacted version](#) 21 November 2023); KSC-BC-2023-12/INV/F00066/CONF/RED2, Confidential Lesser Redacted Version of Decision on Prosecution Request for Preservation Orders, 22 December 2023 ([Public redacted version](#) 5 November 2025); KSC-BC-2023-12/INV/F00089/RED, [Public Redacted Version of Decision Authorising Search and Seizure and Special Investigative Measures](#), 21 February 2024 (Public redacted version 21 March 2025).

<sup>9</sup> KSC-BC-2023-12/F00001, President, [Decision Assigning a Pre-Trial Judge](#), 13 December 2023, Public.

<sup>10</sup> KSC-BC-2023-12/F00002, SPO, Submission of Indictment for confirmation and related request, 15 December 2023, Confidential.

9. In the following months, Judge Guillou continued to issue decisions as Single Judge on matters concerning SIM requests.<sup>11</sup> At the same time, as Pre-Trial Judge he oversaw litigation regarding the proposed Case 12 indictment.<sup>12</sup>

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<sup>11</sup> KSC-BC-2023-12/INV/F00066/CONF/RED2, [Public Redacted Version of Decision on Prosecution Request for Preservation Orders](#) (F00543CONFRED2 in KSC-BC-2018-01), 22 December 2023 (Public redacted version 5 November 2025); KSC-BC-2023-12/INV/F00074, [Public Redacted Version of Decision on Registry Request for Extension of Time](#), 24 January 2024 (Public redacted version 16 December 2025), KSC-BC-2023-12/INV/F00077, Decision on the Prosecution Requests for Variation of Time Limits concerning Retention of Evidence, 31 January 2024 ([public redacted version](#) 5 November 2025); KSC-BC-2023-12/INV/F00084, Decision Varying Time Limits for Rule 77 Submissions and Decision, 15 February 2024 (reclassified as [Public](#) 2 September 2025), KSC-BC-2023-12/INV/F00089/RED, [Public Redacted Version of Decision Authorising Search and Seizure and Special Investigative Measures \(F00588RED in KSC-BC-2018-01\)](#), 21 February 2024 (public version 25 March 2025), Public; KSC-BC-2023-12/INV/F00093, Order for Submissions (F00595 in KSC-BC-2018-01), 29 February 2024, Confidential; KSC-BC-2023-12/INV/F00094, Decision on Request for Variation of Time Limits Concerning Retention of Evidence (F00596 in KSC-BC-2018-01), 29 February 2024, confidential; KSC-BC-2023-12/INV/F00096, Decision on Request to Modify Search and Seizure Decision (F00598 in KSC-BC-2018-01), 1 March 2024, confidential; KSC-BC-2023-12/INV/F00102, Decision on Request on Variation of Time Limits concerning Retention of Evidence (F00611RED in KSC-BC-2018-01), 12 March 2024 ([Public redacted version](#) on 22 August 2024); KSC-BC-2023-12/INV/F00105, Decision on Special Investigative Measures and Request for Assistance and Cooperation (F00619 in KSC-BC-2018-01), 15 March 2024, Confidential; KSC-BC-2023-12/INV/F00111, Decision on Defence Applications for Leave to Appeal Decisions on Investigative Measures (F00629 in KSC-BC-2018-01), 28 March 2024, Confidential; KSC-BC-2023-12/INV/F00123, Decision on the Prosecution Second Request for Variation of Time Limit concerning Retention of Evidence, 1 May 2024 ([Public redacted version](#) 5 November 2025); KSC-BC-2023-12/INV/F00132, Decision on Request for Search and Seizure and Related Request, 8 May 2024, confidential; KSC-BC-2023-12/INV/F00134, Decision on the Prosecution Second Request for Variation of Time Limits concerning Retention of Evidence, 14 May 2024 ([Public redacted version](#) 22 August 2024); KSC-BC-2023-12/INV/F00143, Decision on Prosecution Request for Variation of Time Limits Concerning Retention of Evidence, 23 May 2024 ([Public redacted version](#) 31 October 2025), KSC-BC-2023-12/INV/F00286, Decision on Defence Request for Measures to Ensure Counsel-Client Privilege, 19 December 2023 (reclassified as [Public](#) 3 October 2025); KSC-BC-2023-12/INV/F00297, [Public Redacted Version of Decision Authorising Search and Seizure \[REDACTED\]](#), 12 April 2024.

<sup>12</sup> KSC-BC-2023-12/F00004, Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules, 22 February 2024 (Public redacted version; KSC-BC-2023-12/F00006, Decision on extension of time, 23 February 2024 ([Public redacted version](#) 23 February 2024); KSC-BC-2023-12/F00008, Order for Submissions, 4 April 2024, public; KSC-BC-2023-12/F00013, [Decision on Extension of time](#), 01 May 2024 (reclassified as Public 13 March 2025).



10. On 5 June 2024, Judge Guillou resigned from the KSC. The President assigned Judge Masselot as both Single Judge<sup>13</sup> and Case 12 Pre-Trial Judge.<sup>14</sup>
11. As Single Judge, Judge Masselot continued to be seized of SPO requests for further SIMs, and made orders granting SIMs and/or extending or managing those granted by Judge Guillou.<sup>15</sup> At the same time, as Pre-Trial Judge, Judge Masselot oversaw continued litigation concerning the SPO's proposed indictment.<sup>16</sup> Following Pre-Trial Judge orders for clarification or more information, an indictment was confirmed on 29 November 2024.<sup>17</sup> On 14 April 2025, in response to a partly successful SPO appeal,<sup>18</sup> the Pre-Trial Judge issued an amended confirmation decision.<sup>19</sup> The SPO submitted the Indictment on 16 April 2025.<sup>20</sup>

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<sup>13</sup> KSC-BC-2018-01/F00697/COR, Corrected Version of Decision Assigning a Single Judge, 6 June 2024, Public, p2. See also KSC-BC-2018-01/F00698, Decision on Hashim Thaçi Request for Substitution or Disqualification of a Judge, 6 June 2024, Public.

<sup>14</sup> KSC-BC-2023-12/F00001, Decision Assigning a Pre-Trial Judge, 13 December 2023 (reclassified as public on 8 December 2024); KSC-BC-2023-12/F00015, [Decision Assigning a Pre-Trial Judge](#), 6 June 2024, Public.

<sup>15</sup> KSC-BC-2018-01/F00803, Decision on Prosecution Request for Retention of Evidence, 4 December 2024 ([public redacted version](#) 11 December 2025); KSC-BC-2023-12/INV/F00244, Decision on Prosecution Request for Preservation Order, 24 January 2025 ([public redacted version](#) 11 November 2025).

<sup>16</sup> KSC-BC-2023-12/F00016, Decision on Prosecution Requests for Leave to Present Additional Material and for Suspension of Examination of the Indictment, 20 June 2024 (reclassified as [Public](#) 13 March 2025); KSC-BC-2023-12/F00020, Decision on Prosecution Request to Notify Filing of Amended Indictment, 28 July 2024 (reclassification as [Public](#) 13 March 2025); KSC-BC-2023-12/F00022, Order for submissions, 8 October 2024 ([Public redacted version](#) on 17 March 2025); KSC-BC-2023-12/F00025, Order Pursuant to Rule 86(4)(b) of the Rules Relating to Counts 2 and 19 of the Amended Indictment, 6 November 2024, confidential; KSC-BC-2023-12/F00027, Decision on Prosecution Request for Extension of Time, 7 November 2024 (reclassified as [Public](#) on 13 March 2025).

<sup>17</sup> KSC-BC-2023-12/F00036, [Public Redacted Version of the Decision on the Confirmation of the Indictment](#), 29 November 2024 (public redacted version on 12 February 2025), Public.

<sup>18</sup> KSC-BC-2023-12/IA002/F00012/RED, [Public Redacted Version of Decision on the Specialist Prosecutor's Office's Appeal Against the Decision on the Confirmation of the Indictment](#), 3 April 2025, Public.

<sup>19</sup> KSC-BC-2023-12/F00260, [Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions](#), 14 April 2025.

<sup>20</sup> KSC-BC-2023-12/F00264/A02, [Submission of Amended Confirmed Indictment with confidential Annex 1 and public Annex 2](#), 16 April 2025, Public ("Indictment").

*Prior Defence litigation on these matters*

12. On 8 May 2025, the Defence filed a preliminary motion (“Preliminary Motion on Jurisdiction”),<sup>21</sup> which argued, *inter alia*, that:
- (i) The President had violated Article 33 of the KSC Law by establishing a role of standing Single Judge for investigative matters; and that
  - (ii) The President had further violated Article 33 of the KSC Law by assigning as Pre-Trial Judge in Case 12 the same judges who had already been (wrongly) seized as Single Judge.
13. On 19 June 2025 the Pre-Trial Judge issued her Decision on the Thaçi Defence Preliminary Motion on Jurisdiction.<sup>22</sup> She rejected the Defence Motion in its entirety. On the question of violations of Article 33 of the KSC Law, she refused to determine the merits, holding instead that she was not empowered to assess these questions.<sup>23</sup> The Pre-Trial Judge also held that the Defence Motion was not a jurisdictional challenge falling within Rule 97(1)(a), but rather a challenge to “the competence of the Pre-Trial Judge to hear the present case.”<sup>24</sup>
14. Given that the Defence wished to challenge the Pre-Trial Judge’s finding that this question was not a matter of “jurisdiction” within the meaning of that term in Rule 97(1)(a) of the KSC Rules,<sup>25</sup> and considering that this question would also determine the available avenues for appeal, the Defence sought to appeal through two avenues concurrently:

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<sup>21</sup> KSC-BC-2023-12/F00290, Thaçi Defence Preliminary Motion on Jurisdiction, 8 May 2025, Confidential and *ex parte* (public redacted version 12 May 2025).

<sup>22</sup> KSC-BC-2023-12/F00343, [Decision on the Thaçi Defence Preliminary Motion on Jurisdiction](#), 19 June 2024, Public (“Pre-Trial Judge Decision”).

<sup>23</sup> [Pre-Trial Judge Decision](#), paras 38-39.

<sup>24</sup> [Pre-Trial Judge Decision](#), para. 22.

<sup>25</sup> KSC-BD-03/Rev3/2020, Rules of Procedure for the Specialist Chamber of the Constitutional Court, 2 June 2020 (“SCCC Rules”).



- (i) On 30 June 2025 the Defence filed a request for certification to appeal the Pre-Trial Judge's decision;<sup>26</sup> and
- (ii) On 2 July 2025 the Defence filed a direct appeal before the Court of Appeals Chamber.<sup>27</sup>

15. On 4 August 2025, a Panel of the Court of Appeals Chamber issued a decision holding that the direct appeal was inadmissible because the question raised was not a matter of "jurisdiction" as that term is used in Rule 97(1)(a).<sup>28</sup>
16. On 23 July 2025 the Pre-Trial Judge granted leave to appeal on three issues, including the question of her power to review the legality of her own assignment, and the correct legal avenue for challenging an assignment for its violation of Article 33 of the KSC Law.<sup>29</sup>
17. On 18 August 2025, the Defence filed its appeal.<sup>30</sup>
18. On 28 October 2025, the same Panel of the Court of Appeals Panel issued a decision rejecting the Defence appeal.<sup>31</sup>

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<sup>26</sup> KSC-BC-2023-12/F00355, Thaçi Defence Request for Certification to Appeal "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction", 30 June 2025, Confidential and *Ex parte* (Public redacted version 4 July 2025).

<sup>27</sup> KSC-BC-2023-12/IA005/F00001, Appeal against Decision on the Thaçi Defence Preliminary Motion on Jurisdiction with Public Annexes 1-3, 2 July 2025, Confidential and *Ex parte* (Corrected public redacted version 7 July 2025).

<sup>28</sup> KSC-BC-2023-12/IA005/F00005, Decision on Admissibility of KSC-BC-2023-12/IA005/F00001, 4 August 2025, Public.

<sup>29</sup> KSC-BC-2023-12/F00391, Decision on the Thaçi Defence Request for Certification to Appeal the "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction", 23 July 2025, Public.

<sup>30</sup> KSC-BC-2023-12/IA007/F00004, Thaçi Defence Appeal against "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction", 18 August 2025, Confidential and *Ex parte* (Public redacted version 20 August 2025).

<sup>31</sup> KSC-BC-2023-12/IA007/F00007, [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"](#), 28 October 2025, Public ("Appeals Panel Decision").

### III. APPLICABLE LAW

#### A. Admissibility

19. To be admissible, referrals made by authorised individuals under Article 113(7) of the Constitution and Article 49(3) of the KSC Law must be submitted:

- (i) by a person who bears rights protected by the Constitution<sup>32</sup> and is a victim of their alleged violation;<sup>33</sup>
- (ii) only after remedies provided by law have been exhausted;<sup>34</sup>
- (iii) within two months from the date of the notification of the final ruling concerning the alleged violation.<sup>35</sup>

20. Rule 14 of the SCCC Rules also sets out other bases of inadmissibility.

#### B. Fundamental rights

21. Article 31(2) of the Constitution guarantees the right to have criminal charges determined by a “tribunal established by law”.

22. Article 36 of the Constitution protects the right of every person to have his or her “private life and family life” respected and the confidentiality of correspondence, telecommunication and other communication.”

23. These rights are reinforced via the European Convention on Human Rights (“ECHR”). Its Article 6(1) guarantees the right to have criminal charges determined by a “tribunal established by law”, and its Article 8 protects the right

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<sup>32</sup> KSC-CC-2020-08/F00020/RED, [Constitutional Court Panel, Public Redacted Version of Decision on the Referral of \[REDACTED\] Further to a Decision of the Single Judge](#), 22 April 2020 (Public redacted version 12 June 2020), paras 51-62.

<sup>33</sup> KSC-CC-2019-05/F00012, [Decision on the Referral of Mahir Hasani Concerning Prosecution Order of 20 December 2018](#), 20 February 2019, Public.

<sup>34</sup> Constitution, Article 113(7); KSC Law, Article 49(3). See also SCCC Rules, Rule 20(1)(a).

<sup>35</sup> SCCC Rules, Rule 20(1)(b).

to privacy. Article 22(2) of the Constitution imports those protections into Kosovo law, while Article 53 requires that that human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted consistently with the decisions of the European Court of Human Rights (“ECtHR”).

#### IV. SUBMISSIONS ON ADMISSIBILITY

24. The present referral is admissible.

##### A. Mr Thaçi’s victim status

25. Mr Thaçi is an individual who is granted rights under the Constitution. He is a victim of the violations set out in these submissions, regarding the unlawful assignment of both the Single Judges and the Pre-Trial Judges. Both Single Judges and both Pre-Trial Judges have issued decisions concerning Mr Thaçi as part of criminal proceedings brought against him by the SPO in Case 12, despite not having been assigned in accordance with the law. Among other things, the decisions have authorised the covert recording of Mr Thaçi’s detention centre visits and telephone calls; the seizure and search of his computer; his re-arrest and continued detention; restrictions on his personal visitors during this detention; and his indictment in Case 12.

26. The Defence notes that in determining previous referrals, the Constitutional Court Panel has found claims of Article 31 violations to be inadmissible when brought before final judgment, on the basis that the applicant could not yet claim to be a victim of a violation.<sup>36</sup> Despite this, the present referral is admissible at the present time for three reasons:

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<sup>36</sup> For example: KSC-CC-2022-15/F00010, [Decision on the Referral of Hashim Thaçi Concerning the Right to an Independent and Impartial Tribunal Established by Law and to a Reasoned Opinion](#), 13 June 2022, public, paras 58-68; KSC-CC-2023-21/F00006, [Decision on the Referral of Pjetër Shala to the Constitutional Court Panel Concerning the Violation of Mr Shala’s Fundamental Rights Guaranteed by Articles 31, 32, and 54 of the Kosovo Constitution and Articles 6 and 13 of the European Convention on Human Rights](#), 29 August 2023, public; KSC-CC-2024-25/F00006/RED, Public Redacted Version of

- (i) When addressing a previous referral by Mr Thaçi regarding his right to a “tribunal established by law”, the Constitutional Court Panel noted the “fundamental nature” of the issue in question, and deemed it “appropriate to address this matter”. The Panel therefore went on to consider whether there appeared to be a violation.<sup>37</sup> The question raised by the present referral is equally fundamental, as it relates to the validity of the President’s assignment of all judges at the early stages of KSC proceedings and is likely to impact not only the Case 12 proceedings but all proceedings.
- (ii) The particular Article 31 violations raised by the present referral are not matters which are able to be cured at a subsequent stage of the case. There is no step that the Single Trial Judge can take which will cure the irregularity which taints these proceedings. The case is overwhelmingly built on evidence which has been obtained in a manner not compliant with the KSC Law, as it was authorised by judges not duly and properly assigned under Rule 33. Most significantly, the Indictment was not issued in accordance with the Law, and this nullity cannot be cured other than by a new confirmation decision by a properly assigned Pre-Trial Judge. In these circumstances there is no need to wait until the end of the proceedings to determine whether they are fair, and doing so would only add further injustice as Mr Thaçi would likely be subjected to a third lengthy trial.
- (iii) In any event, even if the Panel considers the referral to be premature regarding an Article 31 violation, the same cannot be said in respect of the violation of Article 36.

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Decision on the Referral to the Constitutional Court Panel on the violation of Mr Hashim Thaçi’s fundamental rights, 15 November 2024 ([public redacted version](#) 24 December 2024), paras 73-79.

<sup>37</sup> KSC-CC-2022-15/F00010, [Decision on the Referral of Hashim Thaçi Concerning the Right to an Independent and Impartial Tribunal Established by Law and to a Reasoned Opinion](#), 13 June 2022, public, paras 68 *et seq.*

**B. Exhaustion of legal remedies**

27. Mr Thaçi has exhausted all available avenues of legal remedy for these violations.

On 8 May 2025 the Defence filed a preliminary motion raising these violations with the Pre-Trial Judge.<sup>38</sup> She refused to entertain them.<sup>39</sup> The Defence then sought to appeal the decision, both via an attempted direct appeal filed on 2 July 2025,<sup>40</sup> which was rejected as inadmissible by the Court of Appeals Panel on 4 August 2025;<sup>41</sup> and with leave of the Pre-Trial Judge on 18 August 2025.<sup>42</sup> The latter appeal was dismissed by the Court of appeals Panel on 28 October 2025.<sup>43</sup> No further avenues of appeal were available to Mr Thaçi.

**C. Timeliness**

28. This filing is made within two months of the Court of Appeals Panel's final ruling on these matters, which was notified on 29 October 2025. No further appeals were available to Mr Thaçi from that decision.

**V. SUBMISSIONS ON THE MERITS****A. Violations of Article 31: "tribunal established by law"**

29. Article 31 of the Constitution, and Article 6(1) of the ECHR require that a criminal tribunal must be "established by law".

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<sup>38</sup> KSC-BC-2023-12/F00290, Thaçi Defence Preliminary Motion on Jurisdiction, 8 May 2025, confidential and *ex parte* (Public redacted version 12 May 2025).

<sup>39</sup> [Pre-Trial Judge Decision](#).

<sup>40</sup> KSC-BC-2023-12/IA005/F00001, Appeal against Decision on the Thaçi Defence Preliminary Motion on Jurisdiction with Public Annexes 1-3, 2 July 2025, confidential and *ex parte* ([Public redacted version](#) 4 July 2025).

<sup>41</sup> KSC-BC-2023-12/IA005/F00005, Appeals Panel, Decision on Admissibility of KSC-BC-2023-12/IA005/F00001, 4 August 2025, Public.

<sup>42</sup> KSC-BC-2023-12/IA007/F00004, Thaçi Defence Appeal against "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction", 18 August 2025, Confidential and *Ex Parte* ([public redacted version](#) 20 August 2025).

<sup>43</sup> [Appeals Panel Decision](#).

30. According to the ECtHR, a violation of the requirement for a “tribunal established by law” occurs when there is:
- (i) a manifest breach of a domestic law;
  - (ii) that breach pertains to a “fundamental rule of the procedure for appointing judges”;
  - (iii) the breach is not remedied by the domestic courts.<sup>44</sup>
31. Importantly, for the purposes of the present referral, the requirement for a tribunal to be “established by law” requires compliance not only with legislation providing for the establishment and competence of judicial organs, but also “any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular.”<sup>45</sup> The ECtHR has made clear that this includes the violation of rules regulating the composition of a bench in a given case.<sup>46</sup>
32. In the present case there have been a number of manifest violations of Article 33, which sets out the KSC’s fundamental rules for the appointment of judges. They are detailed below in Section A of these submissions. Section B addresses the failure of the KSC’s panels to remedy these violations.

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<sup>44</sup> ECtHR, *Ástráðsson v Iceland*, App. no. 26374/18, [Judgment](#), 1 December 2020, paras 243-252.

<sup>45</sup> KSC-CC-2022-15/F00010, [Decision on the Referral of Hashim Thaçi Concerning the Right to an Independent and Impartial Tribunal Established by Law and to a Reasoned Opinion](#), 13 June 2022, public, para. 105; ECtHR, *Ástráðsson v Iceland*, App. no. 26374/18, [Judgment](#), 1 December 2020, para. 212; see also ECtHR, *Gorguiladzé v Georgia*, App. no. 4313/04, [Judgement](#), 20 October 2009, para. 68; ECtHR, *Pandjikidzé and Others v Georgia*, App. no. 30323/02, [Judgement](#), 27 October 2009, paras 104, 108-111.

<sup>46</sup> ECtHR, *Posokhov v Russia*, App. no. 63486/00, [Judgement](#), 4 March 2003, paras 38-44; ECtHR, *Fatullayev v Azerbaijan*, App. no. 40984/07, [Judgement](#), 22 April 2010, para. 144; *Kontalexis v Greece*, App. no. 59000/08, [Judgement](#), 31 May 2011, para. 42; ECtHR, *Richert v Poland*, App. no. 54809/07, [Judgement](#), 25 October 2011, para. 43; ECtHR, *Lavents v Latvia*, App. no. 58442/00, [Judgement](#), 28 November 2002, paras 114-115; ECtHR, *Gurov v Moldova*, App. no. 36455/02, [Judgement](#), 11 July 2006, paras 29-39; ECtHR, *Gorguiladzé v Georgia*, App. no. 4313/04, [Judgment](#), 20 October 2009, paras 67-75; ECtHR, *Fedotova v Russia*, App. no. 73225/01, [Judgement](#), 13 April 2006, paras 38-44.



*Manifest violations of the fundamental rules for appointing judges*(a) The assignment of Single Judges in violation of KSC Law, Article 33(2)

33. Under the KSC Law Article 25(1), the KSC's judicial roles include Pre-Trial Judge,<sup>47</sup> Trial Panels,<sup>48</sup> and "individual judges as necessary performing other functions required under this Law"<sup>49</sup> (as well as other judges in appellate and Constitutional functions). Articles 39 and 40 imbue Pre-Trial Judges and Trial Panels with specified powers, while the functions of Court of Appeals Panels, Supreme Court Panels and Constitutional Court Panels are set out in Articles 45 to 49.
34. No equivalent defined roles – such as overseeing investigative measures – are allocated by the KSC Law to a standing "Single Judge" or "Single Judge Panel". Rather, it permits the (*ad hoc* and temporary) assignment of single judges where a judicial power exists and there is no other judge or panel already assigned who can carry it out.
35. Article 33(2) allows the President to assign a single judge "to deal with a matter which [...] requires the assignment of a judge other than the Pre-Trial Judge (a single judge panel)". When this assignment power was exercised for the first time, on 29 May 2018, the President noted that as an indictment had not yet been filed, there was not yet a Pre-Trial Judge. A single judge assignment would enable a judicial determination of "a specific matter without the conditions for the assignment of a Pre-Trial Judge [...] being triggered."<sup>50</sup> The assignment of a single judge under Article 33(2), in other words, fills a judicial lacuna where no existing Panel was otherwise assigned to the matter arising.

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<sup>47</sup> Article 25(1)(a).

<sup>48</sup> Article 25(1)(b).

<sup>49</sup> Article 25(1)(f).

<sup>50</sup> KSCPR-2018/F00004, Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law, 29 May 2018, para. 11.

36. This is reinforced by the Rules. Rule 42(3) provides that:

Any challenge to a summons, order or investigative undertaking by the Specialist Prosecutor on the basis that it adversely affects the person's rights, shall be brought before a Single Judge to be assigned pursuant to Article 25(1)(f) of the Law, *if a Panel has not otherwise been assigned.* (emphasis added).

37. In the present matter, SIMs were requested to investigate allegations of interference in Case 6: allegations which concerned Case 6 witnesses, Case 6 Accused, and orders made by Trial Panel II in Case 6. Manifestly, there was already a Panel assigned to manage those matters: Trial Panel II. Under the Law and the Rules there was simply no scope for the residual powers for which a Single Judge's functions are intended.

38. Moreover, a Single Judge's assignment is "temporary in nature and shall cease as soon as the matter triggering [it] has been disposed of" (Article 33(2)).

39. On 29 May 2018, the President referred to a "forthcoming request for judicial authorisation" from the SPO.<sup>51</sup> Rather than assigning a single judge temporarily to deal only with this specific request, she assigned Judge Guillou as:

"a Single Judge to consider any request for judicial authorisation and related matters submitted by the Specialist Prosecutor prior to the filing of an indictment and the ensuring assignment of a Pre-Trial Judge under Article 33(1)(a) of the Law".<sup>52</sup>

40. In effect this became a standing judicial role. Judge Guillou was maintained as a "Single Judge Panel" handling all investigative matters arising at the KSC. When Judge Guillou resigned in June 2024, the President invoked Rule 5 of the Rules on the Assignment, which applies when a judge assigned to a Panel is unable to perform his or her duties,<sup>53</sup> and assigned Judge Masselot.<sup>54</sup>

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<sup>51</sup> KSCPR-2018/F00004, Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law, 29 May 2018, para. 2.

<sup>52</sup> KSCPR-2018/F00004, Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law, 29 May 2018, p5.

<sup>53</sup> KSC-BC-2018-01/F00697/COR, Corrected Version of Decision Assigning a Single Judge, 6 June 2024, para. 4.

<sup>54</sup> KSC-BC-2018-01/F00697/COR, Corrected Version of Decision Assigning a Single Judge, 6 June 2024, p2. See also KSC-BC-2018-01/F00698, Decision on Hashim Thaçi Request for Substitution or Disqualification of a Judge, 6 June 2024, Public.

41. Such a role, of permanent tribunal-wide judicial authority over investigative matters, is not foreseen in the KSC Law or the Rules. It would have been a simple matter for the KSC Law to create such a role; to define it in a provision equivalent to Articles 39 and 40; and to set out the conditions and terms of its assignment in Article 33. However, there is no mention in the KSC Law of a standing Single Judge (on investigations or any other issue). Rather, the KSC Law is explicit that the assignment of a Single Judge under Article 33(2) is temporary.<sup>55</sup>
42. This means that a Single Judge's assignment must end once the specific issues in question no longer require judicial oversight or are transferred to a Pre-Trial Judge or Trial Panel. A new assignment must then be made the next time a different matter arises which requires *ad hoc* judicial resolution. It may be that all issues relating to a particular SPO investigation could be handled within a Single Judge assignment. However, the KSC Law does not permit that *every* KSC investigation should be handled by one, permanent Single Judge.
- (b) The assignment of the Pre-Trial Judges in violation of KSC Law Articles 33(1)(a) and 33(4)
43. An additional violation occurred through the President's practice of additionally assigning the standing tribunal-wide investigative Single Judge to simultaneously serve as Pre-Trial Judge in all cases at that stage before the KSC.
44. During the period when he was assigned as a standing "Single Judge Panel" for all pre-indictment matters, Judge Guillou was also assigned as the Pre-Trial Judge in every instance of an indictment being filed (including the present case).<sup>56</sup> On his resignation, Judge Masselot was assigned to replace him not only as the "Single Judge Panel" for investigation matters, but also as Pre-Trial Judge in the

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<sup>55</sup> KSC Law, Article 33(2).

two cases that Judge Guillou had remained seized of in that role (this case and Case 10).<sup>57</sup>

45. In practice then, the KSC has been operating under a system whereby one specific judge oversees all pre-indictment investigative matters *and* serves as Pre-Trial Judge for all cases. Since the two roles are played by one judge, the KSC effectively has a Pre-Trial Judge who begins his or her work prior to the filing of an indictment. The only change that occurs at the point of the indictment is the semantic one of replacing the title “Single Judge” with “Pre-Trial Judge”.

46. A scheme of this kind has been used at some other international courts, most notably the Special Tribunal for Lebanon. However, it is not the scheme foreseen by the KSC Law. It defeats Article 33(1)(a)’s specific provision that a Pre-Trial Judge shall only be assigned once an indictment is filed. While Article 39(3) of the KSC Law and Rule 85(2) do permit a Pre-Trial Judge some role in judicial oversight of investigations, it is a narrow role regarding any matters arising between the filing of an indictment and its confirmation. Procedures undertaken before the filing of an indictment are to be handled by a different judge.<sup>58</sup>

47. A similar requirement is found in Article 33(4) of the KSC Law:

Having been assigned as Pre-Trial Judge or to a panel for a matter, a judge may not sit on another panel at a different phase of the same matter.

48. Thus, the clear intention of the KSC Law was to establish a system where the various stages of case are overseen by different judges.

49. In the present case, this did not occur. Judge Masselot was assigned as a “Single Judge Panel” overseeing the SPO’s SIM requests and the associated matters which gave rise to the material underlying the Indictment. She was also assigned to a

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<sup>58</sup> KSCPR-2018/F00004, Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law, 29 May 2018, para. 11.

different “panel” as Pre-Trial Judge, in the very same case. The same was true for Judge Guillou before her. These assignments meant that Judge Guillou and Judge Masselot each served two successive roles in the proceedings. They also had the effect that the Pre-Trial Judge oversaw all investigative matters, including that which occurred prior to the filing of an indictment.

50. This was not merely a technical violation of the KSC’s legal framework. It had real consequences, especially on the fairness of the proceedings. The Pre-Trial Judge was unable to serve as a genuine check on steps which have been taken prior to her assignment, having herself been involved in those processes. Neither could the Pre-Trial Judge bring a fresh mind to the proceedings. Having served as Single Judge in the proceeding referred to as KSC-2018-01, the Pre-Trial Judge had access to a wide range of documents filed in that proceeding concerning SPO investigations, not only related to Case 12 but also to Case 6, and presumably, to the other contempt cases, Cases 7 and 10. Many of these documents did not form part of the file in Case 12 and were inaccessible to the Defence and co-accused in this case. However, these documents *were* available not only to the SPO but also to the Pre-Trial Judge. These documents may reference or reflect SPO investigative theories prejudicial to the Defence which were not ultimately included within this case. This is also precisely the situation that the KSC Law seeks to avoid by requiring that a Pre-Trial Judge is appointed only upon the filing of an indictment.
51. The President’s multiple violations of Article 33 of the KSC Law constitute a manifest violation of Kosovan law regarding the assignment of judges to constitute particular panels of the KSC. These rules within Article 33 are *the* fundamental framework for judicial assignments at the KSC. Their violation by the President (which has not been remedied, as elaborated below) constitutes a clear violation of Article 31 of the Constitution and Article 6(1) of the ECHR.

*Failure of the KSC to remedy the violations*

52. As set out above, jurisprudence of the ECtHR has held that to demonstrate a violation of Article 6(1) it is necessary to show that domestic courts have failed to provide a remedy.<sup>59</sup>

(a) The decisions of the Pre-Trial Judge and the Court of Appeals Panel

53. The Defence raised the violations of Article 33 of the KSC Law in its Preliminary Motion on Jurisdiction. However, the Pre-Trial Judge refused to rule on them, stating that she did not have the power to do so:

[T]he assignment of Judges falls squarely within the powers and responsibilities of the President, pursuant to Article 33 of the Law. To the extent that the Thaçi Defence takes issue with the validity of the Single Judge's assignment (whether as a "standing" Judge or not), 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>60</sup>

54. Despite holding that she had no power to review her own assignment either as Pre-Trial Judge or as Single Judge, Judge Masselot did not address the problem of what other forum is available for the review of a judicial assignment made by the President in violation of Article 33. She avoided this question by holding that Rule 20 of the KSC Rules was the appropriate avenue for seeking to remedy an Article 33 violation:

[...] the Thaçi Defence's assertion that the assignment of one and the same judge as Single Judge and Pre-Trial Judge was improper falls squarely within the scope of Rule 20 of the Rules on the "Recusal or Disqualification of Judges". If the Thaçi Defence believed that there were grounds for the disqualification of the Single Judge/Pre-Trial Judge, it could and should have raised this matter following the procedure set out in Rule 20(3) of the Rules. Yet, it did not do so. The Thaçi Defence cannot circumvent this procedure and applicable time limits by raising this matter now, in the context of a preliminary motion.<sup>61</sup>

55. On appeal, the Court of Appeals Panel upheld Pre-Trial Judge's finding that she did not have competence to review her own assignment by the President.<sup>62</sup> In

<sup>59</sup> ECtHR, *Ástráðsson v Iceland*, App. no. 26374/18, [Judgement](#), 1 December 2020, paras 273-286.

<sup>60</sup> [Pre-Trial Judge Decision](#), para. 38.

<sup>61</sup> [Pre-Trial Judge Decision](#), para. 39.

<sup>62</sup> [Appeals Panel Decision](#), paras 67-70.



response to the Defence's submission that such a finding would leave Mr Thaçi without a remedy for the violation of his right to a "tribunal established by law", the Court of Appeals Panel found that such a remedy did exist, upholding the Pre-Trial Judge's decision that the appropriate forum for challenging the assignment of the Pre-Trial Judge was Rule 20 of the KSC Rules.<sup>63</sup> The latter ruling from the Court of Appeal Panels appears to be based on an (erroneous) view that Rule 20's scope is not limited to situations of conflict of interest or partiality, but could also include any challenge to a judge's involvement in a Panel.<sup>64</sup>

56. These rulings by the Pre-Trial Judge and the Court of Appeals Panel mean that Mr Thaçi has been left without a remedy for the President's violation of Article 33. The Pre-Trial Judge and the Court of Appeals Panel are wrong to suggest that Rule 20 of the KSC Rules would have provided a remedy. It addresses the limited question of judicial bias (real or perceived). It is thus a remedy for a *different* kind of problem in a judicial assignment than the violation in question here. For the reasons elaborated below, Rule 20 of the KSC Rules cannot be the appropriate channel for addressing an assignment by the President in violation of Article 33. This means that the effect of the Pre-Trial Judge and Court of Appeals Panel decisions is that in fact there is *no* judicial remedy available for a violation of Article 33 by the President.

(b) Correct interpretation of Rule 20 of the KSC Rules

57. Contrary to the finding of the Court of Appeals Panel,<sup>65</sup> Rule 20 of the KSC Rules *only* addresses concerns regarding conflict of interest or the impartiality or independence of the judge and does not provide an avenue for addressing a violation of Article 33. This is clear for a number of reasons.

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<sup>63</sup> *Ibid.*, paras 70-79.

<sup>64</sup> *Ibid.*, para. 72.

<sup>65</sup> *Ibid.*, para. 72.

*Rule 20 is a stand-alone provision*

58. First, and most substantively, this is clear from the construction of Rule 20 itself.

The Rule contains both a substantive principle regarding judicial independence (in paragraph 1); followed by a series of regulations concerning procedures for implementing it (paragraphs 2 to 6):

- (i) Rule 20(1) sets out the circumstances in which recusal or disqualification can occur;
- (ii) Rule 20(2) sets out the procedure for recusal applications by a judge;
- (iii) Rule 20(3) sets out the procedure for disqualification applications by a party;
- (iv) Rule 20(4) sets out how applications under Rule 20(2) or 20(3) shall be decided; and
- (v) Rule 20(5) and (6) address further procedural issues.

It is clear that the provision is *self-contained*. The procedures detailed in Rule 20(2) to (6) are intended to apply specifically to the substantive principle in paragraph 1. Rule 20(3) does not establish an open procedure by which various violations of the KSC Law or KSC Rules could be challenged. Rather, it is clear that the procedure in Rule 20(3) – which allows a Party to seek the disqualification of a judge – applies specifically (and only) to violations of Rule 20(1).

59. Moreover, the contents of Rule 20(1) make very clear that it is not a broad umbrella provision intended to address any argument concerning the constitution of a Panel. The substantive part of the Rule is contained in its paragraph (1):

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 adversely affect the Judge's required impartiality; and
- (d) any other reason which could reasonably appear to affect the Judge's impartiality.

60. This paragraph sets out the full scope of the situations in which Rule 20 has application. The other paragraphs only address the procedure by which the principle set out in Rule 20(1) is enforced. Accordingly, Rule 20 can only serve as a remedy those circumstances identified in Rule 20(1), in other words, it operates only when the issue at hand concerns a judge's "personal interest" or prior "involvement" in the case.

*Rule 20 addresses matters which are distinct from those in Article 33*

61. The Court of Appeals Panel's interpretation might have been plausible if there was any basis for believing that Rule 20(1) of the KSC Rules was enacted as an elaboration or implementation of KSC Law Article 33. However, there is nothing to suggest that this is the case, and indeed several factors which indicate otherwise. For one thing, Article 33 is not concerned with the situations in which a judge has a conflict of interest, or lacks independence or impartiality. Those matters are instead set out in Articles 31 of the KSC Law. If anything, Rule 20(1) appears to be an elaboration of Article 31, rather than of Article 33. This interpretation is also reflected the ICTY Appeals Chamber's leading ruling on judicial disqualification, which links this process to the requirement in the ICTY's Statute that judges must be "persons of high moral character, impartiality and integrity" (rather than to the process for their assignment).<sup>66</sup>

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<sup>66</sup> ICTY, *Prosecutor v Furundzija*, Appeals Chamber, [Judgement](#), 21 July 2000, paras 177 *et seq.*

62. The questions of a judge's lawful and correct assignment (KSC Law, Article 33) are clearly distinct from the question of whether an assigned judge must recuse him or herself or be disqualified (KSC Rules, Rule 20). These two requirements address different aspects of the ECHR's Article 6: the former (Article 33) concerns the right to a tribunal *established by law*; the latter (Rule 20) concerns the right to an *independent and impartial* tribunal.
63. Article 33 addresses the basic minimum requirements for the assignment of a judge. It does not require the President to weigh personal factors indicating potential bias or conflict of interest, but rather to exercise the *administrative* function<sup>67</sup> of appointing judges in accordance with basic requirements and identified time periods. Although some of these minimum requirements appear motivated to ensure that there are checks and balances on judicial power (for example the requirement in Article 33(4) for different judges at different stages), the President is not tasked with considering whether a conflict of interest exists when making an assignment.
64. In contrast, as set out above, Rule 20 concerns a judge's "personal interest" or prior "involvement" in the case: in other words, questions of conflict to interest, bias or lack of independence, whether actual or perceived. This is clear from the wording of Rule 20(1). It is also consistent with the plain meaning of the term used in Rule 20 and its heading: "Recusal or Disqualification of Judges". These are the standard terms used to describe a situation in which a judge is precluded from acting because of a conflict of interest or the real or perceive possibility of partiality or lack of independence.<sup>68</sup>

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<sup>67</sup> KSC-BC-2020-06/F00440, Decision on Application for the Recusal of the President, 24 August 2021, Public, para. 14.

<sup>68</sup> See for example: ICTY Rules of Procedure and Evidence, Rule 15; ICTR Rules of Procedure and Evidence, Rule 15; ECCC Internal Rules, Rule 34; SCSL Rules of Procedure and Evidence, Rule 15; IRMCT Rules of Procedure and Evidence, Rule 18.

65. Questions of recusal or disqualification because of an actual or perceived conflict or lack of independence or impartiality under Rule 20 of the KSC Rules only come into play *after* a judge has been assigned. Rule 20 does not place an obligation on the President *not* to assign a judge who may have an interest in a given case. The obligation not to act in a case where a conflict arises falls on the particular judge. Rule 20(2) requires that a judge recuse him or herself where a ground exists, through making a strictly confidential application to the President. The act of recusal implies that the judge is already in the role in question: it is implausible that Rule 20(2) expects filings being made by judges on the roster *before* an assignment. The President has ruled that Rule 20 is “confined to the disqualification of a judge *sitting on a case*” (emphasis added).<sup>69</sup> This again emphasizes that Rule 20 is not concerned with whether the President has complied with Article 33, but with other factors, concerned with the personal interests or prior activities of the assigned judge.

*Rule 20 applies in different scenarios than Article 33*

66. Article 33 and Rule 20(1) are not only conceptually distinct, but the factual circumstances which would violate them are also not the same. While a violation of *both* provisions can certainly occur in a given case, there are also violations of Article 33 which would not infringe Rule 20(1). For example:

- (i) Article 33(1)(a) requires that the President can only assign a judge from the Roster established pursuant to Article 25(3). This provision would be violated, for example, if the President assigned a judge *not* on the Roster;
- (ii) Article 33(3) requires that upon a referral to the Specialist Chamber of the Constitutional Court, the President must assign the three judges of that

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<sup>69</sup> KSC-BC-2020-07/F00272, [Decision on the Application for Recusal or Disqualification](#), 6 August 2021, Public, para. 22. See also: KSC-BC-2020-07/F00278, [Decision on the Request for Reconsideration of the Decision on Recusal or Disqualification](#), 20 August 2021, Public, para. 9.

Chamber as a Constitutional Court Panel; and in the event that one is unavailable she must assign the reserve constitutional judge. This provision would be violated, for example, if the President assigned only two judges to form such a panel; or assigned the reserve constitutional judge where all three Constitutional Court judges were available.

- (iii) Several sub-paragraphs of Article 33 address the point in time at which a judge's or panel's assignment shall elapse. These provisions would be violated, for example, if the President ordered that a judge's assignment continue beyond such point.

In each of these three examples, Article 33 would be violated. However, the violation would have nothing to do with the assigned judge's personal interest or prior involvement in the case, and would clearly not violate Rule 20(1). The judge in question would thus have no obligation to recuse him or herself under Rule 20(2), and the Parties would have no recourse under Rule 20(3).

- 67. Indeed, some of the issues complained of in the present referral also fall into this category: for example, the President's creation of a standing Single Judge, violated Article 33(2)'s explicit statement that a Single Judge's assignment "shall be temporary in nature". This has nothing to do with an assigned judge's personal interest or prior involvement in the case.
- 68. It may be the case that confusion arose in the present case because the parts of Article 33 which the President violated in her appointment of the Pre-Trial Judge appear to be designed to ensure that an assigned judge comes to a case with an independent and unbiased perspective, including by virtue of not having been part of another panel in the same case. For this reason it is very possible that a particular scenario might sometimes breach *both* the obligation imposed on the assigned Judge by Rule 20(1), and the obligation imposed on the President by Article 33(1)(a) and Article 33(4). Nonetheless, these obligations are distinct. Not



only are they borne by different actors (respectively the assigned judge and the President). But their contents are slightly different. Article 33(1)(a) sets out a specific requirement that a Pre-Trial Judge is assigned only upon the filing of an indictment; while Article 33(4) precludes a judge from sitting at more than one stage of the same case. Article 20(1) creates a far more general obligation, to assess the *specific* personal interests that a particular judge has or appears to have and its effect on the proceedings.

69. It is possible that the Pre-Trial Judge's assignment led to violations of *both* Article 33 and Rule 20(1). However, it remains the case that these must be addressed through separate remedies, and logically a Party's failure to make a challenge to the judge's impartiality under Rule 20(3) cannot cure the violation of Article 33.

*No precedent supports the application of Rule 20(3) to violations of Article 33*

70. The Court of Appeals Panel decision appears to assume that Rule 20 provides an avenue to seek the disqualification of a judge other than on the basis of a lack of independence or impartiality or a conflict of interest.
71. The Defence has been unable to identify a single instance in which Rule 20, or any of its equivalents from other international tribunals, has been used to disqualify a judge outside those circumstances. And the ICTY Appeals Chamber's elaboration of recusal and disqualification procedures, in *Furundzija*, contains no suggestion that these mechanisms could be used to address a matter other than the independence or impartiality of a judge.<sup>70</sup> There is nothing in the language of Rule 20, suggesting that the procedural paragraphs of Rule 20 would apply to the President's administrative functions in assigning judges. Indeed, the President has ruled that:

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<sup>70</sup> ICTY, *Prosecutor v Furundzija*, Appeals Chamber, [Judgement](#), 21 July 2000, paras 177-191.

Rule 20 of the Rules is an avenue through which a party may seek the disqualification of a Judge sitting in a case, where the party contends that the Judge may be biased or where an appearance of bias may exist with respect to its case.<sup>71</sup>

72. It is also noteworthy that neither Judge Guillou nor Judge Masselot acted under Rule 20(2) when they were assigned to carry out two roles in the same case. They clearly did not see this as a matter related to Rule 20.

*Applying Rule 20(3) to Article 33 violations creates perverse results*

73. Finally, the clearest indicator that the Rule 20(3) procedure was never intended to apply to violations of Article 33 is found in the nature of the procedure itself. A concern regarding a judge's possible conflict of interest or lack of independence is something which a Party may opt either to object to, or not. Where a Party knowingly opts not to object (or explicitly waives any right to do so), the judge's involvement becomes permissible.
74. However, such a procedure would clearly be inappropriate for violations of Article 33. The requirements of Article 33 are prerequisites for the validity of an assignment. An assignment made in violation of Article 33 is therefore null and cannot be cured by the acts or omissions of any Party. If, for example, the President assigned a person who was not on the roster established under Article 25 (in violation of Article 33(1)), such an assignment would not become permissible simply because the Parties did not object to it.
75. It follows, from all of these reasons, that a motion based on the violation of Article 33 is different from a Rule 20(3) disqualification request.
76. For these reasons, Rule 20 was never available to Mr Thaçi as a remedy for violation of Article 33. By now deciding – after the expiry of the Rule 20(3)

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<sup>71</sup> KSC-BC-2020-07/F00278, Decision on the Request for Reconsideration of the Decision on Recusal or Disqualification, 20 August 2021, Public, para. 13.

deadline – that Rule 20(3) *had been* available, the Pre-Trial Judge and Court of Appeals Panel have enabled themselves to conclude that Mr Thaçi *did* have a remedy available for an alleged Article 33 violation and simply failed to exercise it himself. In fact, Rule 20(3) only provides an avenue for addressing issues arising under Rule 20(1). It is unrelated to Article 33. If – as the Court of Appeals Panel held – the Pre-Trial Judge has no power to assess the validity of her own assignment, the consequence is that the KSC’s legal framework provides no remedy for the President’s violation of Article 33.

77. Certainly in the present case, Mr Thaçi has been denied any effective legal remedy for the wrongful assignment of the Single Judge and Pre-Trial Judge. The Defence’s attempts to raise the violation as a preliminary motion were rejected. No other avenue is available.

78. Accordingly, all three of the ECtHR’s components of a violation of the right to a “tribunal established by law” are made out in the present instance.

## **B. Violations of Article 36**

79. Article 36 of the Constitution and Article 8 of the ECHR protect against arbitrary interference with private life, family life, residence/home or correspondence. A State is permitted to interfere with these interests for various reasons, including for the protection of national security, or the prevention of disorder or crime, where this is “necessary in a democratic society”. However, any such interference must be “in accordance with the law”.

80. Where an interference with the protected interests is not “in accordance with law” this suffices to demonstrate a violation of the right: it is not necessary to examine whether the interference pursued a legitimate aim or was necessary in a democratic society.<sup>72</sup>

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<sup>72</sup> ECtHR, *M.M. v Netherlands*, App. no. 39339/98, [Judgment](#), 8 April 2003, para.46

*Interference with protected interests*

81. There can be no question in this instance that Mr Thaçi's interests as protected by Article 36 of the Constitution and Article 8 of the ECHR have been interfered with by decisions of the Single Judge and Pre-Trial Judge. Most clearly as Single Judge and Pre-Trial Judge, both Judge Masselot and Judge Guillou made orders enabling the covert recording of Mr Thaçi's private conversations and the accessing of these conversations by the SPO and others. They additionally made orders enabling the seizure and search of Mr Thaçi's computer, and the extraction of data from it, which included his correspondence and personal writings.
82. Covert recording of conversations,<sup>73</sup> and accessing electronic files<sup>74</sup> have been held to constitute an interference with the interests protected by Article 8.

*Not "in accordance with law"*

83. All of the above measures could in principle be permitted under the legal framework of the KSC, and particularly under Chapter 3 of the KSC Rules, which permit SIMs and searches and seizures in certain circumstances. However, the measures imposed on Mr Thaçi, as detailed above, are all measures which required the authorisation of a "Panel", pursuant to Rules 31, 35 and 37.
84. "Panel" is a term defined in the KSC Rules as meaning "Any panel or individual judge assigned in accordance with Articles 25(1) and 33 of the Law, unless otherwise specified".<sup>75</sup> Accordingly, a judge who has not been assigned in accordance with Article 33 is not a Panel. Surveillance, search or seizure ordered

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<sup>73</sup> KSC-CC-2024-25/F00006/RED, Constitutional Court Panel, Public Redacted Version of Decision on the Referral to the Constitutional Court Panel on the violation of Mr Hashim Thaçi's fundamental rights, 15 November 2024 ([Public redacted version](#) 24 December 2024), para 34; ECtHR, *Malone v UK*, App. no. 8691/79, [Judgment](#), 2 August 1984, para.64; ECtHR, *Khan v UK*, App. no. 35394/97, [Judgment](#), 12 May 2000, para. 25.

<sup>74</sup> ECtHR, *Bernh Larsen Holding AS and Others v. Norway*, App. no. 24117/08, [Judgment](#), 14 March 2013, para. 106.

<sup>75</sup> KSC Rules, Rule 2.

by such a person are not measures taken “in accordance with law”. Such measures therefore constitute a violation of Article 36 of the Constitution and Article 8 of the ECHR.

## **VI. RELIEF SOUGHT**

85. For these reasons, the Defence requests that the Panel:

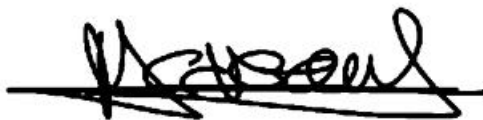
**DECLARE** that the assignments of the Single Judges and Pre-Trial Judges in this case violated Mr Thaçi’s right to a tribunal established by law under Article 31 of the Constitution;

**DECLARE** that the SIMs and search and seizure orders issued against Mr Thaçi by judges not duly appointed under Article 33 violated Mr Thaçi’s right to privacy under Article 36 of the Constitution;

**QUASH** the judicial orders tainted by these violations, including the Case 12 Indictment and the SIMs issued by the Single Judges.

[Word count: 9854 words]

Respectfully submitted,

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

**Sophie Menegon**

**Counsel for Hashim Thaçi**

29 December 2025

Paris, France