



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

Case number: KSC-CC-2025-31

Before: The Specialist Chamber of the Constitutional Court

Judge Vidar Stensland, Presiding

Judge Roumen Nenkov

Judge Piotr Hofmański

Registrar: Fidelma Donlon

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Mr Hashim Thaçi's fundamental rights

Classification: Public

**Decision on the Referral of Hashim Thaçi to the Constitutional Court Panel
Concerning Fundamental Rights**

Applicant

Hashim Thaçi

Specialist Prosecutor

Kimberly P. West

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The Specialist Chamber of the Constitutional Court

Composed of

Vidar Stensland, Presiding Judge

Roumen Nenkov, Judge

Piotr Hofmański, Judge

Having deliberated remotely delivers the following Decision

I. PROCEDURE

A. REFERRAL

1. On 29 December 2025, Mr Hashim Thaçi (“Applicant”) made a referral pursuant to Article 113(7) of the Constitution of the Republic of Kosovo (“Constitution”) and Article 49(3) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) to the Specialist Chamber of the Constitutional Court (“Chamber” and “Referral”).¹ The Applicant was represented by Sophie Menegon and Luka Mišetić.

2. In the Referral, the Applicant complained about a violation of his fundamental rights in relation to ongoing criminal proceedings against him, taking place before the Specialist Chambers (“SC”). In particular, the Applicant claimed that the assignment of the single judge who authorised special investigative and other measures (“SIMs”) in respect of him in KSC-BC-2018-01 (“investigation file”), as well as the subsequent assignment of the same judge to serve as pre-trial judge in the criminal proceedings against him in KSC-BC-2023-12 (“Case 12”) had not been in accordance with the Law, therefore violating his right to have the criminal charges against him determined by a “tribunal established by law” under Article 31(2) of the Constitution and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental

¹ KSC-CC-2025-31, F00001, Referral to the Constitutional Court Panel on the violation of Mr Hashim Thaçi’s fundamental rights, public, 29 December 2025.

Freedoms (“Convention”).² The Applicant further claimed a violation of his right to respect for private and family life under Article 36 of the Constitution and Article 8 of the Convention by virtue of the SIMs and other measures authorised by the judges in question.³

3. On 30 December 2025, the President of the SC (“President”), assigned the above Panel to rule on the Referral pursuant to Article 33(3) of the Law.⁴

B. WRITTEN SUBMISSIONS AND WORKING LANGUAGE

4. The Chamber considered that the Referral was sufficiently comprehensive and that no additional written submissions were necessary under Rule 15(2) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court (“SCCC Rules”).

5. Furthermore, pursuant to Article 20 of the Law and Rule 5 of the SCCC Rules, the Chamber decided that the working language of the present proceedings would be English, with official translation provided by the Registry into the two other official languages of the SC, namely Albanian and Serbian.

C. EXAMINATION OF THE REFERRAL

6. The Chamber turns to the examination of the Referral, based on the Referral and the documents referenced therein. This decision refers to the facts of the case and the submissions of the Applicant insofar as relevant for the Chamber’s assessment of the Referral.

² Referral, paras 3, 29-78.

³ Referral, paras 3, 79-84.

⁴ KSC-CC-2025-31, F00002, Decision assigning judges to a Constitutional Court Panel, public, 30 December 2025. As regards the venue of the proceedings, see KSC-CC-2019-06, F00001, Invocation of change of venue for referrals made pursuant to Article 49 of the Law, public, 18 January 2019; F00002, Decision on the location of proceedings before the Specialist Chamber of the Constitutional Court, public, 22 January 2019.

II. THE FACTS

A. ASSIGNMENT OF A SINGLE JUDGE UNDER ARTICLE 33(2) OF THE LAW

7. On 29 May 2018, following a request submitted by the Specialist Prosecutor's Office ("SPO"), the President, acting pursuant to Article 33(2) of the Law, assigned Judge Nicolas Guillou ("Judge Guillou") as a single judge "to consider any request for judicial authorisation and related matters submitted by the [SPO] prior to the filing of an indictment and the ensuing assignment of a Pre-Trial Judge under Article 33(1)(a) of the Law".⁵ In this regard, the assignment decision specified that (i) "[a]ssignments under Article 33(2) of the Law shall be temporary in nature and shall cease as soon as the matter triggering them has been disposed of", namely "any request for judicial authorisation submitted by the [SPO] prior to the filing of an indictment" in that case,⁶ and (ii) "to ensure the expeditious and efficient resolution of any such request, a Single Judge shall be assigned to consider all future requests".⁷ It also indicated that, under Article 33(4) of the Law, the assigned single judge "may not sit on a panel at a different phase of the same matter other than as a Pre-Trial Judge".⁸

B. CRIMES AGAINST HUMANITY AND WAR CRIMES CASE

8. On 26 October 2020, Judge Guillou, as the pre-trial judge assigned to case KSC-BC-2020-06 ("Case 06") by the President,⁹ confirmed an indictment submitted by the SPO against the Applicant,¹⁰ charging him and three other accused with six counts of crimes against humanity and four counts of war crimes, allegedly committed between at least March 1998 and September 1999 in Kosovo and areas of northern Albania.¹¹

⁵ KSCPR-2018, F00004, Decision assigning a single judge pursuant to Article 33(2) of the Law, public, 29 May 2018 ("Decision assigning a single judge"), Disposition.

⁶ Decision assigning a single judge, para. 15.

⁷ Decision assigning a single judge, para. 16.

⁸ Decision assigning a single judge, para. 18.

⁹ KSC-BC-2020-06, F00001, Decision assigning a pre-trial judge, public, 23 April 2020, Disposition.

¹⁰ See KSC-BC-2020-06, F00045/A03, Annex 3 to Submission of corrected and public redacted versions of confirmed indictment and related requests, public, 4 November 2020.

¹¹ The initial indictment against the Applicant and the other three accused was confirmed in KSC-BC-2020-06, F00026/RED, Public redacted version of decision on the confirmation of the indictment against

9. On 5 November 2020, pursuant to an arrest warrant and a transfer order issued by the pre-trial judge on 26 October 2020,¹² the Applicant was arrested in Kosovo and transferred to the SC Detention Facilities in The Hague, the Netherlands,¹³ where he remains in detention pending trial.

10. Trial proceedings in Case 06 began on 3 April 2023,¹⁴ and are currently ongoing.

C. JUDICIAL AUTHORISATION OF SPO REQUESTS

11. On 31 March 2023, Judge Guillou, as the single judge assigned by the President under Article 33(2) of the Law,¹⁵ granted a strictly confidential and *ex parte* request by the SPO seeking access to visit logs, correspondence logs, withheld correspondence, if any, telecommunications logs, and digitally recorded conversations pertaining to the Applicant at the SC Detention Facilities from January 2023 to 30 April 2023.¹⁶ In this regard, the single judge found, *inter alia*, a grounded suspicion that the Applicant “[had] been, [was committing], or [was] about to commit offences under Article 15(2)

Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, public, 30 November 2020 (the original filed on 26 October 2020), paras 15, 231, 349, 360, 417, 436, 444, 521(a). Subsequently, following decisions by the pre-trial judge, the SPO filed a corrected, an amended and a further amended indictment, as well as a lesser redacted version thereof, which is the current operative indictment in the case: see KSC-BC-2020-06, F000455/A01/RED, Annex 1 to Public redacted version of ‘Submission of corrected indictment and request to amend pursuant to Rule 90(1)(b)’, KSC-BC-2020-06/F00455, dated 3 September 2021, public, 8 September 2021 (the original filed on 3 September 2021); F00789/A05, Annex 5 to Submission of amended indictment and related documents, public, 29 April 2022; F00999/A03, Annex 3 to Submission of confirmed amended indictment, public, 30 September 2022; F01323/A01, Annex 1 to Prosecution further submissions pursuant to decision F01229, public, 27 February 2023.

¹² KSC-BC-2020-06, F00027/A01/RED, Public redacted version of arrest warrant for Hashim Thaçi, public, 5 November 2020 (the original filed on 26 October 2020); F00027/A02/RED, Public redacted version of order for transfer to Detention Facilities of the Specialist Chambers, public, 5 November 2020 (the original filed on 26 October 2020).

¹³ KSC-BC-2020-06, F00051, Notification of arrest of Hashim Thaçi pursuant to Rule 55(4), public, 5 November 2020; F00053, Notification of reception of Hashim Thaçi in the Detention Facilities of the Specialist Chambers and appointment of counsel, public, 5 November 2020.

¹⁴ KSC-BC-2020-06, Transcript of opening statements, public, 3 April 2023, p. 2140.

¹⁵ See above, para. 7.

¹⁶ KSC-BC-2018-01, F000324/RED, Public redacted version of decision on prosecution requests for detention centre information and [REDACTED], public, 5 November 2025 (the original filed on 31 March 2023) (“Decision authorising access to SC Detention Facilities information”), paras 5, 25, 29, 38(a)(d).

of the Law from the SC Detention Facilities” in relation to the ongoing proceedings in Case 06.¹⁷

12. In the course of 2023, the single judge granted additional strictly confidential and *ex parte* requests by the SPO, authorising, *inter alia*, further access to the Applicant’s SC Detention Facilities records or the covert monitoring of his non-privileged visits and telephone calls at the SC Detention Facilities, as well as the extension of such measures.¹⁸

D. ASSIGNMENT OF A PRE-TRIAL JUDGE AND THE FILING OF AN INDICTMENT

13. On 13 December 2023, following the SPO’s notification pursuant to Rule 86(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) and a request to that effect, the President, acting in accordance with Article 33(1)(a) of the Law, assigned Judge Guillou as pre-trial judge upon the filing of an indictment in Case 12.¹⁹

¹⁷ Decision authorising access to SC Detention Facilities information, para. 19.

¹⁸ KSC-BC-2018-01, F00330/RED, Public redacted version of decision on urgent prosecution supplemental requests in relation to F00318 and F00321, public, 5 November 2025 (the original filed on 14 April 2023), with Annexes 1-3, strictly confidential; F00346/RED, Public redacted version of decision authorising the installation of monitoring devices in the Detention Facilities, public, 31 October 2025 (the original filed on 2 May 2023), with Annex 1, strictly confidential; F00350/COR/RED, Public redacted version of corrected version of decision on prosecution request for special investigative measures, public, 3 November 2025 (the original filed on 4 May 2023), with Annex 1, strictly confidential; F00363/RED, Public redacted version of decision on prosecution request for extension of the special investigative measures authorised in F00330, public, 5 November 2025 (the original filed on 1 June 2023); F00365/COR/RED, Public redacted version of corrected version of decision on prosecution supplemental request regarding prosecution filings F00340 and F00344, public, 3 November 2025 (the original filed on 2 June 2023), with Annex 1, strictly confidential; F00384/RED, Public redacted version of decision on prosecution request for extension of decision F00350 and F00363, public, 5 November 2025 (the original filed on 30 June 2023), with Annex 1, strictly confidential; F00443/RED, Public redacted version of decision on prosecution requests for extension of measures authorised F00384 and access to telephone recordings, public, 10 November 2025 (the original filed on 30 August 2023), with Annex 1, strictly confidential; F00518/RED, Public redacted version of decision on urgent prosecution request, public, 5 November 2025 (the original filed on 21 November 2023).

¹⁹ KSC-BC-2023-12, F00001, Decision assigning a pre-trial judge, public, 13 December 2023, para. 1, Disposition.

14. On 15 December 2023, the SPO filed an indictment against the Applicant and three other suspects before the pre-trial judge.²⁰

15. On 11 March 2024, pursuant to an order by the pre-trial judge,²¹ the SPO filed a revised indictment before the pre-trial judge.²²

16. On 2 May 2024, the SPO filed a request before the pre-trial judge seeking leave to present additional material in support of the charges in the revised indictment, and suspension of the pre-trial judge's assessment of the revised indictment until the filing of said material and the submission of an amended indictment.²³

17. After the filing of the indictment, Judge Guillou, in his capacity as single judge assigned by the President under Article 33(2) of the Law,²⁴ granted further strictly confidential and *ex parte* requests by the SPO authorising, *inter alia*, the creation of a forensic image and preservation of the content of any and all computer(s), as well as secure electronic data sharing files/folders used by the Applicant at the SC Detention Facilities.²⁵

E. NEW JUDICIAL ASSIGNMENTS

18. On 6 June 2024, following the resignation of Judge Guillou from the Roster of International Judges on the same day, the President assigned Judge Marjorie Masselot

²⁰ KSC-BC-2023-12, F00002/A01, Annex 1 to Submission of indictment for confirmation and related request, confidential, 15 December 2023.

²¹ KSC-BC-2023-12, F00004/RED, Public redacted version of order to the Specialist Prosecutor pursuant to Rule 86(4) of the Rules, public, 14 March 2025 (the original filed on 22 February 2024).

²² KSC-BC-2023-12, F00007/A01, Annex 1 to Submission of revised indictment for confirmation, confidential, 11 March 2024.

²³ KSC-BC-2023-12, F00014, Prosecution submissions pursuant to Order F00011, public, 2 May 2024. See also KSC-BC-2023-12, F00010, Prosecution notice, public, 19 April 2024; F00011, Order for submissions, public, 24 April 2024; F00012, Request for extension of time, public, 1 May 2024; F00013, Decision on extension of time, public, 1 May 2024.

²⁴ See above, para. 7.

²⁵ KSC-BC-2018-01, F00543/RED, Public redacted version of decision on prosecution requests for preservation orders, public, 5 November 2025 (the original filed on 22 December 2023). See also KSC-BC-2018-01, F00585/RED, Public redacted version of decision on request for amendment of preservation orders, public, 16 December 2025 (the original filed on 19 February 2024).

(“Judge Masselot”) as single judge to replace Judge Guillou in the investigation file.²⁶ On the same day, Judge Masselot was assigned as the new pre-trial judge in Case 12.²⁷

F. FURTHER EXAMINATION AND REVIEW OF THE INDICTMENT

19. On 20 June 2024, Judge Masselot, as the pre-trial judge assigned by the President in Case 12, decided to reject the SPO’s request for leave to submit additional material in support of the revised indictment and for suspension of the pre-trial judge’s assessment thereof pending the filing of that material and amended indictment.²⁸

20. On 27 June 2024, the SPO filed an amended indictment against the Applicant and four other suspects before the pre-trial judge.²⁹

21. On 12 November 2024, following an order by the pre-trial judge,³⁰ the SPO filed a further amended indictment before her.³¹

G. CONFIRMATION OF THE INDICTMENT

22. On 29 November 2024, the pre-trial judge confirmed the SPO’s further amended indictment against the Applicant, charging him and four other accused with offences under Article 15(2) of the Law, namely offences against the administration of justice and public administration, as well as offences against public order.³² In particular, the Applicant was charged with three counts of obstructing official persons in performing official duties under Article 401(2)-(3) and (5) of the 2019 Kosovo Criminal Code, Code

²⁶ KSC-BC-2018-01, F00697/COR, Corrected version of decision assigning a single judge, public, 12 July 2024 (the original filed on 6 June 2024), paras 3-4 and Disposition.

²⁷ KSC-BC-2023-12, F00015, Decision assigning a pre-trial judge, public, 6 June 2024.

²⁸ KSC-BC-2023-12, F00016, Decision on prosecution requests for leave to present additional material and for suspension of examination of the indictment, public, 20 June 2024.

²⁹ KSC-BC-2023-12, F00017/A01, Annex 1 to Submission of amended indictment for confirmation, confidential, 28 June 2024.

³⁰ KSC-BC-2023-12, F00025/RED, Public redacted version of order pursuant to Rule 86(4)(b) of the Rules relating to counts 2 and 19 of the amended indictment, public, 14 March 2025 (the original filed on 6 November 2024).

³¹ KSC-BC-2023-12, F00028/A01, Annex 1 to Submission of further amended indictment for confirmation, confidential, 12 November 2024.

³² KSC-BC-2023-12, F00036/RED, Public redacted version of decision on confirmation of the indictment, public, 12 February 2025 (the original filed on 29 November 2024) (“Case 12 confirmation decision”) para. 313(a)-(e).

No. 06/L-074 ("KCC"), three counts of violating the secrecy of proceedings through unauthorised revelation of protected information under Article 392(1) of the KCC and one count of violating the secrecy of proceedings through unauthorised revelation of the identity of protected persons within the meaning of Article 392(2) of the KCC, as well as four counts of contempt of court pursuant to Article 393 of the KCC.³³

23. According to the confirmed indictment, the Applicant, between at least 12 April 2023 and 2 November 2023, during separate, non-privileged visits at the SC Detention Facilities, and with an aim to interfere in the ongoing Case 06 proceedings, provided the other accused in Case 12 with confidential information about SPO witnesses, and coordinated with them as to how to influence the testimony of SPO witnesses and/or contact them.³⁴

24. Following the confirmation of the indictment, Judge Masselot, in her capacity as single judge assigned by the President pursuant to Article 33(2) of the Law,³⁵ granted further requests by the SPO authorising, *inter alia*, the preservation of SC Detention Facilities audio recordings of non-privileged telephone conversations pertaining to the Applicant and Mr Kadri Veseli, one of the other accused in Case 06.³⁶ While said filings were distributed to and made accessible to the Applicant and the other person concerned, the Applicant did not engage in the litigation.³⁷ On the same day, namely 24 January 2025, the single judge decided that another request by the SPO, which strictly concerned offences for which the Applicant is prosecuted in Case 12, should be adjudicated by the pre-trial judge in that case.³⁸ Subsequently, on 27 January 2025, the single judge ordered the transfer of said request and all other related investigation

³³ Case 12 confirmation decision, para. 313(a).

³⁴ KSC-BC-2023-12, F00055/A01, Annex 1 to Submission of public redacted version of confirmed indictment, public, 6 December 2024, paras 7, 9-22, 26.

³⁵ See above, para. 18.

³⁶ See, for example, KSC-BC-2018-01, F00813/RED, Public redacted version of decision on prosecution request for preservation order, public, 11 November 2025 (the original filed on 24 January 2025) ("Decision on preservation request").

³⁷ Decision on preservation request, para. 4.

³⁸ KSC-BC-2018-01, F00812, Decision on the single judge's competence to adjudicate SPO request F00739, public, 24 January 2025.

filings from the investigation file to the Case 12 file.³⁹

25. On 14 April 2025, following an interlocutory appeal filed by the SPO, as certified by the pre-trial judge,⁴⁰ and the decision by a Court of Appeals panel to remand the matter to the pre-trial judge,⁴¹ Judge Masselot amended the confirmation decision.⁴² In particular, she confirmed an additional mode of liability under Article 32(3) of the KCC for the Applicant in relation to the obstruction charges under Article 401(2)-(3) and (5) of the KCC.⁴³ Likewise, the pre-trial judge ordered the SPO to file an amended confirmed indictment, and set the date for the submission of preliminary motions in the case.⁴⁴

26. On 16 April 2025, the SPO submitted the amended confirmed indictment, which is currently the operative indictment in Case 12.⁴⁵

H. PRELIMINARY MOTIONS AND INTERLOCUTORY APPEAL PROCEEDINGS

27. On 8 May 2025, the Applicant filed a preliminary motion alleging, *inter alia*, that by assigning a single judge under Article 33(2) of the Law to consider any request for judicial authorisation and related matters submitted by the SPO prior to the filing of an indictment, the President in effect created “a standing judicial role”, contrary to the provisions of Article 33(2) of the Law, which provides that such an assignment “shall

³⁹ KSC-BC-2018-01, F00814, Order for transfer of documents, public, 27 January 2024.

⁴⁰ KSC-BC-2023-12, F00071, Prosecution request for leave to appeal the ‘Decision on the confirmation of the indictment’ (F00036), public, 9 December 2024, with Annex 1, public; F00149, Decision on Specialist Prosecutor’s request for leave to appeal the “Decision on the confirmation of the indictment”, public, 31 January 2025.

⁴¹ 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, public, 3 April 2025 (the original filed on the same day), paras 80-89, 90.

⁴² 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, public, 14 April 2025 (“Decision amending the Case 12 confirmation decision”).

⁴³ Decision amending the Case 12 confirmation decision, paras 13-23, 31(a).

⁴⁴ Decision amending the Case 12 confirmation decision, paras 24, 30, 31(b), (h).

⁴⁵ KSC-BC-2023-12, F00264, Annex 2 to Submission of amended confirmed indictment, public, 16 April 2024.

be temporary in nature”.⁴⁶ The Applicant also alleged that the subsequent assignment of the same judge to serve as pre-trial judge in the proceedings against him in Case 12 was in violation of Articles 33(1)(a) and (4) of the Law, according to which, a pre-trial judge shall be assigned only “[u]pon the filing of an indictment”, and “[h]aving 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”.⁴⁷ In this regard, he further claimed that the impartiality of the pre-trial judge may have been undermined by her knowledge of potentially prejudicial filings in the investigation file which do not form part of the Case 12 record and to which the Applicant has no access.⁴⁸

28. On 19 June 2025, the pre-trial judge rendered her decision on the Applicant’s preliminary motion, rejecting it in its entirety.⁴⁹ At the outset, the pre-trial judge held that the Applicant’s preliminary motion did not challenge the SC’s jurisdiction, but her competence to hear the case, and therefore decided that she would not assess it within the purview of Rule 97(1)(a) of the Rules.⁵⁰ Still, the pre-trial judge entertained the Applicant’s motion pursuant to her power under Article 39(1) of the Law.⁵¹ More specifically, on the issues raised by the Applicant in connection with Article 33(1)(a), (2), and (4) of the Law, she held that the pre-trial judge does not have the competence to pronounce herself on these matters, as the assignment of SC judges squarely falls within the powers and responsibilities of the President.⁵² In this regard, she further found that the Applicant’s contention 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 on the recusal or disqualification of judges, and that the Applicant could and should

⁴⁶ KSC-BC-2023-12, F00290/RED, Public redacted version of Thaçi Defence preliminary motion on jurisdiction, public, 12 May 2025 (the original filed on 8 May 2025) (“Applicant preliminary motion”), paras 65-69, with Annex 1, public.

⁴⁷ Applicant preliminary motion, paras 70-76, 86.

⁴⁸ Applicant preliminary motion, paras 77-81.

⁴⁹ KSC-BC-2023-12, F00343, Decision on the Thaçi defence preliminary motion on jurisdiction, public, 19 June 2025 (“Decision on Applicant’s preliminary motion”), para. 42(a).

⁵⁰ Decision on Applicant’s preliminary motion, para. 22.

⁵¹ Decision on Applicant’s preliminary motion, para. 23.

⁵² Decision on Applicant’s preliminary motion, para. 38.

have raised this matter following the procedure set out in Rule 20(3) of the Rules to that effect.⁵³

29. On 30 June 2025, the Applicant filed a request for certification to appeal the pre-trial judge's decision⁵⁴ and, on 2 July 2025, he filed a direct interlocutory appeal before a Court of Appeals panel.⁵⁵

30. On 4 August 2025, the Court of Appeals panel rendered its decision, rejecting the Applicant's direct interlocutory appeal as inadmissible pursuant to Article 45(2) of the Law, on the ground that the matters raised therein did not pertain, *stricto sensu*, to the personal, territorial, temporal, or subject-matter jurisdiction of the SC.⁵⁶

31. On 23 July 2025, the pre-trial judge granted the Applicant's request for leave to appeal her decision on three issues, among them the questions of whether the pre-trial judge had erred in law by (i) considering that she is not able to review the legality of her assignment as pre-trial judge by the President, and (ii) finding that Rule 20 of the Rules bars the Applicant from challenging, through a preliminary motion, the practice of appointing the same judge as both single judge and pre-trial judge.⁵⁷

32. On 18 August 2025, the Applicant filed an interlocutory appeal before a Court of Appeals panel, wherein he argued, *inter alia*, that the assignment of Judge Masselot as both single judge and pre-trial judge in Case 12 violated Article 33 of the Law.⁵⁸

⁵³ Decision on Applicant's preliminary motion, para. 39.

⁵⁴ KSC-BC-2023-12, F00355/RED, Public redacted version of Thaçi defence request for certification to appeal "Decision on the Thaçi defence preliminary motion on jurisdiction", public, 4 July 2025 (the original filed on 30 June 2025), with Annex 1, public.

⁵⁵ KSC-BC-2023-12, IA0005/F00001/RED/COR, Corrected version of public redacted version of appeal against decision on the Thaçi defence preliminary motion on jurisdiction, public, 7 July 2025 (the original filed on 2 July 2025), with Annexes 1-3, public.

⁵⁶ KSC-BC-2023-12, IA0005/F00005, Decision on admissibility of KSC-BC-2023-12/IA005/F00001, 4 August 2025, paras 15-25, 28.

⁵⁷ 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", public, 23 July 2025, paras 6(c)-(d), 31-34, 35(b).

⁵⁸ KSC-BC-2023-12, IA0007/F00004/RED, Public redacted version of Thaçi defence appeal against "Decision on the Thaçi defence preliminary motion on jurisdiction", public, 20 August 2025 (the original filed on 18 August 2025), paras 24-30, 49, 54. See also KSC-BC-2023-12, IA0007/F00006, Thaçi

33. On 28 October 2025, the Court of Appeals panel issued its decision, rejecting the Applicant's interlocutory appeal in its entirety.⁵⁹ At the outset, the appeals panel held that the Applicant's submissions that the assignment of Judge Masselot as both single judge and pre-trial judge violated Article 33 of the Law fell outside the scope of the issues certified for appeal, and formally dismissed them.⁶⁰ With regard to the certified issues, the appeals panel found, *inter alia*, that the assignment of SC judges falls within the sole purview of the President pursuant to Article 33 of the Law, and that the pre-trial judge does not have the competence to review the President's decisions in that respect.⁶¹ According to the appeals panel, within the SC's framework, the appropriate forum to challenge the assignment of a judge by the President is Rule 20 of the Rules.⁶² In this regard, it further held that the language of Rule 20 of the Rules provides for a broad and non-exhaustive list of grounds pursuant to which a party can apply for the disqualification of a judge at the SC and that, as such, the Applicant's assertion as to the impropriety of assigning the same judge as single judge and pre-trial judge falls within the latter's purview.⁶³ Thus, in the appeals panel's view, the Applicant could have availed himself of the procedure set forth under Rule 20(3) of the Rules, which provides a forum to challenge the President's assignment decisions.⁶⁴

I. TRANSMISSION OF ADMINISTRATION OF JUSTICE CASE TO TRIAL

34. On 3 November 2025, the Applicant filed a notice informing the pre-trial judge of his intention to make a referral before the Chamber under Article 49(3) of the Law as regards to certain violations of his constitutional rights which were not remedied

defence reply to prosecution response to appeal against "Decision on preliminary motions on jurisdiction", public, 3 September 2025, para. 19, with Annex 1, public.

⁵⁹ KSC-BC-2023-12, IA0007/F00007, Decision on appeal against "Decision on the Thaçi defence preliminary motion on jurisdiction" and "Decision on preliminary motion for adjournment and severance of proceedings", public, 28 October 2025 ("Decision on Applicant's preliminary motions appeal"), paras 49, 79-80.

⁶⁰ Decision on Applicant's preliminary motions appeal, para. 64.

⁶¹ Decision on Applicant's preliminary motions appeal, paras 65-69.

⁶² Decision on Applicant's preliminary motions appeal, para. 70.

⁶³ Decision on Applicant's preliminary motions appeal, paras 71-73.

⁶⁴ Decision on Applicant's preliminary motions appeal, paras 74-75.

by the Court of Appeals panel, further noting that Rule 98(1) of the Rules requires “a *final* decision on preliminary motions prior to the transfer of the case file to the Trial Panel”.⁶⁵

35. On 11 November 2025, pursuant to Rule 98(3) of the Rules, the pre-trial judge notified the President that Case 12 would be ready for transmission to the trial panel on 12 November 2025.⁶⁶

36. On 12 November 2025, considering Article 25(2) of the Law, and that the charges against the Applicant and other four accused in Case 12 are not classified as serious crimes under Article 22 of the Kosovo Criminal Procedure Code, Code No. 08/L-032, the President decided to assign Judge Christopher Gosnell as single trial judge upon transmission of the case file.⁶⁷ On the same day, the pre-trial judge, having found the appeals panel’s decision on the Applicant’s preliminary motions to be final pursuant to Rule 98(1) of the Rules, and the case file complete, transmitted Case 12 to the single trial judge in accordance with Rule 98 of the Rules.⁶⁸

37. The trial in Case 12 is scheduled to commence on 27 February 2026.⁶⁹

III. ALLEGED VIOLATIONS

38. The Applicant complained before the Chamber that, by assigning a single judge to consider any request for judicial authorisation and related matters submitted by the SPO prior to the filing of an indictment, the President had in effect created “a standing judicial role”, contrary to the provisions of Article 33(2) of the Law, according to which

⁶⁵ KSC-BC-2023-12, F00535, Thaçi defence notice of intention to make an Article 49 referral, public, 3 November 2025, paras 1, 3-4 (emphasis added).

⁶⁶ KSC-BC-2023-12, F00541, Notification pursuant to Rule 98(3) of the Rules of Procedure and Evidence, public, 11 November 2025.

⁶⁷ KSC-BC-2023-12, F00543, Decision assigning a single trial judge, public, 12 November 2025, para. 4, Disposition.

⁶⁸ KSC-BC-2023-12, F00544, Decision transmitting the case file to single trial judge, public, 12 November 2025, paras 24-26, 28, with Annex 1, confidential, and Annex 2, public.

⁶⁹ KSC-BC-2023-12, F00705, Decision on request for adjournment of the start of trial proceedings, public, 29 January 2026, paras 8, 9(b).

such an assignment should be “temporary”.⁷⁰ He also complained that the subsequent assignment of the same judge to serve as pre-trial judge in Case 12 was in violation of Article 33(1)(a) of the Law, according to which a pre-trial judge shall be assigned only “[u]pon the filing of an indictment”, and Article 33(4) of the Law, which provides that, “[h]aving 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”.⁷¹ The Applicant claimed that the violations of Article 33(1)(a), (2), and (4) of the Law by the President, coupled with the subsequent failure of the pre-trial judge and appeals panel to remedy them,⁷² amounted to a violation of his right to have criminal charges against him determined by a “tribunal established by law” in accordance with Article 31(2) of the Constitution and Article 6(1) of the Convention.⁷³

39. The applicant also complained that the SIMs and other measures authorised in respect of him had not been taken “in accordance with law”, as the single judge in the investigation file and the pre-trial judge in Case 12 had been assigned in violation of Article 33 of the Law.⁷⁴ According to the Applicant, this amounted to a violation of his right to respect for private and family life under Article 36 of the Constitution and Article 8 of the Convention.⁷⁵

IV. JURISDICTION

40. The Chamber observes that the Applicant filed the Referral under Article 113(7) of the Constitution and raised complaints in relation to the ongoing proceedings against him before the SC. The Referral therefore relates to the SC and the SPO, as

⁷⁰ Referral, paras 33-42.

⁷¹ Referral, paras 43-51.

⁷² Referral, paras 52-77.

⁷³ Referral, paras 3, 29-32, 78.

⁷⁴ Referral, paras 3, 79-84.

⁷⁵ Referral, paras 3, 84.

required by Article 162(3) of the Constitution and Articles 3(1) and 49(2) of the Law. Thus, the Chamber has jurisdiction to rule on the Referral.

V. SCOPE OF REVIEW

41. The Chamber recalls, at the outset, its supervisory function as regards the work of the SC and the SPO insofar as fundamental rights and freedoms guaranteed by the Constitution are concerned.⁷⁶ Pursuant to Article 49(1) of the Law, the Chamber shall be the final authority on the interpretation of the Constitution as it relates to the subject matter jurisdiction and work of the SC and the SPO.

42. As regards the fundamental rights and freedoms guaranteed by Chapter II of the Constitution, the Chamber notes that, by virtue of Article 22(2) of the Constitution, the guarantees set forth in the Convention apply at the constitutional level.⁷⁷ Indeed, the Kosovo Constitutional Court has reiterated that the rights and freedoms guaranteed by the international instruments enumerated in Article 22 of the Constitution “have the status of norms of constitutional rank and are an integral part of the Constitution,

⁷⁶ KSC-CC-2025-09, F00007, Decision on the referral of Salih Mustafa concerning fundamental rights guaranteed by Article 33(3) of the Kosovo Constitution, public, 9 July 2025, (“*Decision on S. Mustafa referral concerning proportionality of punishment*”), para. 33; KSC-CC-2024-27, F00011, Judgment on the referral of Salih Mustafa concerning fundamental rights guaranteed by Articles 31 and 33 of the Kosovo Constitution and Articles 6 and 7 of the European Convention on Human Rights, public, 17 April 2025 (“*Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*”), para. 57; KSC-CC-2024-28, F00003, Judgment on the Referral of Haxhi Shala to the Specialist Chamber of the Constitutional Court, public, 6 March 2025 (“*Judgment on H. Shala referral concerning detention*”), para. 28; KSC-CC-2024-25, F00006/RED, Public redacted version of decision on the referral to the Constitutional Court Panel on the violation of Mr Hashim Thaçi’s fundamental rights, public, 24 December 2024, (original issued on 15 November 2024) (“*Decision on H. Thaçi referral concerning special investigative measures*”), para. 27; KSC-CC-2023-22, F00011, Judgment on the referral by Nasim Haradinaj to the Specialist Chamber of the Constitutional Court, public, 31 May 2024 (“*Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*”), para. 65. See also KSC-CC-2019-05, F00012, Decision on the referral of Mahir Hasani concerning prosecution order of 20 December 2018, public, 20 February 2019 (“*Decision on M. Hasani referral concerning SPO order*”), para. 24.

⁷⁷ See, for example, KSC-CC-2022-13, F00010; KSC-CC-2022-14, F00009, Decision on the referral of Jakup Krasniqi concerning the legality of charging joint criminal enterprise and the referral of Kadri Veseli concerning decision of the appeals panel on challenges to the jurisdiction of the Specialist Chambers, public, 13 June 2022 (“*Decision on J. Krasniqi, K. Veseli referrals concerning criminal charges*”), para. 34, with further references to case law.

in the same way as all other provisions contained in the Constitution”.⁷⁸ The Chamber recalls in this regard that the Applicant’s complaints relate to Articles 31(2) and 36 of the Constitution, as well as Articles 6(1) and 8 of the Convention and that, as such, the Referral falls to be considered under said provisions.

43. Concerning the assessment of the Referral, the Chamber notes that, pursuant to Article 53 of the Constitution, human rights and fundamental freedoms guaranteed by the Constitution “shall be interpreted consistent with the court decisions of the European Court of Human Rights [ECtHR]”. Furthermore, the Kosovo Constitutional Court has consistently recognised the application of Article 53 of the Constitution in its review of constitutional referrals.⁷⁹ It has also stated that “the Constitutional Court *is bound* to interpret human rights and fundamental freedoms consistent with the court decisions of the [ECtHR]”.⁸⁰ In that light, and considering Articles 22(2) and 53 of the Constitution, this Chamber has particular regard to the jurisprudence of the ECtHR in its review of the Applicant’s Referral.⁸¹

44. Lastly, the Chamber recalls that its task, under Article 113(7) of the Constitution and Article 49(1) and (3) of the Law, is to assess whether the irregularities complained of by the Applicant violated his individual rights and freedoms guaranteed by the

⁷⁸ Kosovo, Constitutional Court, *Constitutional review of judgments* [A.A.U.ZH. no. 20/2019 of 30 October 2019; and A.A.U.ZH. no. 21/2019, of 5 November 2019] of the Supreme Court of the Republic of Kosovo, KI 207/19, Judgment, 10 December 2020 (5 January 2021), para. 111.

⁷⁹ See, for example, Kosovo, Constitutional Court, *Request for constitutional review of judgment Pml no. 225/2017 of the Supreme Court of 18 December 2017*, KI 37/18, Resolution on inadmissibility, 30 May 2018 (11 June 2018), para. 37; *Constitutional review of decision Pn II no. 1/17 of the Supreme Court of Kosovo of 30 January 2017 related to the decision Pml no. 300/16 of the Supreme Court of 12 December 2016*, KI 62/17, Judgment, 29 May 2018 (11 June 2018), para. 43; *Request for constitutional review of judgment Pml no. 225/2017 of the Supreme Court of 18 December 2017*, KI 34/18, Resolution on inadmissibility, 23 May 2018 (11 June 2018), para. 41.

⁸⁰ Kosovo, Constitutional Court, *Constitutional review of judgment Pml no. 181/15 of the Supreme Court of the Republic of Kosovo of 6 November 2015*, KI 43/16, Resolution on inadmissibility, 14 April 2016 (16 May 2016), para. 50 (emphasis added).

⁸¹ *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 35; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 59; *Judgment on H. Shala referral concerning detention*, para. 30; *Decision on H. Thaçi referral concerning special investigative measures*, para. 29; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 67; *Decision on M. Hasani referral concerning SPO order*, para. 26.

Constitution.⁸² Accordingly, the Chamber does not decide on the Applicant's guilt or innocence.⁸³ Likewise, it is not the Chamber's role to decide whether the findings of the criminal chambers were correct in terms of facts or law.⁸⁴ Otherwise, it would be acting as an appeal chamber, which would be to disregard the limits imposed on its jurisdiction pursuant to Articles 113 and 162(3) of the Constitution.⁸⁵

45. The Chamber may only question such findings where they are flagrantly and manifestly arbitrary, in a manner that gives rise in itself to a violation of fundamental rights and freedoms guaranteed by the Constitution.⁸⁶ For instance, but not limited to,

⁸² *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 36; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 60; *Decision on H. Thaçi referral concerning special investigative measures*, para. 30; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 68; 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*, public, 13 June 2022 ("*Decision on H. Thaçi referral concerning jurisdictional challenge*"), para. 41. See also Kosovo, Constitutional Court, *Constitutional review of judgment Pml no. 19/2022 of the Supreme Court of 15 February 2022*, KI 74/22, *Judgment*, 7 November 2023 (5 December 2023), para. 72.

⁸³ *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 36; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 60; *Decision on H. Thaçi referral concerning special investigative measures*, para. 30; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 68; *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 41. See also Kosovo, Constitutional Court, *Constitutional review of judgment Pml no. 224/220 of the Supreme Court of Kosovo of 17 September 2020*, KI 31/21, *Resolution on inadmissibility*, 5 May 2021 (21 May 2021), para. 35.

⁸⁴ *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 36; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 60; *Decision on H. Thaçi referral concerning special investigative measures*, para. 30; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 68; KSC-CC-2020-08, F00020/RED, *Public redacted version of decision on the referral of [REDACTED] further to a decision of the Single Judge*, public, 12 June 2020 (original issued on 22 April 2020) ("*Decision concerning single judge decision*"), para. 36. See also Kosovo, Constitutional Court, KI 31/21, cited above, paras 35-36.

⁸⁵ *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 36; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 60; *Decision on H. Thaçi referral concerning special investigative measures*, para. 30; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 68; *Decision concerning single judge decision*, para. 36; Kosovo, Constitutional Court, *Constitutional review of judgment Pml no. 41/2017 of the Supreme Court of the Republic of Kosovo of 3 July 2017*, KI 119/17, *Resolution on inadmissibility*, 3 April 2019 (3 May 2019), para. 87. See also ECtHR, *Kemmache v. France (no. 3)*, no. 17621/91, 24 November 1994, para. 44.

⁸⁶ *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 37; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 61; *Decision on H. Thaçi referral concerning special investigative measures*, para. 31; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 69; *Decision concerning single judge decision*, para. 36. See also

this may occur in situations of manifest errors of assessment that no reasonable court could have ever made,⁸⁷ unreasonable conclusions regarding the facts that are so striking and palpable on the face of it that a court's findings could be seen as grossly arbitrary,⁸⁸ or manifestly erroneous interpretation and application of the relevant law or reasoning that has no legal foundation or is so palpably incorrect that it may be construed as grossly arbitrary or as amounting to a denial of justice.⁸⁹

VI. ADMISSIBILITY

46. At the outset, the Chamber must ascertain whether the complaints raised by the Applicant in the Referral are admissible.⁹⁰ This follows from Article 113(1) of the Constitution, pursuant to which the Chamber decides only on matters "referred to [it] in a legal manner by authorised parties".⁹¹ Likewise, Rule 15(1) of the SCCC Rules

ECtHR, *De Tommaso v. Italy* [GC], no. 43395/09, 23 February 2017, para. 170; Kosovo, Constitutional Court, KI 37/18, cited above, para. 41.

⁸⁷ ECtHR, *Dulaurans v. France*, no. 34553/97, 21 March 2000, paras 33-39. See also ECtHR, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, 5 February 2015, para. 62.

⁸⁸ ECtHR, *Khamidov v. Russia*, no. 72118/08, 15 November 2007, paras 170-175.

⁸⁹ ECtHR, *Anđelković v. Serbia*, no. 1401/08, 9 April 2013, paras 24-29; *Bochan v. Ukraine (no. 2)* [GC], cited above, paras 60-65.

⁹⁰ *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 38; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 62; *Judgment on H. Shala referral concerning detention*, para. 31; *Decision on H. Thaçi referral concerning special investigative measures*, para. 37; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 70; 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*, public, 29 August 2023 ("*Decision on P. Shala referral concerning admissibility of prior statements*"), para. 19; *Decision on J. Krasniqi, K. Veseli referrals concerning criminal charges*, para. 36.

⁹¹ *Decision on S. Mustafa referral concerning proportionality of punishment*, para. 38; *Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior*, para. 62; *Judgment on H. Shala referral concerning detention*, para. 31; *Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression*, para. 70; *Decision on P. Shala referral concerning admissibility of prior statements*, para. 19; KSC-CC-2022-19, F00004/RED, Public redacted version of the decision on the referral of Pjetër Shala concerning fundamental rights guaranteed by Articles 31 and 32 of the Kosovo Constitution and Articles 6 and 13 of the European Convention on Human Rights, public, 15 December 2022 ("*Decision on P. Shala referral concerning disqualification request*"), para. 14. See also 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*, KI 195/19, *Judgment*, 5 May 2021 (31 May 2021), paras 68-69; *Constitutional review of decision Pml no. 313/2018 of the*

stipulates that the Chamber shall decide on “the admissibility and/or the merits of a referral made under Article 49 of the Law”. Said provisions set out the Chamber’s responsibility to first determine, *ex officio*, whether the Referral is admissible or not.⁹²

47. The Chamber thus turns to examine the question of admissibility in light of certain admissibility requirements provided for in the Constitution, the Law, and the SCCC Rules, which arise in the present proceedings. Given that the Applicant raised two distinct complaints in the Referral, the question of admissibility is examined for each complaint separately.

A. ALLEGED VIOLATION OF ARTICLE 31(2) OF THE CONSTITUTION AND ARTICLE 6(1) OF THE CONVENTION

1. Submissions

48. The Applicant submitted that the Referral is admissible.⁹³ While acknowledging that, when determining previous referrals, the Chamber had found complaints under Article 31 of the Constitution and Article 6 of the Convention inadmissible for lack of victim status if brought before a final judgment, the Applicant argued that he could nevertheless already claim to be a victim of the alleged violations under Article 31(2) of the Constitution and Article 6(1) of the Convention at this stage of the proceedings.⁹⁴ In this regard, he indicated that, when examining a previous referral by him regarding his right to a “tribunal established by law” in relation to the ongoing proceedings in Case 06, the Chamber had noted the “fundamental nature” of the issue at hand, and deemed it “appropriate to address this matter” and assess whether there appeared to

Supreme Court of 10 December 2018, KI 12/19, Resolution on inadmissibility, 10 April 2019 (3 May 2019), paras 30-31.

⁹² *Decision on S. Mustafa referral concerning proportionality of punishment, para. 38; Judgment on S. Mustafa referral concerning fair trial rights and the principle of lex mitior, para. 62; Judgment on H. Shala referral concerning detention, para. 31; Judgment on N. Haradinaj referral concerning legality, entrapment, and freedom of expression, para. 70; Decision on P. Shala referral concerning admissibility of prior statements, para. 19; Decision on P. Shala referral concerning disqualification request, para. 14; Decision on H. Thaçi referral concerning jurisdictional challenge, para. 43.*

⁹³ Referral, para. 24.

⁹⁴ Referral, paras 25-26.

be a violation in that respect.⁹⁵ According to the Applicant, the question raised by the present Referral is equally fundamental, as it relates to the validity of the President's assignment of "all" SC judges at the early stages of proceedings, and is likely to impact "all proceedings", and not just those in Case 12.⁹⁶

49. The Applicant also claimed that the violations of Article 31(2) of the Constitution and Article 6(1) of the Convention, as alleged in the Referral, are not matters that can be cured at subsequent stages of the proceedings.⁹⁷ In particular, the Applicant argued that Case 12 is built on evidence which was not obtained in accordance with the Law, as it was authorised by judges who were not properly assigned under Article 33 of the Law.⁹⁸ In addition, he contended that the further amended indictment in Case 12 was not issued in accordance with the Law, arguing that such nullity can solely be cured by a new confirmation decision by a properly assigned pre-trial judge.⁹⁹ The Applicant asserted that waiting until the end of the proceedings to determine whether they are fair would add further injustice, as he would likely be subjected to a third lengthy trial.¹⁰⁰

50. Lastly in this regard, the Applicant submitted that he had exhausted all available legal remedies for the alleged violation, and that the Referral was timely, namely made within two (2) months from the final ruling on the matters raised, which according to the Applicant was the appeals panel's decision of 28 October 2025, notified to him on 29 October 2025.¹⁰¹

⁹⁵ Referral, para. 26(i).

⁹⁶ Referral, para. 26(i).

⁹⁷ Referral, para. 26(ii).

⁹⁸ Referral, para. 26(ii).

⁹⁹ Referral, para. 26(ii).

¹⁰⁰ Referral, para. 26(ii).

¹⁰¹ Referral, paras 27-28.

2. Chamber's Assessment

51. The Chamber recalls that pursuant to Article 113(7) of the Constitution, as well as Article 49(3) of the Law, individuals are authorised to refer to the Chamber alleged violations of their individual rights and freedoms guaranteed under the Constitution. This is also set out in Rule 20(1) of the SCCC Rules. The Chamber further observes that Rule 14(f) of the SCCC Rules stipulates that a referral shall be inadmissible if nothing in the referral, or specific parts thereof, gives rise to the appearance of a violation of a constitutional right.

52. At the outset, the Chamber takes note that the pre-trial phase in Case 12 has been concluded and that the trial is due to commence on 27 February 2026.¹⁰² Given that the criminal proceedings against the Applicant are pending and that the charges at issue are yet to be decided, the Chamber must first determine whether the Applicant, at this stage of the criminal proceedings, may claim to be a victim of the alleged violation.¹⁰³

53. The Chamber notes that the Applicant's complaint regarding the improper assignment of judges under Article 33 of the Law concerns a specific aspect of the fair trial guarantees contained in Article 31(2) of the Constitution, as well as Article 6(1) of the Convention. In particular, it pertains to the Applicant's right to a determination of the charges against him by a "tribunal established by law".¹⁰⁴ In addition, insofar as the Applicant's complaint may also be interpreted to raise, in substance, the issue of the pre-trial judge's lack of judicial impartiality by virtue of the functions performed

¹⁰² See above, paras 36-37.

¹⁰³ See, similarly, *Decision on P. Shala referral concerning admissibility of prior statements*, para. 21; *Decision on P. Shala referral concerning disqualification request*, para. 18; KSC-CC-2022-18, F00004/RED, Public redacted version of the decision on the referral of Pjetër Shala to the Constitutional Court Panel concerning fundamental rights guaranteed by Articles 30 and 31 of the Kosovo Constitution and Article 6 of the European Convention on Human Rights, public, 22 August 2022 ("*Decision on P. Shala referral concerning access to material*"), para. 15; *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 54; *Decision on J. Krasniqi, K. Veseli referrals concerning criminal charges*, para. 38.

¹⁰⁴ See, for example, ECtHR, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020, paras 212-213, with further references to case law.

as single judge,¹⁰⁵ it concerns his right to have the charges against him determined by an “impartial tribunal”.¹⁰⁶

54. As observed above, the criminal proceedings against the Applicant in Case 12 are pending¹⁰⁷ and the charges at issue are yet to be examined and determined by the single trial judge and, as the case may be, by a Court of Appeals and a Supreme Court panel, in accordance with their respective competence. Therefore, at this stage of the proceedings, it is not known how the charges against the Applicant will be decided. However, the outcome of the proceedings may be relevant in determining whether an individual may claim to be a victim of an alleged violation of a fair trial right under Article 31(2) of the Constitution and Article 6(1) of the Convention.¹⁰⁸

55. Indeed, the Chamber recalls that, in accordance with the well-established case law of the ECtHR, an individual may not claim to be a victim of a violation of his or her right to a fair trial under Article 6 of the Convention where those proceedings were discontinued or where the individual was acquitted.¹⁰⁹ The limited exceptions to this rule concern, for instance, issues relating to the reasonable length of proceedings, or access to court.¹¹⁰ It follows that, at this point in the proceedings, the Applicant cannot claim to be a victim of the alleged violation of his right to fair trial under Article 31(2) of the Constitution and Article 6(2) of the Convention. Accordingly, the Chamber does not need to determine, at this stage, how it would apply this ECtHR case law.¹¹¹

¹⁰⁵ Referral, paras 47-50.

¹⁰⁶ See, for example, ECtHR, *Borg v. Malta*, no. 37537/13, 12 January 2016, paras 81, 83.

¹⁰⁷ See above, para. 52.

¹⁰⁸ See, similarly, *Decision on P. Shala referral concerning admissibility of prior statements*, para. 21; *Decision on P. Shala referral concerning access to material*, para. 17; *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 60.

¹⁰⁹ ECtHR, *Saknovskiy v. Russia* [GC], no. 21272/03, 2 November 2010, para. 77 (“*Saknovskiy v. Russia*”); *Bouglame v. Belgium* (dec.), no. 16147/08, 2 March 2010; *Oleksy v. Poland* (dec.), no. 1379/06, 16 June 2009. See also *Decision on P. Shala referral concerning admissibility of prior statements*, para. 26; *Decision on P. Shala referral concerning access to material*, para. 18; *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 60.

¹¹⁰ *Saknovskiy v. Russia*, para. 77, with further references to case law. See also *Decision on P. Shala referral concerning admissibility of prior statements*, para. 26.

¹¹¹ See, similarly, *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 60

56. Further to the above, the Chamber takes note of the Applicant's argument that, in its consideration of a previous referral made by him regarding, *inter alia*, his right to a determination of the charges against him by a "tribunal established by law", the Chamber "deem[ed] it appropriate to address [the] matter" complained of on grounds that "it raise[d] a fundamental question pertaining to the functioning of the SC".¹¹² However, the Chamber also expressly emphasised that, "given the premature nature of the complaint", it was required to exercise particular caution "so as not to encroach, at [that specific] stage, upon the role of the other panels of the SC in determining in determining the issues of law and fact relevant to the criminal case before them",¹¹³ and that "such an assessment [was] without prejudice to any future determination of a complaint [...] which the Applicant may bring before the Chamber" at a later stage of the proceedings.¹¹⁴ Accordingly, while touching upon the merits,¹¹⁵ the Chamber's observations were not determinative thereof, and did not imply that said referral was admissible. In the instant case, the Chamber does not consider it necessary to engage with the question raised by the Applicant at this point in the proceedings.¹¹⁶

57. As regards the Applicant's contention that the alleged violations of Article 31(2) of the Constitution and Article 6(1) of the Convention cannot be remedied later in the proceedings,¹¹⁷ the Chamber considers that such assertions are speculative. As noted, the Case 12 proceedings are pending, and no final outcome has been reached yet.¹¹⁸ Thus, the Chamber finds that it cannot be assumed at this juncture that any alleged irregularities could not be addressed subsequently.

58. Indeed, it falls in the first place to the criminal chambers to assess whether there is any merit to the raised procedural violation, and whether this has to be remedied in

¹¹² Referral, para. 26(i).

¹¹³ *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 68; see also para. 101.

¹¹⁴ *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 101; see also paras 115, 118.

¹¹⁵ *Decision on H. Thaçi referral concerning jurisdictional challenge*, paras 73-85, 105-113, 115, 117.

¹¹⁶ See, similarly, *Decision on P. Shala referral concerning admissibility of prior statements*, paras 23-30; *Decision on the referral of P. Shala concerning access to material*, paras 17-21.

¹¹⁷ Referral, para. 26(ii).

¹¹⁸ See above, paras 52, 54.

the course of the ensuing proceedings.¹¹⁹ This approach reflects the general principle according to which compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole, and not on the basis of an isolated consideration of one particular aspect or a single procedural incident.¹²⁰

59. As to the Applicant's grievance that, by waiting until the end of the proceedings to examine their fairness, he may be subjected to unnecessarily lengthy proceedings,¹²¹ the Chamber notes that the Applicant alleged a distinct violation of Article 31(2) of the Constitution and Article 6(1) of the Convention, namely the right to have the criminal charges against him determined by a "tribunal established by law", and not that the proceedings were excessively long. While the examination of complaints concerning the (reasonable) length of the proceedings would require different considerations, the Chamber is of the view that they have no bearing on the assessment of the arguments raised in the present complaint, as the grievance is merely hypothetical at this time.¹²²

60. Given its considerations as regards the Applicant's victim status, the Chamber thus finds that the complaint, at this stage of the proceedings, is premature.¹²³ As such, the Applicant's complaint under Article 31(2) of the Constitution and Article 6(1) of the Convention must be declared inadmissible in accordance with Article 113(7) of the Constitution, Article 49(3) of the Law, and Rule 14(f) of the SCCC Rules.

61. Lastly, although the Chamber finds that the complaint must be dismissed for the aforementioned reasons, it still recalls that, in principle, the SC's legal framework allows the Applicant to raise alleged violations of the rights afforded to him pursuant

¹¹⁹ See, similarly, *Decision on P. Shala referral concerning admissibility of prior statements*, para. 27; *Decision on the referral of P. Shala concerning access to material*, para. 19. See also ECtHR, *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, 28 January 2020, para. 51.

¹²⁰ ECtHR, *Ibrahim and others v. the United Kingdom* [GC], no 50541/08 and others, 13 September 2016, paras 250-251.

¹²¹ Referral, para. 26(ii).

¹²² See, similarly, *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 64.

¹²³ See, similarly, *Decision on P. Shala referral concerning admissibility of prior statements*, para. 29.

to Article 31(2) of the Constitution and Article 6(1) of the Convention at various stages of the proceedings. The Chamber notes in this respect that, pursuant to Article 113(7) of the Constitution, Article 49(3) of the Law, and Rule 20(1)(a) of the SCCC Rules, an individual may only make a referral to the Chamber after exhaustion of all effective remedies provided for by law against the alleged violation. However, as the complaint is premature, the Chamber does not need to rule on the requirement of exhaustion at this point in time.

B. ALLEGED VIOLATION OF ARTICLE 36 OF THE CONSTITUTION AND ARTICLE 8 OF THE CONVENTION

1. Submissions

62. The Applicant submitted that the Referral is admissible.¹²⁴ He claimed that, even if the Chamber considered the Referral to be premature regarding the alleged breaches of Article 31(2) of the Constitution and Article 6(1) of the Convention, the same could not be said in respect of the violation of Article 36 of the Constitution and Article 8 of the Convention, of which he was already a victim at this stage of the proceedings.¹²⁵ The Applicant also submitted that he had exhausted all available legal remedies for the alleged violation, and that the Referral was timely, made within two (2) months from the final ruling on the matters raised, namely the appeals panel's decision of 28 October 2025, notified to him on 29 October 2025.¹²⁶

2. Chamber's Assessment

63. At the outset, the Chamber takes note of the Applicant's claim that the measures ordered by Judges Guillou and Masselot, in their capacity as single judge and pre-trial judge, violated his right to respect for private and family life pursuant to Article 36 of the Constitution and Article 8 of the Convention on the basis that these judges were

¹²⁴ Referral, para. 24.

¹²⁵ Referral, paras 25, 26(iii).

¹²⁶ Referral, paras 27-28.

improperly assigned and, as such, said measures were not taken “in accordance with law”.¹²⁷ The Chamber observes, however, that other than making general references to measures such as the covert recording of conversations, the accessing of electronic files, or searches and seizures, the Applicant fails to identify the specific decisions or orders complained of, or to explain how those measures violated his right to respect for private and family life, including the particular aspect of that right at issue.¹²⁸ The Chamber is of the view that the Applicant’s complaint is framed in terms that are too general and vague to enable an assessment and is therefore unsubstantiated.¹²⁹

64. Furthermore, to the extent that the Applicant’s complaint under Article 36 of the Constitution and Article 8 of the Convention may be said to be based, in substance, on the same considerations addressed above under Article 31(2) of the Constitution and Article 6(1) of the Convention, the Chamber refers to its previous findings,¹³⁰ and is of the view that, in consequence, this part of the Referral does not give rise to a distinct matter for determination at this stage. The Chamber thus finds that the complaint does not disclose an appearance of a violation of the Applicant’s rights under Article 36 of the Constitution and Article 8 of the Convention and dismisses it as inadmissible in accordance with Rule 14(f) of the SCCC Rules.¹³¹

65. In any event, while it finds that the complaint must be dismissed for the above reasons, the Chamber observes that, depending on the specific measures complained of, the Applicant may, in principle, need to raise such a complaint in the proceedings against him.¹³² As such, the Chamber’s earlier considerations regarding the exhaustion of legal remedies, as set out in paragraph 61 of this decision, may also be relevant with

¹²⁷ Referral, paras. 3, 79-84.

¹²⁸ Referral, paras. 81-83.

¹²⁹ See, for example, Kosovo, Constitutional Court, *Constitutional review of judgment Rev. no. 392/19 of the Supreme Court of Kosovo, of 2 June 2020*, KI 173/20, Resolution on inadmissibility, 10 November 2021 (30 November 2021), paras 49, 75; ECtHR, *Trofimchuk v. Ukraine* (dec.), no. 4241/03, 31 May 2005.

¹³⁰ See above, paras 52-60.

¹³¹ See, similarly, *Decision on H. Thaçi referral concerning jurisdictional challenge*, para. 114.

¹³² ECtHR, *Dragojević v. Croatia*, no. 68955/11, 15 January 2015, paras 72-73; *Bălteanu v. Romania*, no. 142/04, 16 July 2013, paras 32-35.

respect to this complaint. However, given that the complaint is inadmissible pursuant to Rule 14(f) of the SCCC Rules, the Chamber does not need to rule on the requirement of exhaustion at this stage.

C. CONCLUSION

66. Based on the foregoing, the Chamber dismisses as premature for lack of victim status the Applicant's first complaint concerning an alleged violation of his right to have the criminal charges against him determined by a "tribunal established by law" under Article 31(2) of the Constitution and Article 6(1) of the Convention. It follows that this part of the Referral must be declared inadmissible pursuant to Article 113(7) of the Constitution, Article 49(3) of the Law, and Rule 14(f) of the SCCC Rules.

67. Likewise, the Chamber finds that the Applicant's complaint as to a violation of his right to respect for private and family life under Article 36 of the Constitution and Article 8 of the Convention by virtue of the measures authorised in respect of him is unsubstantiated and does not reveal an appearance of a violation of the Applicant's constitutional rights. Thus, this part of the Referral must also be declared inadmissible pursuant to Rule 14(f) of the SCCC Rules.

FOR THESE REASONS,

The Specialist Chamber of the Constitutional Court, unanimously,

Dismisses the complaints raised by Mr Hashim Thaçi in the Referral as inadmissible.



Vidar Stensland
Presiding Judge

Done in English on Thursday, 5 February 2026

At The Hague, the Netherlands