

**In:** KSC-BC-2020-06  
**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,  
Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

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

**Date:** 30 March 2026

**Language:** English

**Classification:** Public

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**Thaçi Defence Reply to 'Prosecution response to Thaçi Defence Request for an  
Order to the SPO Pursuant to Rule 136 (F03696)'**

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## I. INTRODUCTION

1. The Defence for Mr. Hashim Thaçi (“Defence”) hereby replies to the Specialist Prosecutor’s Office (“SPO”) Response<sup>1</sup> regarding the Defence Request for an Order pursuant to Rule 136 of the Rules.<sup>2</sup> The SPO’s position rests upon a flawed interpretation of Rules 112 and 136, which, if left undisturbed, would sanction a continued violation of Mr. Thaçi’s fundamental right to a fair trial.

## II. SUBMISSIONS

- A. THE SPO’S UNILATERAL SUBMISSIONS VIOLATE FAIR TRIAL RIGHTS
2. Because the proceedings are now closed, Mr. Thaçi no longer possesses a general right to be heard by the Panel unless he can satisfy the rigorous “exceptional circumstances and showing of good cause” standard under Rule 136. Consequently, the SPO’s unilateral submission of evidence to the Trial Panel at this stage—including material the SPO characterises as incriminating in related proceedings—denies Mr. Thaçi his right to an adversarial proceeding.
3. This ‘back-door’ submission of evidence violates the principle of equality of arms and the right to comment on evidence presented to the trier of fact, as guaranteed by the European Convention on Human Rights,<sup>3</sup> Article 31 of the Constitution, and the Law.<sup>4</sup>

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<sup>1</sup> KSC-BC-2020-06/F03710, *Prosecution response to ‘Thaci Defence Request for an Order to the SPO Pursuant to Rule 136’*, 25 March 2026, public (“Response”).

<sup>2</sup> KSC-BD-03/Rev3/2020, *Rules of Procedure and Evidence Before the Kosovo Specialist Chambers*, 2 June 2020 (“Rules”).

<sup>3</sup> *Brandstetter v. Austria*, 211 Eur. Ct. H.R. (ser. A) ¶¶ 66–67 (1991); *Vermeulen v. Belgium*, 1996-I Rep. Judg. & Dec. 224, ¶ 33.

<sup>4</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), articles 21(1) and (4); KSC-CC-PR-2017-01/F00004, *Specialist Chamber of the Constitutional Court, Judgement on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office*, 26 April 2017, paras. 26, 165 (“The right to an adversarial hearing requires that, in

B. THE RISK OF PREJUDICIAL *EX PARTE* CONTACT

4. The SPO's Disclosure Package 1851 (10 March 2026) serves as a cautionary example. While the SPO labeled this material as 'exculpatory' under Rule 103 in the present case, it has also disclosed, tendered, and admitted the *exact same material* as 'incriminating' in support of its case in Case 12. The SPO is fully aware of the dual nature of these documents and their utility against Mr. Thaçi.

5. The Panel of course needs no explanation from the SPO to be able to understand the exculpatory and *inculpatory* nature of the materials which are being submitted to it by the SPO. The SPO is thus making *contact* with the Trial Panel that is suggestive of *the merits of the case*, essentially on an *ex parte* basis (in light of Mr. Thaçi's inability to be heard in response).<sup>5</sup> The fact that the Panel consists of professional judges does not cure this prejudice; incriminating suggestions should not be communicated to the trier of fact in a vacuum during deliberations, in violation of the Accused's right to be heard in response.

C. CORRECT INTERPRETATION OF RULES 112 AND 136

6. The SPO's reliance on Rule 112 is misplaced. While the first sentence of Rule 112 establishes a general duty to disclose evidence to both the opposing Party and the Panel, the second sentence explicitly narrows this duty following the closure of proceedings under Rule 136. Specifically:

- Post-closing, the SPO has a duty to disclose Rule 103 material **only** to the Defence;
- The Rule conspicuously omits any duty to disclose such material **to the**

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principle there has been an opportunity for the parties to a criminal trial to have knowledge of and comment upon all evidence adduced or observations filed.”).

<sup>5</sup> As to what would constitute a submission to a Panel, see also Article 11(a) of the KSC *Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers* (“contact with a Panel or a Judge of that Panel in relation to the merits of a particular case”).

**Panel** after the case is closed.

7. This distinction is intentional and designed to protect the integrity of the Trial Panel's deliberations. Furthermore, Rule 136(3) mandates that the Panel "may not receive further submissions or hear evidence" absent exceptional circumstances. The Panel's own oral order of 18 February 2026 confirmed this: "pursuant to Rule 136, no further submissions or evidence may be made to the Panel at this stage".<sup>6</sup> The SPO Response makes no attempt to explain how this provision, or the Panel's 18 February 2026 Order, could be interpreted to allow the Panel to receive written evidence, including incriminating evidence, from the SPO.

D. ABSENCE OF LEGITIMATE OVERSIGHT INTEREST

8. The SPO fails to articulate any "legitimate interest" that would justify the Panel continuing to receive copies of disclosures post-trial.<sup>7</sup> The "legitimate interest" defined in the Framework Decision pertains to the Pre-Trial Judge's duty to ensure the **expeditious preparation** of a case.<sup>8</sup> As the trial is now complete, this rationale is moot.

### III. CONCLUSION

9. For the foregoing reasons, the Defence respectfully requests that the Trial Panel:

- **ORDER** the SPO to cease providing the Trial Panel with copies of its evidentiary disclosures; and
- **REITERATE** that, pursuant to Rule 136(3), no further submissions or

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<sup>6</sup> KSC-BC-2020-06/F03696, *Thaçi Defence Request For an Order to the SPO Pursuant to Rule 136*, 13 March 2026, public ("Request"), para. 2, citing T-260218, at p.29238.

<sup>7</sup> Response, para. 4.

<sup>8</sup> Request, para. 12, citing KSC-BC-2020-06/F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public, para. 49.

evidence shall be received by the Panel absent a showing of exceptional circumstances and good cause.

**[Word count: 941 words]**

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Luka Misetic', is centered on the page. The signature is fluid and cursive.

**Luka Misetic**

**Counsel for Hashim Thaçi**

Monday, 30 March 2026

At New York, United States