



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

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**'Request for arrest warrants and related orders', filing KSC-BC-2020-06/F00005 dated
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with public redacted Annex 1 and public Annexes 2-3

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I. INTRODUCTION

1. On 25 April 2020, the Specialist Prosecutor's Office ('SPO') requested that the Pre-Trial Judge of the Kosovo Specialist Chambers ('KSC') confirm an indictment ('Indictment') against Hashim THAÇI, Kadri VESELI, Rexhep SELIMI, and Jakup KRASNIQI ('Suspects') in respect of crimes committed in Kosovo and parts of Albania between March 1998 and September 1999.¹ At that time, the SPO also foreshadowed filing the present request concerning arrest warrants and associated relief.²

2. Having regard to Articles [REDACTED] of the Law³ and Rules [REDACTED] of the Rules,⁴ the SPO requests the Pre-Trial Judge to: (a) issue arrest warrants against the Suspects and corresponding orders to transfer them to the KSC detention facility in the Host State ('Detention Centre'); (b) authorise search and seizure of their persons and property; (c) [REDACTED]; (d) order the interim non-disclosure of witness and victim identities; and (e) order the temporary non-disclosure of the Indictment and related documents.

II. STATEMENT OF FACTS

3. This section sets out facts relevant to the necessity of arrest and transfer of the Suspects and the non-disclosure reliefs sought.

4. The Suspects wield enormous influence over former KLA members and Kosovo in general.⁵ Individually and collectively, they have the ability to manipulate government

¹ Submission of Indictment for confirmation, KSC-BC-2020-06/F00002, 25 April 2020, Strictly Confidential and *Ex Parte* (with three annexes).

² KSC-BC-2020-06/F00002, para.5. *See also* Decision on Specialist Prosecutor's Request for Extension of the Word Limit, KSC-BC-2020-06/F00004, 27 May 2020, Strictly Confidential and *Ex Parte* (authorising a word count of 9,000 words for the present request).

³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev2/2020, 5 July 2017 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

⁵ Indictment, KSC-BC-2020-06/F00002/A01, paras 1-12.

bodies to evade and thwart proceedings against them,⁶ and to mobilise additional support bases, including those formerly under their command in the KLA and groups like the KLA War Veterans Association ('KLA WVA').

5. The KLA WVA, with a membership of 40,000, previously petitioned for repeal of the Law,⁷ and has actively opposed prior attempts to prosecute former KLA members for war crimes, including through threatening protests, demonstrations and civil disobedience.⁸ Recently, government adviser Shkëlzen GASHI merely stated that certain individuals within the KLA committed crimes, and as a result – consistent with KLA General Staff language in 1998-1999⁹ – he was: (i) branded a 'collaborator' and a Serb supporter both by Jakup KRASNIQI¹⁰ and by leading members of the KLA WVA;¹¹ (ii) subjected to death threats;¹² and, in the face of the backlash, (iii) sacked from his advisory position.¹³

6. The GASHI example reflects a climate of impunity and intimidation which the Suspects have actively facilitated and encouraged. The Suspects themselves have a long record of hostility to accountability for crimes committed during the war or any investigation of them. From the outset, as charged in the Indictment, as members of the KLA and Provisional Government of Kosovo, the Suspects were members of a joint criminal enterprise with a common purpose encompassing the unlawful intimidation,

⁶ There are already clear indications that certain parts of the Kosovo Government will not cooperate in good faith with SPO investigations. [REDACTED].

⁷ AFP Article, 15 February 2018, at <https://www.france24.com/en/20180215-kosovos-guerrilla-heroes-fear-war-crimes-court>.

⁸ Balkan Insight, 24 June 2013, at <https://balkaninsight.com/2013/06/24/kla-ex-fighters-determined-to-continue-objection-of-eulex/>.

⁹ See KSC-BC-2020-06/F00002/A02, pp.10-18.

¹⁰ Annex 2, Part II F, 24 April 2020 Jakup Krasniqi Facebook Post. From its timing and content, it is clear this message relates to Shkëlzen GASHI.

¹¹ See Annex 2, Part III A and C.

¹² See Annex 2, Part III B.

¹³ BIRN, Serbeze HAXHIAJ, Kosovo PM Sacks Adviser for Criticising Wartime Guerillas, 26 April 2020, at <https://balkaninsight.com/2020/04/26/kosovo-pm-sacks-adviser-for-criticising-wartime-guerrillas/>.

mistreatment, commission of violence against, and removal of those deemed to be opponents.¹⁴ Further, each of the Suspects failed to investigate crimes against opponents by those under their effective control.¹⁵

7. More recently, they have publicly attacked the KSC's mandate,¹⁶ including accusing it of being discriminatory,¹⁷ and labelling it a 'historical injustice'.¹⁸ In 2017, it was widely reported that members of the PDK party, of which THAÇI and VESELI are its former and current leader, had attempted to generate support for abolition of the KSC.¹⁹ In 2019, THAÇI lobbied for the KSC's 'reform' and asserted that it is for the Kosovo government to decide the 'mandate, operation and geographic location' of the KSC and SPO.²⁰ THAÇI has since publicly lied about the extent of his personal involvement with the SPO.²¹ Jakup KRASNIQI, as part of a years-long diatribe against the KSC,²² posted on 24 April 2020 that '[e]very Albanian that D. MARTY calls a PATRIOT, either in the service

¹⁴ Indictment, KSC-BC-2020-06/F00002/A01, para.32.

¹⁵ Indictment, KSC-BC-2020-06/F00002/A01, paras 53-55.

¹⁶ *See, for example*, [REDACTED] (recounting THAÇI's reaction to publication of the Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Report: Inhumane treatment of people and illicit trafficking in human organs in Kosovo, Doc.12462, 7 January 2011 ('Council of Europe Report')).

¹⁷ President of the Republic of Kosovo, President Thaçi's speech addressed to the citizens and the KSF soldiers, 5 December 2017, at <https://president-ksgov.net/en/speeches/?offset=10>; Balkan Transitional Justice, Petrit Çollaku, Kosovo Opposition Rejects New War Crimes Court, 6 January 2015, at <https://balkaninsight.com/2015/01/06/opposition-parties-against-special-court/>.

¹⁸ AP, Llazar Semini, Kosovo president slams international war crimes court, 14 February 2018, at <https://apnews.com/8c1fd1a013284f12b02b1337bc53334c>.

¹⁹ RFE/RL, Interview with Hashim THAÇI, 27 December 2017, at <https://www.rferl.org/a/kosovo-thaci-legislation-abolishing-war-crimes-court/28943894.html> (THAÇI stating that he is not 'encouraging lawmakers' to pass such a bill but adding that he would sign any decision made by parliament on the matter); RTK, Thaci: MPs decide on Special Court, their initiative is legal, 28 December 2017, at <https://www.rtklive.com/en/news-single.php?ID=10335>.

²⁰ Annex 2, Part I A, 29 November 2019 Letter of Hashim Thaçi to Michael Pompeo Reported in Gazeta Express.

²¹ Annex 2, Part I B, Zëri, 1 April 2020, THAÇI speaks up whether he was interviewed by the Specialist Chambers. THAÇI was in fact served an SPO summons on 17 November 2019, and first appeared in The Hague for interview on 12 December 2019.

²² *See* Annex 2, Part II.

of the prime minister or in any other position, is a collaborator and in the service of [Slobodan] MILOŠEVIĆ's policy of genocide!²³ Through such statements and actions, the Suspects are using their positions of power and influence to actively undermine and seek to obstruct the KSC's mandate.

8. Moreover, certain of the Suspects have a demonstrable record of interfering with, or obstructing, law enforcement, and there is already evidence of attempts to interfere with SPO investigative activities. For example, SHIK members answerable to Kadri VESELI²⁴ and named JCE member Azem SYLA are implicated in surveilling, threatening and bribing witnesses testifying against former KLA members at the ICTY.²⁵

9. In the same vein, Rexhep SELIMI was blacklisted by the United States government for possible involvement in obstruction of the implementation of UNSC 1244 (the UN Security Council Resolution establishing UNMIK)²⁶ and is subject to sanctions imposed by the United States Treasury.²⁷ Moreover, individuals who worked for Rexhep SELIMI²⁸ were implicated in a [REDACTED] attempt to kill [REDACTED].²⁹ Within an hour after the attempted murder, SELIMI tried to call one of the suspects,³⁰ and SELIMI subsequently contacted a Kosovo police officer requesting him to recover the [REDACTED] suspected to have been used in the assassination attempt.³¹ An [REDACTED] investigator noted that '[i]t is [...] of great concern that Rexhep Selimi can

²³ Annex 2, Part II F, 24 April 2020 Jakup Krasniqi Facebook Post.

²⁴ Indictment, KSC-BC-2020-06/F00002/A01, para.5.

²⁵ [REDACTED].

²⁶ United States, Executive Order 13219 Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans, 26 June 2001, 66 F.R. 34777.

²⁷ United States Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List, 22 May 2020, p.1042, latest version available at <https://sanctionssearch.ofac.treas.gov>.

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED]. *See also* [REDACTED].

³¹ [REDACTED]. *See also* [REDACTED].

call a KPS Officer at anytime and ask him to utilize his position to recover evidence possibly used in criminal offences'.³²

10. More recently, government officials loyal to THAÇI and VESELI have presided over corrupt government pay-outs to potential SPO witnesses. The (then) Minister of Justice, Abelard TAHIRI, appointed Driton LAJÇI as the head of a Division for Coordinating the Process of Legal Protection and Financial Support for Potential Accused Persons in Trials before the Specialist Chambers ('Division') within the Ministry of Justice.³³ Abelard TAHIRI has worked extensively with THAÇI in multiple roles, [REDACTED].³⁴ [REDACTED].³⁵ Directly prior to taking up the role as head of the Division, LAJÇI worked as an advisor to VESELI³⁶ and has known THAÇI for over 25 years,³⁷ having been a member of the initiatory council of THAÇI's PDK in 1999.³⁸

11. Under LAJÇI, the Division processed applications for the payment of purported 'litigation and travel expenses' for suspects appearing before the SPO, even though the KSC already reimburses interviewees for such expenses.³⁹ It is apparent that the money paid by the Division is not given pursuant to consistent criteria and bears little relation to legitimate expenses incurred. For example, [REDACTED] received [REDACTED]⁴⁰ in connection with a one-day interview in The Hague. [REDACTED].⁴¹ There is no evidence [REDACTED] ever formally applied to the Division for financial support before receiving

³² [REDACTED].

³³ [REDACTED]; Law No. 05/L-054 on Legal Protection and Financial Support for Potential Accused Persons in Trials Before the Specialist Chambers.

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED]. *See also* [REDACTED].

³⁸ BBC article, 14 October 1999, 020881-020882.

³⁹ Article 42(4).

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

such payment,⁴² while applications of others – some interviewed by the SPO for several days – had yet to be approved months later.⁴³

12. THAÇI and VESELI have also relied on loyalists like LAJÇI to report on details of the SPO's investigation. [REDACTED]. [REDACTED].⁴⁴

13. [REDACTED]:

a. [REDACTED].

b. [REDACTED]

c. [REDACTED]⁴⁵

14. Moreover, after [REDACTED] chose to answer the SPO's questions, rather than to invoke silence, there is evidence that THAÇI sought to ensure that the lawyer who represented [REDACTED] would not be assigned to represent other interviewees.⁴⁶

15. In a further incident, shortly after [REDACTED] made public that he was to be interviewed by the SPO, THAÇI and VESELI [REDACTED].⁴⁷ Asked by THAÇI about his family situation, [REDACTED].⁴⁸ Shortly afterwards, [REDACTED] met with [REDACTED] and offered him various benefits, [REDACTED].⁴⁹ [REDACTED] made it clear that this offer was on behalf of the President [THAÇI].⁵⁰

16. Hashim THAÇI will not confine himself to using the Division to ensure his fellow JCE members remain on his side in the face of SPO investigators. He arranged for [REDACTED] and [REDACTED] to contact [REDACTED] ahead of his SPO interview to

⁴² See [REDACTED]. *But see* [REDACTED]. [REDACTED]. [REDACTED].

⁴³ [REDACTED].

⁴⁴ See Annex 1, Declaration of [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

convey 'that [THAÇI] wanted to contact [REDACTED] or give [him] some sort of instruction'.⁵¹

17. The attempts to influence potential witnesses, including named JCE members, have also included hiring them to government positions. Sylejman SELIMI got out of prison on 25 January 2019, and was promptly served with a SPO summons on 29 January. Within 72 hours of being served,⁵² he was hired as a government 'adviser'. Following a public outcry, SELIMI was let go from his responsibilities shortly after his February 2019 SPO interview,⁵³ but not before receiving over €15,000 in salary⁵⁴ for doing next to nothing.⁵⁵ In the same timeframe, named JCE member Rrustem MUSTAFA was interviewed by the SPO in January 2019. On 14 February, THAÇI hired him as an adviser with a salary of €18,000 per year - none of which was publicly disclosed until it was revealed in a report of the Kosovo Anti-Corruption Agency.⁵⁶

18. Each of the Suspects has the means, motive and opportunity to interfere with witnesses, and otherwise evade and obstruct proceedings. That such incidents are occurring before any indictment is confirmed vividly illustrates the risk that would come from letting the Suspects remain at liberty. As is apparent from prior prosecutions, including those involving named JCE members and other close associates of the Suspects, there is an endemic climate of severe witness interference and intimidation in trials

⁵¹ [REDACTED]. *See also* [REDACTED].

⁵² The fact that Sylejman SELIMI was due to be questioned by the SPO had already been publicly reported after initial contact was made with him by the SPO. *See* Kossev, Izvor KoSsev, Sylejman Selimi hospitalized two days before the trip to the Hague, received two days off for New Year's celebration, 9 January 2019, at <https://kossev.info/sylejman-selimi-hospitalized-two-days-before-the-trip-to-the-hague-received-two-days-off-for-new-year-celebration/>.

⁵³ *See* BIRN, Perparim Isufi, Kosovo PM Sacks Adviser Convicted of War Crimes, 4 June 2019, at <https://balkaninsight.com/2019/06/04/kosovo-pm-sacks-adviser-convicted-of-war-crimes/>.

⁵⁴ Annex 3, Sylejman SELIMI Anti-Corruption Agency Report, p.3.

⁵⁵ [REDACTED].

⁵⁶ *See* BIRN, Taulant Osmani, Kosovo President Secretly Appoints War Crimes Convict as Adviser, 7 June 2019, at <https://balkaninsight.com/2019/06/06/kosovo-president-secretly-appoints-war-crimes-convict-as-adviser/>.

involving former KLA members. The examples provided below - which primarily relate to crime locations charged in the Indictment - are illustrative of a broader disturbing trend.⁵⁷

19. On [REDACTED] – [REDACTED]⁵⁸ – was shot dead and [REDACTED] – [REDACTED] – was seriously injured.⁵⁹ They were both witnesses in the [REDACTED] case,⁶⁰ which had commenced [REDACTED] prior to the shooting, and concerned crimes related to the [REDACTED] detention site.⁶¹ [REDACTED]’s house had also previously been bombed and further shooting incidents had occurred against other witnesses.⁶² In the words of the Presiding Judge of the trial, there was an ‘exceptional scale of intimidation of witnesses’⁶³ that ‘marred the progress of [these] proceedings’.⁶⁴

20. On [REDACTED], former KLA member [REDACTED] – [REDACTED]⁶⁵ – was found [REDACTED]. [REDACTED]. He had given evidence to [REDACTED] war crimes investigators and was the key witness in the case against [REDACTED] and others for crimes related to the [REDACTED] detention site.⁶⁶ There is evidence that [REDACTED] faced the worst kind of intimidation in the years before his death – [REDACTED].⁶⁷

⁵⁷ In addition to those incidents discussed below, *see* in relation to Likoc/Likovac (Indictment, KSC-BC-2020-06/F00002/A01, Schedule A, Site No.14.1): [REDACTED]; in relation to Llapashticë/Lapaštica (Indictment, KSC-BC-2020-06/F00002/A01, Schedule A, Site No.10.3): [REDACTED]; [REDACTED]. *See also* [REDACTED]; in relation to Zllash/Zlaš (Indictment, KSC-BC-2020-06/F00002/A01, Schedule A, Site No.11.4): Submission of Indictment for confirmation and related requests, 14 February 2020, KSC-BC-2020-05/F00002, paras 9, 11.

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED]. *See also* [REDACTED] (referencing a variety of interference incidents).

⁶⁵ [REDACTED].

⁶⁶ [REDACTED]. [REDACTED]. [REDACTED].

⁶⁷ [REDACTED].

21. The *Limaj et al.* case concerned, *inter alia*, named JCE member Fatmir LIMAJ's criminal responsibility for crimes at the Llapushnik/Lapušnik detention site.⁶⁸ [REDACTED] refused to testify in that case because of threats, [REDACTED].⁶⁹ [REDACTED] was approached at his door and threatened with death if he testified against Fatmir LIMAJ.⁷⁰ In the course of *Limaj et al.*, a contempt conviction was entered for separate acts of corruptly influencing a protected witness.⁷¹

22. The *Haradinaj et al.* case concerned, *inter alia*, named JCE member Lahi BRAHIMAJ's criminal responsibility for crimes committed at the Jabllanicë/Jablanica detention site⁷² and similarly resulted in contempt convictions for revealing the identity of⁷³ and corruptly influencing⁷⁴ protected witnesses. In its judgment, the *Haradinaj et al.* Trial Chamber observed that:⁷⁵

[T]hroughout the trial the Trial Chamber encountered significant difficulties in securing the testimony of a large number of witnesses. Many witnesses cited fear as a prominent reason for not wishing to appear before the Trial Chamber to give evidence. The Trial Chamber gained a strong impression that the trial was being held in an atmosphere where witnesses felt unsafe. This was due to a number of factors specific to Kosovo/Kosova, for example Kosovo/Kosova's small communities and tight family and community networks which made guaranteeing anonymity difficult. The parties themselves agreed that an unstable security situation existed in Kosovo/Kosova that was particularly unfavourable to witnesses.

23. In *Demaku et al.*, named JCE members Sabit GECI and Sylejman SELIMI were charged with crimes related to the Likoc/Likovac detention site.⁷⁶ There is evidence that between 2013 and 2015, persons associated with the accused in that case gave [REDACTED] as inducement for him to withdraw his statement [REDACTED] and

⁶⁸ Indictment, KSC-BC-2020-06/F00002/A01, Schedule A, Site No.1.1.

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ ICTY, *Prosecutor v. Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005.

⁷² Indictment, KSC-BC-2020-06/F00002/A01, Schedule A, Site No.3.1.

⁷³ ICTY, *Prosecutor v. Haxhiu*, IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008.

⁷⁴ ICTY, *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4-A, Judgement, 23 July 2009.

⁷⁵ ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Judgement, 3 April 2008, para. 6.

⁷⁶ Indictment, KSC-BC-2020-06/F00002/A01, Schedule A, Site No.14.1.

provide false testimony.⁷⁷ [REDACTED] was similarly offered [REDACTED] to give a false statement, was threatened, [REDACTED].⁷⁸ Ultimately, [REDACTED]⁷⁹ and [REDACTED]⁸⁰ [REDACTED].

24. In *Balaj et al.*, which concerned crimes in the Dukagjini Operational Zone,⁸¹ witnesses [REDACTED] and [REDACTED] also had attempts made on their lives during the proceedings.⁸² [REDACTED] was injured when unknown persons fired [REDACTED].⁸³ [REDACTED].⁸⁴ Such acts, when coupled with examples of witnesses materially withholding information, prompted the investigating judge to declare that he had ‘never before received so [much] information about threats against witnesses or at least attempts to influence them’.⁸⁵ [REDACTED] following the guilty verdict in this trial,⁸⁶ [REDACTED] was killed [REDACTED].⁸⁷ [REDACTED] later, gunmen shot and killed [REDACTED].⁸⁸

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ The Indictment includes allegations relating to the Dukagjini Operational Zone. See Indictment, KSC-BC-2020-06/F00002/A01, para.43. Further, the detention site at Jabllanicë/Jablanica (Indictment, KSC-BC-2020-06/F00002/A01, Schedule A, Site No.3.1) was located in the Dukagjini Operational Zone.

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED]. See also UNMIK, *Prosecutor v. Balaj et al.*, PN.222/2002, Detention Decision of Supreme Court of Kosovo, 13 September 2002, SPOE00085767-00085776, p.SPOE00085769 (upholding an extension on detention in the case: ‘[t]he long list of threats directed mainly against the life and safety of witnesses, can be easily considered by the court as a very strong direct or indirect influence the accused have in Dukagjini and Kosovo, an influence which would only be increased if the accused are tried in liberty’).

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

25. [REDACTED] has stated that former KLA members offered him a substantial cash bribe to keep quiet, and later put out a hit on his life.⁸⁹ [REDACTED] worked for [REDACTED],⁹⁰ which, [REDACTED], was headed by [REDACTED].⁹¹ [REDACTED].

26. Indeed, when speaking to the SPO, multiple potential witnesses – including victims, former KLA members,⁹² and former employees of international organisations operating in Kosovo, such as OSCE⁹³ – expressed fear or recalled prior experiences of witness interference. Throughout this investigation, witnesses have repeatedly expressed profound fear of what might happen to them for speaking the truth to the SPO.⁹⁴ It is the latest manifestation of a long and ongoing problem. According to an OSCE report on trials in Kosovo during the first 10 years following the war, the issue of witness protection ‘has undermined prosecution of war crimes cases perhaps more than any other single issue’, particularly in cases against former KLA members.⁹⁵

III. ARREST WARRANTS

27. Detention is the most effective means to limit the Suspects’ ability to flee or otherwise thwart the KSC’s jurisdictional reach, obstruct the investigation or court proceedings, and/or commit further crimes.

28. The requirements under Article 41(6) for the Suspects’ arrest and detention are fulfilled.

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ Indictment, KSC-BC-2020-06/F00002/A01, para.5. [REDACTED]. See [REDACTED]. See generally [REDACTED].

⁹² See, for example, [REDACTED].

⁹³ See Annex 1, Declaration of [REDACTED].

⁹⁴ Annex 1, Declaration of [REDACTED].

⁹⁵ OSCE, Kosovo’s War Crimes Trials: An Assessment Ten Years On (1999-2009), May 2010, at <https://www.osce.org/kosovo/68569?download=true>, p.26; [REDACTED]. See, similarly, Council of Europe Report, paras 21, 25-26, 69 (noting the difficulties encountered in the context of making the report).

29. The Indictment and supporting material demonstrate there is a grounded suspicion⁹⁶ that the Suspects committed crimes within the jurisdiction of the Specialist Chambers, as charged in the Indictment and as required under Article 41(6)(a).

30. Further, though the satisfaction of only one of these criteria is sufficient to ground a warrant of arrest, the Suspects should be detained on the basis of all three criteria specified in Article 41(6)(b) ('Article 41(6) Criteria'). There are 'articulable grounds to believe' that: (1) there is a risk of flight; (2) the Suspects will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; and (3) the seriousness of the crime, or the manner or circumstances in which it was committed and the Suspects' personal characteristics, past conduct, the environment and conditions in which they live or other personal circumstances indicate a risk that they will repeat the criminal offence or commit a crime which they have threatened to commit. Determining the existence of one of these three risks is a matter of assessing the possibility – as opposed to the unavailability – that such risks materialise.⁹⁷

A. RISK OF FLIGHT

31. Once the Suspects learn of the serious crimes for which they are charged – crimes which can entail a sentence of life-long imprisonment⁹⁸ – they have a strong incentive to avoid being tried and risking conviction. Their incentive to flee may further be influenced by knowledge of the publicly-reported convictions of former senior KLA members for some of the crimes charged, including, for example, named JCE members Lahi BRAHIMAJ, Rrustem MUSTAFA, and Sabit GECl.

⁹⁶ Kosovo, Criminal No.04/L-123, Procedure Code, 2012, Article 19(1.9).

⁹⁷ [REDACTED]; ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Judgment on the appeal of Mr Aime Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberte provisoire de Maitre Aime Kilolo Musamba'", 11 July 2014, para.107.

⁹⁸ Article 44(1).

32. The Suspects all have the means, motive, and opportunity to evade justice. The Suspects are all former senior commanders in the KLA and current or former political leaders in the Kosovo government.⁹⁹ All have access to significant funds, and can readily mobilise a vast network of supporters and government officials, including persons with security, police and intelligence expertise.

33. All Suspects possess passports which would allow them to immediately flee to countries that do not require a visa.¹⁰⁰ THAÇI and VESELI travel widely internationally, while SELIMI and KRASNIQI regularly visit Albania. Kosovo has only a small number of extradition agreements with other countries, which is significant because this is one of the mechanisms of cooperation for the KSC.¹⁰¹ When combined with the number of countries which simply do not recognise Kosovo as a state, it is all too easy for the Suspects to legally travel to a jurisdiction which would have no obligation to transfer them to the KSC. The Suspects also undoubtedly have the connections to leave Kosovo through unlawful borders, making surrender of their passports an inadequate solution.

B. RISK OF OBSTRUCTING THE PROGRESS OF THE CRIMINAL PROCEEDINGS

34. The Suspects were senior leaders of the KLA, still hold positions of authority and influence in Kosovo, and are charged with, *inter alia*, committing through a joint criminal enterprise war crimes and crimes against humanity in 1998 and 1999 at locations throughout Kosovo and northern Albania. Voluminous evidence has been and continues to be collected from many sources, including from abroad. The investigations have been, and upcoming pre-trial and trial proceedings are likely to be, of considerable complexity. These investigations and proceedings are being conducted in a climate of witness

⁹⁹ Indictment, KSC-BC-2020-06/F00002/A01, paras 1-12.

¹⁰⁰ Hashim THAÇI has a diplomatic passport and Jakup Krasniqi has an Albanian passport.

¹⁰¹ Article 55(2); Rule 208.

intimidation and fear. In these circumstances, at least until the witnesses are heard and evidence secured, detention is necessary.¹⁰²

35. The risk of the Suspects mobilising their supporters to obstruct the investigation and proceedings against them is palpably real, as can be seen by their attitude towards past and present criminal investigations and proceedings concerning crimes by former KLA members,¹⁰³ and the climate of witness intimidation accompanying such investigations and proceedings.¹⁰⁴ In the Indictment time period, the Suspects were superiors to many of the SPO's potential witnesses. They continue to hold high positions of authority and/or influence. They have the means, motive, and opportunity to interfere with witnesses, victims, or accomplices, and otherwise seek to obstruct proceedings. As demonstrated above, it appears that such efforts have pre-emptively commenced.¹⁰⁵

36. In repeatedly seeking to delegitimise the KSC (including through proposing measures which would effectively disable it),¹⁰⁶ the Suspects' actions – coupled with their positions of influence and the tensions within Kosovo – will undoubtedly embolden the efforts of those who seek to obstruct the SPO's investigation. The Suspects are themselves capable of provoking public disorder if they see it in their interest.

37. In the course of trial, the Suspects will inevitably learn the identities of witnesses against them, readily exposing such witnesses to a heightened risk of intimidation. Some

¹⁰² See, similarly, ECtHR, *Podeschi v. San Marino*, 66357/14, Judgment, 13 April 2017, paras 147-149; ECtHR, *Mkhitaryan v. Russia*, 46108/11, Judgment, 5 February 2013, paras 94-99; ECtHR, *Sopin v. Russia*, 57319/10, Judgment, 18 December 2012, paras 43-47. See also EULEX, *Prosecutor v. Sabit Tafil Geci et al.*, 117/2013, Ruling on Appeals Against Extension of Detention on Remand, 22 February 2013, SITF00177479-SITF00177485, p.SITF00177484 (para. 21) (the conditions for detaining a person must primarily be based on circumstances pertaining to the individual concerned, but 'other circumstances may also be taken into consideration, including the known problem of witness intimidation in criminal cases involving former KLA members in Kosovo, as long as this is not the sole consideration').

¹⁰³ See paras 6-9 above.

¹⁰⁴ See paras 18-26 above.

¹⁰⁵ See paras 10-17 above.

¹⁰⁶ See para.7 above.

of the witnesses may be relocated, but not all will agree to relocation measures. Likewise, especially in the circumstances of a trial against senior KLA members, other protective measures will not fully address risks of interference and intimidation.¹⁰⁷ In this regard, the serious war crimes and crimes against humanity at issue in this case will attract significant public attention in Kosovo, where the consequences of the war are still felt and the process of normalisation of relations among ethnic and political groups is still ongoing.¹⁰⁸

38. Accordingly, in this case, detention and the resulting ability to monitor and, as necessary, limit the Suspects' contacts with one another, alleged JCE members and accomplices, victims, and others is necessary to mitigate the risk that the Suspects will interfere with witnesses or otherwise obstruct the proceedings.¹⁰⁹

C. RISK OF COMMISSION OF FURTHER CRIMES

39. Beyond the inherent criminality of potential interference with the administration of justice considered under the previous criterion, the Suspects are clearly capable of orchestrating violent criminal acts.

40. The Suspects are accused of a joint criminal enterprise targeting real or perceived KLA opponents.¹¹⁰ The climate of intimidation of witnesses who testified against KLA members shows that the risk of acts of violence targeting KLA opponents continues to the present day.¹¹¹ There is a significant risk that the Suspects will again arrange for crimes of violence to be committed against those perceived to be against them, and ordering their detention is the only reasonable means to address this risk.

¹⁰⁷ See para.22 above.

¹⁰⁸ See, for example, UNMIK, Report of the Secretary General, S/2019/461, 3 June 2019, at https://unmik.unmissions.org/sites/default/files/s_2019_461.pdf. See, similarly, ECtHR, *Milanković and Bošnjak v. Croatia*, 37762/12 & 23530/13, Judgment, 26 April 2016, paras 148-156.

¹⁰⁹ See, similarly, ECtHR, *Baranowski v. Poland*, 39742/05, Judgment, 2 October 2007, para.47.

¹¹⁰ Indictment, KSC-BC-2020-06/F00002/A01, para.32.

¹¹¹ See paras 18-26 above.

D. TRANSFER TO THE DETENTION FACILITIES OF THE KSC

41. In light of the SPO's invocation of a change of venue to the Host State,¹¹² the SPO requests that the Pre-Trial Judge order the transfer of the Suspects to the Detention Centre, pursuant to Rule 50(1)-(2).

IV. SEARCH AND SEIZURE

42. The SPO requests that, as part of the arrest warrants, the Pre-Trial Judge authorise the SPO and/or authorities executing the arrest warrant, in cooperation with the SPO, to:

- a. Search the person of the Suspects, location of arrest, and the Suspects' residences, offices, and vehicles; and
- b. Seize any evidence that is believed to have been used in, connected with or may be evidence relevant to: (a) the charged crimes, in particular, any evidence relevant to the Suspects' activities between 1998 and 1999, relationship or interactions with the KLA and/or Provisional Government of Kosovo, or members thereof, or with victims, witnesses or alleged accomplices; (b) any recent efforts to interfere with the administration of justice; and [REDACTED].¹¹³ Such items may include records of contacts or meetings, financial or property records, diaries, logbooks, decisions, photographs, video and audio recordings, orders, instructions, directives, reports, policies, protocols or regulations, as well as computers, telephones and other devices that reasonably could be expected to contain relevant evidence.

43. There is grounded suspicion that the Suspects, former leaders in the KLA, have committed crimes within the Specialist Chamber's jurisdiction and, in turn, there is

¹¹² KSC-BC-2020-06/F00002, para.4.

¹¹³ [REDACTED].

grounded suspicion that they may have evidence necessary to the investigation on their persons or in their residences, offices, or vehicles.¹¹⁴ Further, in light of the risks of interference and obstruction, including as outlined above,¹¹⁵ any evidence in the Suspects' possession will not otherwise be obtained. Search and seizure in connection with arrest is the only effective means for the purposes of the investigation.¹¹⁶

44. The resulting interference with the Suspects' rights to privacy and property is proportionate to the legitimate aim of the investigation, and the investigative measure does not negate the essence of those rights.¹¹⁷ The SPO will tailor its execution of the search and seizure and/or will provide necessary information and instructions to any other authorities assisting in executing the search and seizure, in a manner designed to exclude information of no foreseeable relevance, and in accordance with the safeguards outlined in Rule 39.

45. The SPO requests that retention of any evidence seized be authorised for (i) the time necessary to complete review of the evidence; and (ii) if deemed relevant, such further period of time as may be necessary for investigations and proceedings.

V. [REDACTED]

46. [REDACTED]. [REDACTED].¹¹⁸ [REDACTED].

47. [REDACTED]. [REDACTED].¹¹⁹ [REDACTED].

¹¹⁴ Rule 37(2)(a), (3). *See also* Articles 35(2)(b) and 39(3) and Rule 48(2).

¹¹⁵ *See* Section III.B above.

¹¹⁶ Rules 31(1)(b), 37(1).

¹¹⁷ Rule 31(1)(c).

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED]. *See also* [REDACTED].

48. [REDACTED],¹²⁰ [REDACTED]. [REDACTED].¹²¹ [REDACTED]¹²² –
[REDACTED],¹²³ [REDACTED].
49. [REDACTED]. [REDACTED]. [REDACTED].
50. [REDACTED].¹²⁴
51. [REDACTED].¹²⁵ [REDACTED].¹²⁶ [REDACTED].
52. [REDACTED].
53. [REDACTED]. [REDACTED].¹²⁷ [REDACTED].¹²⁸

VI. INTERIM NON-DISCLOSURE OF THE IDENTITIES OF WITNESSES AND VICTIMS

54. As set out above, there are real risks of, *inter alia*, interference with witnesses and victims¹²⁹ which, pursuant to Rule 105, constitute exceptional circumstances justifying interim non-disclosure of the identities of witnesses and victims involved in these proceedings until appropriate protective measures have been ordered. This includes those witnesses and victims identified in the Indictment, its supporting materials, [REDACTED]. Accordingly, and notwithstanding the risk that the Suspects may nonetheless be able to deduce the identities of certain potential witnesses, the SPO requests that the Pre-Trial Judge order, pursuant to Rules 80 and 105, the following:

- a. That the name and identifying information of any witness or victim identified shall not be disclosed to the public.

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

¹²² [REDACTED].

¹²³ [REDACTED].

¹²⁴ [REDACTED].

¹²⁵ [REDACTED]. [REDACTED].

¹²⁶ [REDACTED].

¹²⁷ [REDACTED].

¹²⁸ [REDACTED].

¹²⁹ Section II above.

- b. Authorise the SPO to redact the identity and identifying information of, and assign provisional pseudonyms to, witnesses and victims named prior to disclosure to the Suspects or public.
- c. That such interim non-disclosure continues until further order of the Pre-Trial Judge on application of the SPO or after hearing the SPO. Noting the strong possibility that a pseudonym alone may be insufficient to prevent the Suspects from identifying vulnerable witnesses, the SPO requests an opportunity to apply redactions or otherwise be heard before any such information ([REDACTED]) is disclosed.

VII. NON-DISCLOSURE OF THE INDICTMENT, RELATED DOCUMENTS AND INFORMATION

55. Continued non-disclosure of the Indictment, and related information, at this stage is necessary to ensure the integrity of the proceedings, and the protection of witnesses and victims. As set out above, there are real risks of, *inter alia*, the Suspects' flight, interference with witnesses and victims, and commission of further crimes, which, pursuant to Rule 88(2), demonstrate good cause justifying the temporary non-disclosure of the Indictment, related documents and information to the public until further order.

VIII. EXECUTION AND SERVICE

56. The SPO requests the Pre-Trial Judge to transmit the arrest warrant and transfer order, with the authorisation for search and seizure, to the SPO for execution and service in cooperation with the Registrar. [REDACTED]. The SPO, in cooperation with the Registrar, is the best-positioned competent authority for the service and/or execution of these orders.

57. Mindful of the need to act in conformity with the fundamental rights provided for in Chapter II of the Constitution, these orders will be executed by the SPO with

appropriate measures protecting the fundamental rights of the Suspects and victims/witnesses. Any interference with rights implicated by the measures will only be limited to that which is strictly necessary.¹³⁰ As soon as the arrests are effectuated, the Suspects shall be informed of their rights under the Law.

58. The SPO requests authorisation to disclose, as appropriate and necessary, the orders for purposes of their execution.

IX. CLASSIFICATION

59. This filing and its annexes are filed strictly confidential and *ex parte* in accordance with Rules 85(4) and 86(2).

X. RELIEF REQUESTED

60. For the foregoing reasons, the SPO requests that the Pre-Trial Judge:

- a. Issue arrest warrants against the Suspects and corresponding transfer orders as provided in Sections III and VIII above;
- b. Authorise search and seizure in the terms requested in Sections IV and VIII above;
- c. [REDACTED];
- d. Order the interim non-disclosure of witness and victim identities in the terms requested in Section VI above; and

¹³⁰ For instance, at the site of any search and seizure, the SPO intends to impose a temporary prohibition on the use of non-essential electronic communications. This is strictly necessary because, if multiple arrests and/or searches are planned to be carried out around the same time in relation to multiple suspects, the information that a particular search is taking place risks putting the other suspects on notice and jeopardising the broader operation. See ECtHR, *Cacuci and S.C. Virra & Cont Pad S.R.L. v. Romania*, 27153/07, 17 January 2017, paras 65-67. The SPO also foresees the possibility that, for reasons of security and preservation of evidence, searches of their property may proceed in the absence of the Suspects. However, the SPO will take steps to, as practicable and pursuant to Rule 39(1)(c)-(d), notify the Suspects' counsel and provide them a reasonable opportunity to be present, if it can be reasonably awaited, and ensure the presence of an independent observer. See, *similarly*, [REDACTED].

- e. Order the temporary non-disclosure of the Indictment, related documents and information in the terms requested in Section VII above.

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Jack Smith

Specialist Prosecutor

Tuesday, 17 November 2020

At The Hague, the Netherlands.