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In:	**KSC-BC-2020-06**
	The 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 Counsel for Hashim Thaçi
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Public Redacted Version of

Reply to Specialist Prosecutor's Response Opposing the Application for Interim Release on behalf of Mr Hashim Thaçi

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I. INTRODUCTION

1. Pursuant to Rule 57(2) of the Rules of Procedure and Evidence ("RPE"),[1] and further to the "Prosecution Response to the Application for Interim Release on Behalf of Mr Hashim Thaçi"[2] ("Response"), Mr Thaçi hereby files his reply, in accordance with Rule 76(2) of the RPE and the decision of the Pre-Trial Judge ("PTJ") granting an extension of time to file a reply until 7 January 2021.[3]

2. The defence for Mr Thaçi ("the defence") has addressed, in its Application for Interim Release on Behalf of Mr Hashim Thaçi,[4] the misleading and selective submissions advanced by the SPO in its original request for an arrest warrant.[5] Nothing within the Response, either by way of new "discovered information"[6] or argument, alters the position that the criteria set by Article 41(6)(b) of the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law") remain unsatisfied.

3. Contrary to the SPO's submissions, it does not now present "subsequently discovered" information.[7] This information has been available to the SPO for months. Indeed, the defence repeatedly asked[8] the SPO to produce, as a matter of

[1] Rules of Procedure and Evidence before the Kosovo Specialist Chambers (adopted on 17 March 2017, revised on 29 May 2017, amended on 29 and 30 April 2020).
[2] KSC-BC-2020-06/F00149, Prosecution Response to Application for Interim Release on behalf of Mr. Hashim Thaçi, 16 December 2020.
[3] KSC-BC-2020-06/F00162, Decision on Thaçi Defence Request for Extension of the Reply Word Limit, 5 January 2021.
[4] KSC-BC-2020-06/F00120, Application for Interim Release on behalf of Mr Hashim Thaçi, 4 December 2020 ("Application").
[5] Confidential Redacted Version of 'Request for arrest warrants and related orders', filing KSC-BC-2020-06/F00005 dated 28 May 2020, KSC-BC-2020-06/F00005/CONF/RED, 15 November 2020 ("Request").
[6] Response, para. 1
[7] Response, para. 1.
[8] KSC-BC-2020-06, Transcript, 9 November 2020; KSC-BC-2020-06, Transcript, 18 November 2020, p. 157 & seq.; KSC-BC-2020-06/F00085, Defence for Hashim Thaçi's Submissions for first Status Conference, 17 November 2020, para. 23.

courtesy, any further material that it wished to rely on so that the defence could address all the issues in its application for interim release rather in a piecemeal manner.

4. It is a telling feature of the SPO Response that the defence contentions that the SPO has repeatedly generalised its allegations;[9] misrepresented and mischaracterised underlying evidence;[10] misled the court;[11] and deliberately omitted key evidence in making its submissions;[12] have been met with almost blanket silence. There has been little attempt by the SPO to counter the central assertion that it secured an Arrest Warrant from the court on the basis of incomplete and misleading representations of the underlying evidence. Indeed, in the Response the SPO appears to have "doubled-down" on its approach, and now relies on the circular logic that the criteria under Article 41(6) have been immutably established by the Decision on Arrest, whereas that decision was substantially induced by the SPO's flawed, *ex parte* submissions and made without the benefit of *inter partes* submissions. The PTJ has every reason to be sceptical of the positions put forward by the SPO. As discussed in the initial Application and further below, the new "evidence" relied upon by the SPO concerns many events taken out of context and improperly explained or presented.

5. The SPO demonstrates a troubling disregard for the need to justify with anything approaching persuasive evidence – rigorously measured against the applicable legal standards – the deprivation of the most fundamental basic civil rights of any accused – that is, to remain at liberty until proven guilty. This is a civil right

[9] Application, paras. 17, 18, 42; The SPO's response to this is often little more than linguistic sophistry in suggesting that co-accused with vaguely defined "common circumstances" allows for generalised allegations which is therefore "compatible with individualised assessment", Response para. 7.
[10] Application, paras. 22, 26, 48.
[11] Application, paras. 22, 49.
[12] Application, para. 25.

afforded to every accused, including one who until the day of his arrest was a respected President with a commitment to peace and stability – a Nobel Peace Prize nominee – who now stands accused of committing crimes 22 years ago.

6. It is wrong to characterise the current Application as a mere review of the original decision. It is for the SPO to establish that the criteria for arrest and continued detention are established. The court will recognise that depriving an individual of his liberty is a weighty decision even after a conviction. At this stage – when presumed innocent and with the SPO yet to discharge its burden of proving the case beyond a reasonable doubt – a decision in favour of detention must be compelling.

7. The ICC Appeals Chamber in *Gbagbo*, considering a similar procedure under article 60(2) of ICC Statute, addressed the question whether the Pre-Trial Chamber had applied the correct standard when deciding on an application for interim release in that case.[13] It observed that the Pre Trial Chamber "has to inquire anew into the existence of facts justifying detention" and the Pre-Trial Chamber 's power is "not to be conditioned by its previous decision to direct the issuance of a warrant of arrest" so that "[t]hus, the decision under article 60(2) of the Statute is a decision *de novo*, in the course of which the Pre-Trial Chamber has to determine whether the conditions of article 58(1) are met. It is imperative that the Pre-Trial Chamber is deciding *de novo* because it is hearing the submissions of the defence for the first time." [14] The defence has every confidence that the PTJ will hold the SPO to its burden of proof.

[13] *Prosecutor v. Gbagbo*, ICC-02/11-01/11 OA, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled 'Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo', 26 October 2012, para. 24.
[14] *Ibid*.

II. SUBMISSIONS

A. The Applicable Legal Framework

8. The SPO misrepresents the defence submission. It is not the defence case that the threshold for detention required under Article 41(6)(b) is that of certainty.

9. While "inevitability, of future occurrence"[15] is plainly not necessary, it is equally the case that a *mere* possibility that one of the identified risks might eventuate is insufficient to satisfy the statutory test and strip a defendant of his liberty. Were that the case, a 0.0001% likelihood – categorisable as a "possibility", would meet the test. The risk must be a *real risk* and more than being fanciful or a *mere* possibility.

10. This position finds support in the caselaw relied upon by the Appeals Chamber.[16] In concluding that *"[t]he question revolves around the possibility, not the inevitability, of a future occurrence*", the Appeals Chamber cited to a 2011 decision in the *Mbarushimana* case,[17] which itself relied on the same language from an earlier 2008 decision in *Katanga & Ngudjolo*.[18] In that decision, the ICC Appeals Chamber gives important insight into what a "possibility" (as opposed to an "inevitability") means in this context; finding that detention was justified because the risk that the accused would evade justice became a "*distinct* possibility; a possibility rising in proportion to the consequences that a conviction may entail".[19] Having considered the gravity of the charges, the accused's network of international contacts giving

[15] Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.67.
[16] Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.67, cited in Response, para. 3.
[17] Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.67, fn.123.
[18] ICC, *Prosecutor v. Katanga & Ngudjolo*, ICC-01/04-01/07-572, Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of PreTrial Chamber I on the Application of the Appellant for Interim Release, 9 June 2008.
[19] *Ibid*, para. 21 (emphasis added).

him the connections and means to flee, and a report that Mr. Ngudjolo had escaped from lawful custody in his own country before the verdict in a previous criminal trial, the Appeals Chamber agreed that "[t]he possibility of his absconding *remains visible*."[20] Nothing in this decision, from which this language derives, stands for the proposition that the risk must be anything less than a *real* and *distinct* possibility.

11. This mirrors the position consistently adopted by the European Court of Human Rights ("ECtHR") which has, in considering flight risk, required such a risk to be "sufficiently real and incapable of being averted by a less restrictive measure"[21] than detention, and "the existence of the concrete facts outweighing the rule of respect for individual liberty must be nevertheless convincingly demonstrated."[22]

12. The language and requirement of "real risk" is expressly adopted by the ECtHR in considering flight risk and potential interference with witnesses or of the obstruction of proceedings.[23] In respect of each criteria under Article 41(6)(b), the risks in question must be "convincingly established"[24]

13. As regards the risk of commission of further offences, the ECtHR has recently re-affirmed the "imminence" requirement to such a risk under Article 5(1)(c) of the ECHR: "Preventive detention cannot reasonably be considered necessary unless a proper balance is struck between the importance in a democratic society of preventing an imminent risk of an offence being committed and the importance of the right to liberty."[25]

[20] *Ibid*, para. 24.
[21] *Merabishvili v. Georgia*, Judgment, Application No. 72508/13, 28 November 2017 at para 229.
[22] *Ilijkov v. Bulgaria*, Judgment, Application No. 33977/96, 26 July 2001 at para 84.
[23] *Jarzyński v. Poland,* Judgment, Application No. 15479/02, 4 October 2005, at paras 43 and 46.
[24] *Samoylov v. Russia*, Judgment, Application No. 57541/09, 24 January 2012, at para 109, 119 – 120.
[25] *I.S. v. Switzerland*, Judgment, Application No. 60202/15, 6 October 2020 at para 56 citing *S., V. and A. v. Denmark,* Judgment, Application Nos. 35553/12, 36678/12 and 36711/12, 22 October 2018 at para. 161.

14. The defence maintains its submission that the drafters of the KSC Law consciously used the language they did, requiring an assessment of the *risk* of certainty ("will") rather than the lower *risk* of possibility ("may"). This was a quite deliberate step re-enforcing the presumption in favour of liberty, and ensuring that pre-trial detention would remain a course of last resort.

B. The Article 41(6)(b) criteria remain unmet

15. In its original submissions, the SPO chose a scatter-shot approach, listing a series of tenuous allegations - often in a misleading way. The defence was forced to address each one to demonstrate that Mr Thaci's actions were not improper, let alone criminal in nature, and exposing their lack of substance. The SPO is now forced to retreat and to argue that it "is not whether any individual act is itself criminal or 'improper'"[26] but rather "the pattern of conduct" that matters, relying on "all the evidence together"[27] to make out its case on risk. The SPO needs to produce significant and reliable material rather than resort, as it has done, to bundling together flimsy allegations.

Support networks

16. In the absence of any concrete evidence against Mr Thaçi that would satisfy the necessary individualised assessment under Article 41(6), the SPO submits that "an accused's position or contacts may be considered when determining the likelihood of his returning for trial, threatening witnesses if released or committing further crimes",[28] relying for that submission on the *Gucati* Appeal Decision. That decision, while recognising as relevant *Gucati*'s position as head of the KLA War Veterans Association did so in the particular circumstances of that case – namely "there is a

[26] Response, para. 34
[27] Response, para. 6
[28] Response, para. 7.

risk that Gucati would continue to disseminate confidential information by communicating freely with the media or his network of KLA veterans or publishing the material himself."[29]

17. The SPO singularly fails to establish how the specific finding against Mr Gucati, impacting on the risk assessment in *his* particular case, may properly and adversely apply to the risk assessment concerning Mr Thaçi. The SPO dedicates extensive submissions to the improper activity of the KLAWA[30] without a shred of evidence that Mr Thaçi is in a "position of particular influence over *this* network"[emphasis added]. Such tenuous submissions underline the desperation in the SPO arguments.

(i) Article 41(6)(b)(i): Mr Thaçi is not a flight risk

18. It has never been submitted that "the gravity of the charges and severity of the potential penalties"[31] are not factors that are capable of being taken into account but that they alone can not justify detention.[32] The SPO's submission that, "the ECtHR has found that, in cases concerning war crimes against the civilian population, detention may be justified and extended *solely* [emphasis added] on the gravity of the charges" is not only misleading, it is simply wrong.[33]

[29] KSC-BC-2020-07/IA001/F00005, Appeals Decision, para. 63.
[30] Response, paras. 15 – 17.
[31] Contra Response, para. 9.
[32] Application, para. 40 & fn. 55.
[33] Contra Response, fn. 22; See *Šuput v. Croatia*, 49905/07, Judgment, 31 May 2011, paras. 107-108 citing additional "particular circumstances of the instant case" including the fact that "the majority of the alleged victims lived in the same place as the Applicant"; In *Getoš-Magdić v. Croatia*, 56305/08, Judgment, 2 December 2010, para. 86 - 91, the national courts relied on additional factors including "the need to obtain voluminous evidence from many sources"(para.87).

19. The SPO's concerns[34] over the limited number of countries with whom the KSC can "seek binding cooperation to surrender" are squarely met by the defence proposal that Mr Thaçi be released to a state that has such an agreement.

20. It is unfortunate that the SPO's submission[35] drawing comparison to other "well-known international figures" who used "their resources to evade justice" omits the most revealing feature when considering prospective risk of flight: Unlike Presidents Habré, Karadžić and Taylor, who upon learning of confirmed indictments against them *did* flee, Mr Thaçi on learning of the confirmed indictment promptly resigned as President of Kosovo, liaised with his lawyers and the SPO to surrender, and did surrender to the KSC.

21. The SPO contention that Mr Thaçi had "no choice but to surrender" is risible and untrue. For the purpose of this argument the SPO conveniently abandons its notion of his having available the resources of an effective, extensive network. Nor does the SPO address the immunity issue raised at paragraph 36 of the Application.

22. President Thaçi behaved responsibly and with due respect for the authority of the KSC. He had choices. He chose to surrender and not rely on his constitutional immunity as President to oppose his arrest. He would have similarly responded to a summons and had prepared to do so. The SPO misled the court as to Mr Thaçi being a flight risk. The Judge was correct in his initial inclination to question whether proceeding by way of summons rather than arrest was the better course.

23. The SPO cynically states that Mr Thaçi's calls for peace and unity were made "cognizant of his need to seek interim release".[36] It belittles, wholly unfairly, the

[34] Response, Para. 11.
[35] Response, para. 11.
[36] Response, para. 13.

proven, consistent efforts of Mr Thaçi over the past twenty years and more to achieve and sustain peace in Kosovo and Serbia. It is regrettable any prosecutor feels it necessary to distort the facts in this way.

24. Finally, the SPO persists in its repeated assertions that the risk of flight is compounded by "Thaçi's access to significant funds".[37] Put simply, there is no evidence to substantiate this, let alone convincingly demonstrate this to be a material feature of the risk analysis.

(ii) Article 41(6)(b)(ii): There remain no articulable grounds to believe that Mr Thaçi will obstruct proceedings

The KSC

25. The November 2019 letter by Mr Thaçi to the Secretary of State, Mike Pompeo, was fully addressed in the defence Application at paragraph 24. There is nothing wrong with it. The defence remind the Pre-trial judge of the SPO's extraordinary misquotation of part of that letter referred to at paragraph 22 of that Application.

26. The SPO's continues its misplaced reliance on a media organisation's interpretation of letters exchanged between Mr Thaçi and US Secretary of State Pompeo.[38] By its Reply the SPO refers to a letter sent by Pompeo to President Thaçi as if the response was a criticism of Mr Thaçi's position. The SPO relies on a single extract from Secretary Pompeo's letter of March 2020, stripped of the surrounding context. In the letter Mr Pompeo praises Mr Thaçi for his "personal engagement in the painstaking negotiation and adoption of the Court's structure and rules of

[37] Response, para. 9; Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.28. *See also* Arrest Warrant Application, KSC- BC-2020-06/F00005, paras 31-33.
[38] Request, para. 7, Annex 2, Part I, A; Response, para. 21.

procedure under the Government [Mr Thaçi] led in 2015." The SPO do not produce the letter. The letter was sent on 21 January 2020. It was followed by a meeting in February between Mr Pompeo and President Thaçi in which it was plain that the U.S. Government perceived Mr Thaçi as an important partner in the pursuit of its policy to support the KSC and peace in the area[39].

[REDACTED] (Paragraph 22)

27. This a strange piece of evidence. The prosecution rely on a statement made by someone [REDACTED] who was present when someone else [REDACTED] spoke to a third party [REDACTED] on the phone. The alleged conversation between them – an invitation to [REDACTED] – is disputed. Mr Thaçi has never met [REDACTED] alone. [REDACTED]. [REDACTED]. Despite the lapse of time, [REDACTED]. [REDACTED]. In any event how does this advance the argument for depriving Mr Thaçi of his liberty? The SPO would appear to have given it the little weight it deserves when they made no reference to it in their initial Request.

28. A general matter that arises in this process is the SPO's reliance on general allegations made by third parties, without statements being made, and which are contested as to content or inference by the applicant. The absence of signed statements (with commitments to tell the truth) is an important protection which is absent here, where the application under consideration concerns the liberty of a defendant. In a trial the right to confront an adverse witness is paramount. The defence submits that where the Pre-Trial Judge finds a particular issue of significance in his determination of the issue of detention, and where that issue is dependent on the credibility of a third party witness, then the defence should be provided with the opportunity of questioning that third party on the contested

[39] https://www.state.gov/secretary-pompeos-meeting-with-kosovo-president-thaci/.

issue. In the absence of such an opportunity to confront no reliance should be placed on the untested allegation. To do otherwise would be an unfairness in the trial process.

29. It should be reiterated Mr Thaçi did support the KSC – it would not have existed without him. With the years his support may have changed: the court did nothing for a few years and was criticised by several actors, which led Mr Thaçi to question the need or interest of such institution - this is different from obstructing justice.

Pardons[40]

30. What is not explained by the SPO is that both men remain in prison to this day. The effect of the "pardons" will only see the release dates for each individual brought forward to July 2024 and June 2025 respectively.[41] This modest commuting of sentence was within the bounds of Presidential discretion, limited, reasonable, in line with previous decisions by President predecessors and conducted at the conclusion of a lengthy procedure. Other acts of commutation of sentence are not referred to, including those of Serbian prisoners similarly subject to Presidential pardon. There is no rational basis to conclude that the actions taken impact on the matters to be considered under Article 41(6)(b)(ii).

Alleged interferences in current proceedings

31. With respect to matters concerning the hiring of Rrustem Mustafa, the SPO suggests that the defence "misses the point"[42]. Rather, a review of the Request[43]

[40] Response, para. 23.
[41] KSC-BC-2020-06/F00149, Annex 1, p.4,
[42] Response, para. 26.
[43] Request, para. 17.

and Application[44] reveals the SPO's subsequent shift of emphasis. The SPO is aware that a post with a salary of €18,000 would be of little financial consequence to such a wealthy man.

32. [REDACTED],[45] [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

33. Nor did Mr Thaçi have anything to do with the appointment of Haxhi Shala. As the Prosecution may be aware, the appointment has no relevance to this case. The appointment of his son to the position of Consul General was effected by Kosovo's 'Minister of Foreign Affairs and Diaspora' who comes from the same party as Mr. Shala, the Alliance for the Future of Kosovo', which was part of the Government that Mr. Shala helped elect. This is a matter of domestic politics, which is irrelevant to the case. The SPO omits to mention that the nomination was by the Prime Minister in his interest the appointment was made. Mr Thaçi had nothing to do with this appointment and fulfilled only a formal, prescribed role in the process.

34. As regards Sylejman Selimi,[46] the defence has nothing to add to its submission at paragraph 34 – namely, the appointment had nothing to do with Mr Thaçi. The SPO either does not understand, or disguises the fact that it does, that the constitutional position in Kosovo is that such appointments are Prime Ministerial appointments. The defence has had the benefit of reading the submissions on behalf of Mr Veseli, which demonstrate that "the SPO is evidently clutching at straws."[47]

[44] Application, para. 55 & 56.
[45] Response, para. 27.
[46] Response, para. 29.
[47] KSC-BC-2020-06/F00151, Application for Interim Release of Kadri Veseli, 17 December 2020, paras. 43 – 46.

35. Any one of these instances of the SPO misunderstanding the position or misquoting is troubling but, when there are multiple instances, a powerful inference arises that they are not merely by omission or accident.

36. Concerning Driton Lajçi,[48] the defence refers to its Application,[49] and adopts the submissions made on behalf of Mr Veseli[50] [REDACTED].[51] With the suggestion of improper pressuring of Lajçi disintegrated, the SPO now suggests, disingenuously, that "exerting pressure" upon Lajçi was never the material impropriety alleged by the SPO, but merely that *assistance should be provided* to [REDACTED].[52] Whether true or not, the SPO fails to explain how requesting for assistance to be provided to [REDACTED] could be considered improper.

37. [REDACTED]. [REDACTED].

38. [REDACTED][53] [REDACTED]. [REDACTED]. [REDACTED].

39. [REDACTED]. [REDACTED].

40. [REDACTED][54]. [REDACTED],[55] [REDACTED]. [REDACTED].

41. [REDACTED].[56] [REDACTED].

[48] Response, paras. 32, 33.
[49] Application, paras. 46, 47.
[50] KSC-BC-2020-06/F00151, Application for Interim Release of Kadri Veseli, paras. 28-35.
[51] KSC-BC-2020-06/F00151, Application for Interim Release of Kadri Veseli [REDACTED].
[52] KSC-BC-2020-06/F00161, Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli, para. 28; cf. KSC-BC-2020-06/F0005, Request for Arrest Warrant, para. 12.
[53] Response, para. 36.
[54] Response para. 35.
[55] [REDACTED].
[56] Response, para. 36.

42. [REDACTED]. Despite significant investigative exertions, there is no impropriety that can be relied upon in the context of considerations under Article 41(6)(b)(ii). It is telling that, despite repeated claims of sinister and unlawful interference, no such evidence has emerged, let alone the "concrete facts" that "convincingly establish" a risk justifying the removal of a person's liberty, which the SPO bears the burden of demonstrating.

[REDACTED] SPO interviews

43. Mr Thaçi made no efforts to contact directly or indirectly [REDACTED]. It should be noted that [REDACTED]is hesitant in the account he provides in interview [REDACTED].[57]

44. The SPO concludes its submissions with reliance placed on the veracity of the hearsay account of [REDACTED].[58] [REDACTED].[59] It is instructive that the SPO relies on these self-serving comments by [REDACTED] but on the next page provides copious reasons to doubt the man's truthfulness.[60]

45. In a similar vein to the allegation of an approach by [REDACTED][61], neither episode provides any "concrete facts" for the purpose of considering the particular risks under Article 41(6)(b)(ii). Neither episode is evidence of an intent to "obstruct the progress of criminal proceedings", and no other incident in the 10 years in which Mr Thaçi has known himself to be a target of investigation demonstrates obstruction on his part.

[57] [REDACTED].
[58] Response, para. 37.
[59] The same reasoning applies to [REDACTED].
[60] Response, fn. 70; Response, para. 46.
[61] As addressed in Application, para. 53.

(iii) Article 41(6)(b)(iii): No risk of repeated criminality

46. The defence maintains that Article 41(6)(b)(iii) should be given its ordinary, natural and obvious meaning.[62] The SPO argues that "the more logical interpretation […] is that there must be a risk of the accused repeating the underlying criminal acts - murder, torture, and cruel treatment ".[63] There is no reasonable inference that Mr Thaçi will commit such crimes. There is no material to suggest he has done so over the past twenty years. There is certainly no "imminent risk" for the commission of such offences. Even the possibility of "physical violence or threats of violence"[64] – the SPO's last stand - do not approach it. Even when submitting that for "these former KLA leaders, these methods [consisting in targeting perceived opponents] persist",[65] the SPO is incapable of referring to any evidence at all that this has any connection to Mr Thaçi.

47. On the contrary, the behaviour and public speeches of Mr Thaçi over the last years, calling for peace and justice for all the parties, have demonstrated his strong commitment toward the reconciliation of the various ethnicities present in Kosovo, as recognized by his nomination for the Peace Nobel Prize, and the lack of risk emanating from him with regard to the targeting of potential opponents or any other related offences:

48. ***The Constitutive Session of the Kosovo Assembly, held on 4 and 9 January 2008:***[66] When presenting the first governmental plan at the Kosovo Assembly, Mr. Thaci noted that under his *governance* "[t]he minority's rights will be respected and guaranteed through affirmative and responsible engagements guaranteed by the

[62] Application, para. 58 – 59.
[63] Response, para. 39.
[64] Response, para. 39.
[65] Response, para. 40
[66] http://old.kuvendikosoves.org/common/docs/proc/trans_s_2008_01_04_al.pdf.

Constitution" and that he will work for the good, together with its political partners will build a democratic and multiethnic Kosovo and "[he] will be a Prime Minister of all citizens of Kosovo, regardless of ethnicity".

49. ***Visit to the Serb cemetery in Gjilan on 21 February 2010***:[67] In his capacity as Prime Minister of Kosovo, on 21 February 2010 Mr. Thaci visited the Serb cemetery in the Municipality of Gjilan following a vandalistic act of the desecration of the grave of a Kosovo Serb, Ms. Zivka Jovanovic. Mr. Thaci was accompanied with the then-Minister of Communities and Return, Sasa Rasic, who is also a member of the Serb community in Kosovo. During his visit, Mr. Thaci condemned the desecration of the grave of Ms. Jovanovic, by considering such act a vandalistic one and requested that the relevant authorities find the perpetrators and take adequate measures in accordance with the law. In this regard, Mr. Thaci explicitly stated that "[t]his act has disgusted all citizens of the Republic of Kosovo and is condemned by all Kosovo institutions" and that "[d]espite such actions, which are not part of the tradition of [Kosovo] people, [the Government] will continue to implement [its] joint commitments for Kosovo as the homeland of all of its people."

50. ***Tributes to Serbian victims in Kosovo:*** As President of Kosovo, Mr. Thaci visited certain Serbs' memorials in Kosovo and paid tribute to Kosovo Serbs killed during and after the war in Kosovo, calling for justice for all the victims of the war; such statements of Mr. Thaci caused outrage among many people in Kosovo.

- *Tribute at a Serbs' Memorial in Staro Gracko/Gracke, Lipjan, on 21 July 2016*: Mr. Thaci explicitly stated that "[e]very crime must be brought to light and punished" and

[67] https://kryeministri-ks.net/en/the-prime-minister-visits-the-serb-cemetery-in-gjilan/.

that a "[c]rime is [a] crime, [regardless of] whoever it is committed against or whoever committed it".[68]

- *Tribute at a Serbs' Memorial in Gorazhdec, Peja, on 15 August 2016*: Mr. Thaci stated that he "[o]nce again [he expresses his] compassion and sympathy for all the victims, during and after the war, of all communities," and "[o]nce again [insists] that the fate of all missing persons, whether Albanian, Serb or Roma or any other community, is brought to light." He underlined that justice is needed for honest reconciliation and that the reconciliation between Albanians and Serbs is possible and it will happen.[69]

- *Tribute at a Serbs' Memorial in Big Hoca on 12 December 2016*: Mr. Thaçi also requested again for the fate of the missing to be clarified, justice to prevail and reconciliation to take place as soon as possible.[70]

- Mr. Thaci, himself, personally responded to the critics in a *speech at the Kosovo Assembly on 23 December 2016,* by which he defended his visits at Serbs memorials in Kosovo. He emphasized that "[the Kosovo Specialist Chambers] should not be seen as a punishment, but as an advantage for the country" and invited "everyone for justice, solidarity and inter-ethnic reconciliation."[71]

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[68] https://president-ksgov.net/en/news/president-thaci-i-pray-with-pain-and-sympathy-for-all-victims; see also https://balkaninsight.com/2016/07/21/kosovo-president-lays-wreath-at-serbs-memorial-07-21-2016/; https://insajderi.com/tri-grackat-ne-te-cilen-ra-keq-presidenti-ne-fshatin-gracke/.

[69] https://president-ksgov.net/en/speeches/speech-by-president-thaci-at-the-memorial-dedicated-to-the-youth-killed-the-village-of-gorazhdec-in-peje; see also https://insajderi.org/presidenti-thaci-ne-gorazhdevc-nderoi-viktimat-e-terroristeve-shqiptare/.

[70] https://president-ksgov.net/en/news/reconciliation-happens-rising-above-ourselves; see also https://telegrafi.com/bashkeluftetaret-nuk-ia-falin-presidentit-thaci-vizita-tek-memorialet-e-serbeve-fyerje-per-luften-e-uck-se-video/.

[71] https://president-ksgov.net/en/speeches/the-complete-address-of-the-president-hashim-thaci-to-the-parliament-of-the-republic-of-kosovo.

51. ***Statement against the protest for demolition of the Serbian Orthodox Church in Prishtina, 17 September 2016:***[72] On 17 September 2016 Mr. Thaci posted a statement in his official Facebook Page, condemning the protest before the Serbian Orthodox Church in Prishtina and the violence manifested therein. He stated that "[Kosovo] must not permit the violation of these objects, especially when they belong to religious communities." He was heavily criticized by some MPs. At the plenary session of Kosovo Assembly, held on 29 September 2016,[73] Mr. Glauk Konjufca from "Vetëvendosje" stated that "the statement of President Hashim Thaci in defense of this monstrous act of Milosevic regime is more than disgusting."

52. Such excerpts from various speeches of Mr Thaçi over the time demonstrates the sincerity of his commitment toward reconciliation. If released, Mr Thaçi would not constitute a danger for anyone but on the contrary, could help to promote dialogue and peace within his country.

53. Indeed, Mr Thaçi, despite the severe charges levelled against him by the SPO before the KSC, still benefit from the confidence of prominent public figures, both at the national and international levels.[74] In particular, it is significant that [REDACTED] have agreed to issue a joint statement in support of his application for interim release, considering that he is "a man of high character and trustworthy, who takes pride in his accomplishments to bring peace, prosperity and justice to Kosovo and the region"; they expressed their confidence that "Mr. Thaçi will implement and fulfill any interim release condition that may be imposed on him by the Kosovo Specialist Chambers."

(iv) Ability of Kosovo to police conditions of Interim Release

[72] https://www.facebook.com/HashimThaciOfficial/posts/1177012405702450?_rdc=1&_rdr.
[73] http://old.kuvendikosoves.org/common/docs/proc/trans_s_2016_09_29_10_6629_al.pdf.
[74] See Annexes 1 to 3.

54. Whatever the incapacity of the SPO – set out at length by the SPO at paragraphs 42 to 48 - any concerns as to monitoring etc in Kosovo is fully addressed by the defence proposal that Mr Thaçi be released to a third-party State, not adjoining Kosovo, and which has a cooperation agreement with the KSC.[75]

III. CONCLUSION

55. For the forgoing reasons, the defence requests the PTJ to:

GRANT Mr Thaçi's request for interim release upon such conditions as the PTJ considers necessary and appropriate.

[Word count: 5291]

Respectfully submitted,

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David Hooper

Specialist Counsel for Hashim Thaçi

Wednesday 25th January 2021

London.

[75]Austria, Belgium, Croatia, the Czech Republic, Germany, Hungary, Italy, Macedonia, Turkey, the United Kingdom, and the United States. Most of these countries have entered into extradition agreements with Kosovo itself. Others have formally agreed with Kosovo on the continued application of extradition agreements reached with the Federal Republic of Yugoslavia.