



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

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 Prosecutor

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**Prosecution response to preliminary motions concerning Council of Europe
Report, investigation deadline, and temporal mandate**

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I. INTRODUCTION

1. The charges in the Indictment¹ relate to the Council of Europe Report ('CoE Report'),² and are thus within the subject matter jurisdiction of the Kosovo Specialist Chambers ('KSC'). Contrary arguments disregard the plain language of the Law³ and misrepresent the CoE Report. Accordingly, they must be rejected.

2. The THAÇI Defence's submissions regarding the permitted period for conducting criminal investigations, and the temporal mandate of the KSC and Specialist Prosecutor's Office ('SPO'),⁴ are similarly without merit. They rely on inapplicable legal provisions and ignore authoritative pronouncements of the Specialist Chamber of the Constitutional Court ('SCCC').

3. The KSC has jurisdiction over all charges in the Indictment, and the Defence requests⁵ should be rejected in full.

¹ Lesser Redacted Version of 'Redacted Indictment, KSC-BC-2020-06/F00045/A02, 4 November 2020', KSC-BC-2020-06/F000134, 11 December 2020, Confidential ('Indictment'). See also Annex 1 to Submission of corrected and public redacted versions of confirmed Indictment and related requests, KSC-BC-2020-06/F00045/A01, 4 November 2020, Strictly Confidential and *Ex Parte*.

² 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 ('CoE Report'). Unless otherwise indicated, all citations to the CoE Report are to the Rapporteur's explanatory memorandum.

³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

⁴ THAÇI Request, KSC-BC-2020-06/F00216, paras 1(b)-(c), 44-59.

⁵ In particular this response addresses: Preliminary Motion to Dismiss the Indictment due to Lack of Jurisdiction, KSC-BC-2020-06/F00216, 12 March 2021 ('THAÇI Request'), paras 1(a), 3-43; Preliminary Motion to Dismiss the Indictment due to Lack of Jurisdiction – Discrimination, KSC-BC-2020-06/F00219, 15 March 2021 ('SELIMI Request'), paras 1, 4; Krasniqi Defence Preliminary Motion on Jurisdiction, KSC-BC-2020-06/F00220, 15 March 2021 (with annex) ('KRASNIQI Request'). Arguments in these requests concerning joint criminal enterprise and the KSC's allegedly discriminatory employment policy are addressed in separate responses.

II. SUBMISSIONS

A. THE SUBJECT MATTER JURISDICTION IS CLEAR

4. The Constitution, the Law and the CoE Report provide a clear and mutually reinforcing subject matter jurisdiction for the KSC. Defence challenges to this are variously premised on (i) unsubstantiated attempts to manufacture a conflict between the Law and the Constitution, and (ii) a narrow, unsupported reading of the CoE Report.

5. Article 162(1) of the Constitution specifies that (i) establishment of the KSC and SPO is for the purpose of enabling Kosovo to comply with its international obligations in relation to the CoE Report, and (ii) the jurisdiction of the KSC is to be regulated by that article and by a specific law. Consistent with this, the Law grants the KSC subject matter jurisdiction over, *inter alia*, war crimes and crimes against humanity 'which relate to' the CoE Report.⁶

6. As outlined below,⁷ based on a deliberately narrow, misreading of the CoE Report, the Defence effectively attempt to claim that KSC jurisdiction is confined to organised crime allegations, in Albania, in mid-1999. There is no support for that contention, and - in attempting to manufacture it - they ignore plain language, disregard basic interpretative principles, and seek to draw implausible inferences.

⁶ Article 6(1). *See also* Article 1(2), referring in a consistent manner to crimes 'which relate to those reported in the [CoE Report]'.

⁷ Section II.B below.

7. For example, the Defence place great emphasis on the fact that Article 162 of the Constitution describes the reason for the establishment of the KSC as being for Kosovo to 'comply with its international obligations in relation to the [CoE Report]'.⁸ But that language does not contain any of the limitations they seek to read into it,⁹ nor does it support any of the inferences they seek to draw from it. In particular, the claim that Article 162(1) of the Constitution was somehow designed to narrow or correct the scope of SITF investigations is simply without foundation.¹⁰ Had that been the intent, and noting that the scope of SITF investigations was publicly known at the time,¹¹ it would obviously have been necessary for the language to expressly define the manner in which the CoE Report was to be read or to identify the specific allegations within it which were to provide the permissible scope of the KSC's subject matter jurisdiction. It does not do so. Rather, it expressly delegates further delineation of jurisdiction to the Law.

8. The THAÇI Defence claims, without support, that its narrow interpretation of subject matter jurisdiction is what the Kosovo Assembly intended.¹² However, it is not

⁸ Article 162(1) of the Constitution. *See* THAÇI Request, KSC-BC-2020-06/F00216, paras 24, 28-30; SELIMI Request, KSC-BC-2020-06/F00219, para.4 (bullet 2); KRASNIQI Request, KSC-BC-2020-06/F00220, para.62.

⁹ THAÇI Request, KSC-BC-2020-06/F00216, paras 9-12, 32, 38 (claiming that 'the legislature was authorized to create specialist chambers only with respect to the allegations in the Marty Report, which themselves had been investigated by the SITF').

¹⁰ THAÇI Request, KSC-BC-2020-06/F00216, paras 13-22.

¹¹ Annex II of the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, Statement dated 29 July 2014 of the Chief Prosecutor of the Special Investigative Task Force, S/2014/558, 1 August 2014.

¹² *See* THAÇI Request, KSC-BC-2020-06/F00216, para.29 (asserted without citation: '[t]he debates in the National Assembly on the constitutional amendment confirm that the intent was to limit the jurisdiction of the KSC to the allegations in the Marty Report and to limit the life of the KSC to five years'). From

proper statutory interpretation to resort to drafting history in the face of clear statutory language.¹³

9. Moreover, the Defence interpretation is directly contradicted by the plain language of the Law. The Law was duly passed by the Assembly on the same day as Article 162 of the Constitution was, and its jurisdictional provisions provide that: (i) the KSC's temporal jurisdiction extends from 1998 to 2000, rather than just mid-1999;¹⁴ (ii) its territorial jurisdiction includes crimes in Kosovo, and not just Albania;¹⁵ and (iii) the prosecution of international crimes,¹⁶ rather than only organised crimes, is foreseen.

10. These provisions could not be clearer. Had there been any doubts at the time as to the compatibility of the Law with the Constitution, either the Assembly or the President could have referred it for a constitutional determination.¹⁷ They did not do so. The Law's provisions, read with Article 162 of the Constitution and the Rules, must be interpreted harmoniously whenever this is possible to do so.¹⁸ The Defence instead

the 3 August 2015 transcripts of the Assembly debate on the Constitutional Amendment and the Law, there is no indication from anyone speaking, Hashim THAÇI included, that the legislature intended any such limits (Kosovo Assembly, Transcripts, 3 August 2015 (sessions commencing at 10:00, 21:00, and 23:15)).

¹³ See Article 32 of the Vienna Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969.

¹⁴ Article 7.

¹⁵ Article 8.

¹⁶ Articles 13 and 14.

¹⁷ Article 113(2)(1) of the Constitution.

¹⁸ See Scalia and Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson Reuters 2012), chapter 27 (Harmonious-Reading Canon: the provisions of a text should be interpreted in a way that renders them compatible, not contradictory). See also chapter 5 (Presumption of Validity: an interpretation that validates outweighs one that invalidates (*ut res magis valeat quam pereat*)).

advances discordant interpretations which involve voiding the Law's plain language, and such arguments must be rejected.

11. There is equally no support for the Defence claim that the Law must be read so as to exclude any overlap of jurisdiction with matters falling within the jurisdiction of the ICTY.¹⁹ It is apparent that neither the Constitution nor the Law circumscribe the KSC's jurisdiction by reference to the ICTY.²⁰ On the contrary, the possibility of substantive overlap appears to have been specifically foreseen in the Law in, for example, provisions which (i) provide *non-bis-in-idem* protection as between the ICTY and KSC;²¹ and (ii) expressly provide for the admissibility before the KSC of evidence collected by the ICTY.²² Were the Defence claims regarding legislative intent true, such provisions would be rendered superfluous, again going against basic principles of statutory interpretation.

12. Moreover, noting the CoE Report's express concerns regarding ongoing impunity,²³ it is implausible to suggest that a mutually exclusive mandate with the ICTY had been created. When the Law was being considered in 2015 the ICTY was deep into its completion strategy. It was obvious that the ICTY would not be in a

¹⁹ THAÇI Request, KSC-BC-2020-06/F00216, paras 14-16, 31; KRASNIQI Request, KSC-BC-2020-06/F00220, para.65(b).

²⁰ On the contrary, as set out above, the express jurisdictional provisions encompass matters which could also have fallen within the jurisdiction of the ICTY.

²¹ Article 17.

²² Article 37.

²³ CoE Report, Summary; Draft Report, para.14; Explanatory Memorandum, paras 7, 69, 169-174, 176.

position to take on any further Kosovo cases, meaning that the Defence arguments depend upon the KSC ceding jurisdiction to an unavailable institution.

13. Finally, there is no merit in Defence claims that the KSC mandate is confined only to specific crimes elaborated in the CoE Report. On the contrary, the Law expressly provides that subject matter jurisdiction extends to crimes that 'relate to' the CoE Report.²⁴ This makes it clear that a perfect overlap with the incidents in the CoE Report is not required.²⁵ If the drafters wanted to restrict the KSC only to those crimes specifically discussed in the CoE Report, more direct phrasing would have been used. That this was not done also reflects common sense. It would have been unreasonable, and liable to result in impunity, to strictly limit the KSC's jurisdiction only to those incidents specifically discussed in a report written prior to any criminal investigation even having been conducted.

14. In any event, as outlined below, the charges in the Indictment fall squarely within the KSC's subject matter jurisdiction.

B. THE CHARGED CRIMES RELATE TO THE COE REPORT

²⁴ Articles 1(2) and 6. Additionally, contrary to Defence arguments (THAÇI Request, KSC-BC-2020-06/F00216, paras 25-26), Art.1(2) of the Law does not limit KSC jurisdiction. As is apparent from the 'Scope and Purpose' section of the Law in which the provision falls, Article 1(2) is descriptive, rather than jurisdictional, in nature. It provides an explanation of the purpose for which the Law was adopted. In describing the CoE Report allegations as having been the subject of criminal investigations by the SITF, the provision is merely reflecting the relevant context, not creating any additional jurisdictional limitation.

²⁵ *Contra* THAÇI Request, KSC-BC-2020-06/F00216, paras 25, 33; KRASNIQI Request, KSC-BC-2020-06/F00220, paras 55, 64-65, 67.

15. The Indictment charges the Accused with participation in a common criminal purpose to gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be Opponents.²⁶ It details incidents of persecution, imprisonment/arbitrary detention, other inhumane acts/cruel treatment, torture, murder, and enforced disappearance at or in connection with more than 40 detention locations throughout Kosovo and in northern Albania.²⁷ As outlined below, these charges – including the crimes, the common purpose, the locations and means employed, the perpetrators, and victims, as well as the temporal and geographic scope of events – all clearly relate to the CoE Report. Indeed, although not necessary in order to satisfy the requirements of Article 6(1),²⁸ they fall within the scope of matters expressly addressed in the report.

16. The Defence argues that the CoE Report concerns organised crime, rather than war crimes or crimes against humanity.²⁹ Certainly some of the language and allegations in the CoE Report relate to organised crime. However, contrary to Defence submissions,³⁰ the report also expressly contains allegations of international crimes.³¹ Indeed, the summary of the Report expresses a concern that '[i]nsufficient

²⁶ Indictment, KSC-BC-2020-06/F000134, para.32. 'Opponents' is defined in the Indictment.

²⁷ Indictment, KSC-BC-2020-06/F000134, paras 59-93. *See also* Schedules A-C.

²⁸ *See* para.13 above.

²⁹ THAÇI Request, KSC-BC-2020-06/F00216, paras 9, 39-41; SELIMI Request, KSC-BC-2020-06/F00219, para.4 (bullet 7); KRASNIQI Request, KSC-BC-2020-06/F00220, paras 60, 67.

³⁰ CoE Report, Doc.12462, para.101. The THAÇI Defence and SELIMI Defence assertions that the report makes no reference to war crimes or crimes against humanity is simply inaccurate. THAÇI Request, KSC-BC-2020-06/F00216, para.39; SELIMI Request, KSC-BC-2020-06/F00219, para.4 (bullet 7).

³¹ CoE Report, Doc.12462, Summary; Draft Resolution, paras 11 and 19.6; Explanatory Memorandum, paras 7, 8, 68, 101, 113.

investigation has been carried out into the connection of KLA members with war crimes committed against Serbians and Albanian Kosovars'.³² In particular, the 'general characteristics' of KLA detention are described as seeming to meet the threshold for war crimes.³³ That conclusion is supported by extensive descriptions of beatings and 'gratuitous' mistreatment.³⁴ In addition to the extensive descriptions of detention (including arbitrarily)³⁵ and of inhuman treatment, specific reference is also made in the CoE Report to murders,³⁶ torture,³⁷ and enforced disappearance.³⁸

17. Consistent with the Indictment, a core focus of the CoE Report is crimes committed in or in connection with KLA-run detention facilities. Other aspects of the case against the Accused - such as the existence of KLA intelligence structures and their use in committing crimes,³⁹ as well as how detention facilities were part of a co-ordinated network⁴⁰ - were similarly recognised in the CoE Report.

18. Prominently featured in the CoE Report is that persons suspected of being 'collaborators', as well as other perceived opponents, were especially targeted.⁴¹ For example, the CoE Report describes one subset of persons target for detention as being

³² CoE Report, Doc.12462, Summary. *See also* CoE Report, Doc.12462, Draft Resolution, para.11.

³³ CoE Report, Doc.12462, para.101.

³⁴ CoE Report, Doc.12462, para.112.

³⁵ CoE Report, Doc.12462, para.117.

³⁶ CoE Report, Doc.12462, Draft Resolution, para.12; Explanatory Memorandum, paras 19, 124, 174.

³⁷ CoE Report, Doc.12462, paras 128, 173, 174.

³⁸ CoE Report, Doc.12462, para.137.

³⁹ CoE Report, Doc.12462, para.52, fn.22.

⁴⁰ CoE Report, Doc.12462, para.98.

⁴¹ CoE Report, Doc.12462, Draft Resolution, para.11; Explanatory Memorandum, paras 4, 44 (noting that arguably more resources and political capital were devoted to ethnic Albanian rivals), 52, 86 (referring to 'perceived rivals, traitors, and persons suspected of being 'collaborators' with the Serbs), 111.

‘ethnic Albanian civilians – as well as some KLA recruits – suspected of being ‘collaborators’ or traitors, either on the premise that they spied for Serbs or because they were thought to have belonged to, or supported, the KLA’s political and military rivals, especially the LDK and the emergent Armed Forces of the Republic of Kosovo (FARK)’.⁴²

19. The Defence argues that the CoE Report is limited to crimes committed in the Republic of Albania.⁴³ The CoE Report certainly focuses on crimes committed in Albania, including at the charged detention sites in Kukës and Cahan,⁴⁴ but does not do so exclusively. As an initial matter, the very title of the report is ‘Inhumane treatment of people and illicit trafficking in human organs *in Kosovo*’.⁴⁵ The CoE Report also expressly references crimes in various parts of Kosovo,⁴⁶ and in preparing the report the rapporteur visited mass grave sites in Kosovo.⁴⁷ The draft resolution accompanying the CoE Report calls for cooperation from Albanian and Kosovar authorities with EULEX to, *inter alia*, ‘find out the truth about crimes committed in Kosovo’.⁴⁸

⁴² CoE Report, Doc.12462, para.111.

⁴³ THAÇI Request, KSC-BC-2020-06/F00216, paras 9, 34-36; SELIMI Request, KSC-BC-2020-06/F00219, para.4 (bullet 5); KRASNIQI Request, KSC-BC-2020-06/F00220, para.59.

⁴⁴ CoE Report, Doc.12462, paras 115-28.

⁴⁵ Emphasis added.

⁴⁶ *For example* CoE Report, Doc.12462, paras 4, 23, 72, 175 (describing having been tasked to look into ‘the allegations and human rights violations *said to have been committed in Kosovo* in the material period’ (emphasis added)).

⁴⁷ CoE Report, Doc.12462, para.14, fn.11.

⁴⁸ CoE Report, Doc.12462, Draft Resolution, para.19.5.1.

20. The Defence argues that, because the CoE Report is concerned with events and acts which occurred ‘for the most part’ from the summer of 1999 onwards,⁴⁹ crimes before then fall outside its ambit.⁵⁰ But the very words ‘for the most part’ reveal that the CoE Report encompassed crimes beyond the summer of 1999. For example, the CoE Report discusses KLA criminal enterprises in Albania beginning ‘at the latest in 1998’.⁵¹ Elsewhere, in a summary that directly reflects the temporal jurisdiction which would later be granted through the Law, the CoE Report describes certain KLA leaders as having:

ordered – and in some cases personally overseen – assassinations, detentions, beatings and interrogations in various parts of Kosovo and, of particular interest to our work, in the context of KLA-led operations on the territory of Albania, between 1998 and 2000.⁵²

21. Finally, contrary to Defence submissions that only persons specifically named in the CoE Report can fall within its jurisdiction⁵³ potential perpetrators are in fact expressly described in a non-exhaustive way,⁵⁴ leaving it open for others to be identified. Indeed, any other interpretation, which would limit charges only to those who had been identified as potential persons of interest before any criminal investigation had even been conducted, would clearly be illogical and contrary to the interests of justice.

⁴⁹ CoE Report, Doc.12462, para.4.

⁵⁰ THAÇI Request, KSC-BC-2020-06/F00216, paras 10, 37-38; SELIMI Request, KSC-BC-2020-06/F00219, para.4 (bullet 6); KRASNIQI Request, KSC-BC-2020-06/F00220, para.58.

⁵¹ CoE Report, Doc.12462, para.56.

⁵² CoE Report, Doc.12462, para.72.

⁵³ SELIMI Request, KSC-BC-2020-06/F00219, para.4 (bullet 8).

⁵⁴ CoE Report, Doc.12462, paras 68, 72.

22. The charged crimes must 'relate to' the CoE Report. As demonstrated above, the actual correlation is in fact much stronger than that. The charges in the Indictment are clearly reflected and encompassed in the express allegations in the CoE Report. The KSC has subject matter jurisdiction over the charges, and the Defence requests should be rejected.

C. THE INVESTIGATIVE DEADLINE

23. The THAÇI Defence's reliance on Article 159 of the Kosovo Criminal Procedure Code ('KCPC'),⁵⁵ is misplaced.

24. Article 3 of the Law sets out the applicable legal framework before the KSC. In particular, it provides that other provisions of Kosovo law do not apply unless they have been expressly incorporated and adopted into the Law.⁵⁶ Save in respect of a small number of very specific references,⁵⁷ the KCPC has not been adopted or incorporated into the Law. Rather than adopting the KCPC, the Law provides that rules of procedure and evidence were to be drafted and adopted by the KSC Judges.⁵⁸ In so doing the Judges were to be 'guided', but not bound, by the KCPC.⁵⁹

25. The Rules also do not incorporate Article 159 of the KCPC. Rather, the Rules provide for a framework to be governed in a manner consistent with the ECHR,

⁵⁵ THAÇI Request, KSC-BC-2020-06/F00216, paras 53-59.

⁵⁶ Articles 3(2)(c) and (4).

⁵⁷ Articles 23(1), 35(3). *See also* Article 37(3)(b) (specifying that evidence given pursuant to certain provisions of the KCPC is admissible before the KSC).

⁵⁸ Article 19(1).

⁵⁹ Article 19(2).

requiring that an investigation be terminated if no indictment has been issued within ‘a reasonable time’ from when a person became a suspect and was notified thereof.⁶⁰ This regime, governing the termination of investigations,⁶¹ has been found to be compatible with the rights and freedoms in Chapter II of the Constitution.⁶²

26. In this respect, there is no ambiguity or lacuna in the Rules requiring resort to the KCPC.⁶³ Nor would resort to Article 159 of the KCPC otherwise be appropriate in this instance because - as set out below - doing so would be contrary to the Law, which constitutes the *lex specialis* for the KSC,⁶⁴ rather than consonant with it.⁶⁵

27. The THAÇI Defence simultaneously submits that: (i) the SPO is not permitted to conduct any investigation into matters relating to the CoE Report, because any such

⁶⁰ Rule 47 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’). All references to ‘Rule’ or ‘Rules’ herein refer to the Rules, unless otherwise specified.

⁶¹ *Contra*. THAÇI Request, KSC-BC-2020-06/F00216, para.55 (incorrectly characterising this provision as governing what happens ‘after the completion’ of the SPO investigations; nothing in Rule 47 restricts it to coming into effect only after completion of investigations, rather it regulates an investigation’s permissible duration from the point at which a suspect is notified of, and consequently ‘affected’ by, it). In a separate filing, THAÇI has made submissions regarding the specific investigation against him, and his right to a trial within a reasonable time, as opposed to the SPO’s general investigative authority or general investigative time limits (see KSC-BC-2020-06/F00217), and those submissions are addressed in a separate response.

⁶² Judgment 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, KSC-CC-PR-2017-01/F00004, 26 April 2017, para.107.

⁶³ *Contra*. THAÇI Request, KSC-BC-2020-06/F00216, paras 54-55.

⁶⁴ Article 3(2)(b).

⁶⁵ Rule 3 provides that the Rules shall be interpreted in a manner ‘consonant with the framework as set out in Article 3 of the [Law] and, where appropriate, the [KCPC]’.

investigation would have been time-barred at some point prior to 2015;⁶⁶ and that (ii) the SPO conducted ‘an entirely new criminal investigation’.⁶⁷ The position is internally incoherent, and neither proposition withstands rational scrutiny.

28. On the one hand, with respect to the proposition that the SPO was not authorised to conduct investigations or issue indictments on matters which had been investigated (in whole or in part) by the SITF, the position is squarely contradicted by the clear jurisdiction granted to the KSC,⁶⁸ and related investigative and prosecutorial mandate and powers granted to the SPO,⁶⁹ providing, *inter alia*, a clear legal basis for further investigations to support an indictment.⁷⁰ Indeed, such a limit would presumptively have rendered the KSC inoperative from the outset. Were – as the THAÇI Defence suggests – any further investigation or prosecution of matters relating to the CoE Report already barred in 2014, at the time of the Exchange of Letters, or 2015, upon amendment of the Constitution and adoption of the Law, such steps would have been futile. Rather, it is apparent from, *inter alia*, the Exchange of Letters itself, that such matters were specifically foreseen to be pursued by a specialised prosecution

⁶⁶ THAÇI Request, KSC-BC-2020-06/F00216, paras 56-59 (‘the maximum duration permitted under Article 159 of the Criminal Procedure Code had already been used up by the SITF’).

⁶⁷ THAÇI Request, KSC-BC-2020-06/F00216, para.59.

⁶⁸ Article 6(1).

⁶⁹ See, for example, Law, Article 35 (setting out the SPO’s investigative mandate, including Article 35(2) authorising the SPO ‘to conduct criminal investigations and to take responsibility for new or pending criminal investigations or proceedings within the subject matter jurisdiction of the Specialist Chambers’); Rules 30-47 (setting out an array of investigative measures and the rights of persons during investigations), 85 (authority of the Pre-Trial Judge to rule on SPO requests related to the conduct of the investigation).

⁷⁰ *Contra* THAÇI Request, KSC-BC-2020-06/F00216, para.53.

office and before specialised chambers, in order to provide the necessary guarantees of security, independence and impartiality, and fairness.

29. On the other hand, if the SPO had launched an ‘entirely new’ investigation from what was investigated by the SITF, then Article 159 (even if it applied, which it does not) could not have barred such investigations because they were ‘entirely new’.

D. TEMPORAL MANDATE

30. The THAÇI Defence’s arguments that the KSC had a five-year mandate expiring in August 2020⁷¹ ignore the SCCC’s clear pronouncements, which are authoritative in this matter.⁷² As expressly found by the SCCC, the KSC’s mandate is not limited to five years.⁷³ The mandate continues until the Council of European Union notifies Kosovo of its completion.⁷⁴

31. The SCCC’s understanding is confirmed in particular by the Exchange of Letters, which provides that the KSC’s mandate ‘shall continue until [...] Kosovo is notified by the Council of the European Union that the investigations have been concluded and that any proceedings by the judicial chambers resulting therefrom

⁷¹ THAÇI Request, KSC-BC-2020-06/F00216, paras 44-52.

⁷² Article 162(3) of the Constitution.

⁷³ Judgment on the Referral of Proposed Amendments to the Constitution of Kosovo, KSC-CC-2020-11/F00015, 26 November 2020, paras 65-66.

⁷⁴ SCCC Amendment Judgment, KSC-CC-2020-11/F00015, para.66; Article 162(14) of the Constitution, *referencing* Law No. 04-L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, 23 April 2014, p.10.

have been concluded'.⁷⁵ Reading the relevant constitutional provisions as a whole, if investigations and proceedings did not conclude within the initial five-year period, then the mandate would continue until notification in accordance with the Exchange of Letters.⁷⁶

32. As was apparent at the time,⁷⁷ the proposed constitutional amendment – which THAÇI put forward after the SPO announced it had sought confirmation of an indictment against him - was directed towards facilitating exactly the type of arguments now being put forward by the THAÇI Defence. THAÇI's amendment proposal was deemed to diminish the rights and freedoms of victims and witnesses under the Constitution precisely because it removed safeguards concerning the

⁷⁵ Exchange of Letters, 04-L-274, p.8; Judgment on the Referral of Proposed Amendments to the Constitution of Kosovo, KSC-CC-2020-11/F00015, 26 November 2020, para.66. *Contra* THAÇI Request, KSC-BC-2020-06/F00216, para.48.

⁷⁶ Judgment on the Referral of Proposed Amendments to the Constitution of Kosovo, KSC-CC-2020-11/F00015, 26 November 2020, paras 65-66 ('[i]n this connection, the President of Kosovo referred to "ambiguity" in Article 162(13) and (14), which could suggest that the duration of the mandate of the Specialist Chambers and the SPO was limited to a five-year period, which has already expired. However, the Chamber is unable to discern any such possible interpretation of those provisions. [...] Article 162(13) and (14) provide that, in case there is no notification by the Council of completion of the mandate prior to expiry of the initial five-year period, the mandate shall continue beyond the initial five years until the Council notifies Kosovo of completion of the mandate. There has been no notification by the Council of completion of the mandate prior to expiry of the initial five-year period under Article 162(13). Therefore, the mandate of the Specialist Chambers and the SPO has continued and shall continue until the notification by the Council of completion of the mandate pursuant to Article 162(14).'). *See also* Prosecution submissions on proposed amendments to the Constitution of Kosovo, KSC-CC-2020-11/F00008, paras 8-11.

⁷⁷ *See* KSC-CC-2020-11/F00008, paras 12-13 (in reference to THAÇI's public statements at the time the amendment proposal was made, from para.13: '[b]y suggesting that the temporal mandate of the court requires "extension" and "clarification", Mr THAÇI implies that its mandate already expired in August 2020. A potential consequence of that position would be the invalidation of all actions taken by the KSC/SPO since that time, notably including any confirmation of the indictment against Mr THAÇI himself').

continued 'secure, independent, impartial, fair and effective' operation of the KSC.⁷⁸ THAÇI's submissions are in contradiction to the express, authoritative pronouncements of the SCCC, and must be rejected.

III. RELIEF REQUESTED

33. For the foregoing reasons, the KSC has jurisdiction over the charged crimes and the Defence's relief sought concerning the Council of Europe Report, investigation deadline, and temporal mandate should all be rejected in full.

Word count: 4,439



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⁷⁸ Judgment on the Referral of Proposed Amendments to the Constitution of Kosovo, KSC-CC-2020-11/F00015, 26 November 2020, paras 67-69.