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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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# Thaçi Defence Reply to "Prosecution response to preliminary motions concerning the status of the Kosovo Specialist Chambers and allegations of rights violations"

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# I. SUBMISSIONS

## A. INADMISSIBILITY CLAIM

1. In accordance with Article 6(1) of the ECHR,[1] 'a court or tribunal must *always* be "established by law"'.[2] The Specialist Prosecutors Office's ("SPO") inadmissibility claim[3] with respect to the challenges to the legality of the KSC made by the defence for Mr. Hashim Thaçi ("the Defence")[4] is not compatible with the fact that the Article 6(1) ECHR 'established by law' or judicial independence requirements must be satisfied in every judicial instance. Rule 97(1)(a) of the Rules of Procedure and Evidence ("Rules") cannot violate the Constitution which provides for the direct applicability and supremacy of the ECHR 'over provisions of laws and other acts of public institutions'.[5] Furthermore, it follows from the fundamental right to an effective remedy before an independent and impartial tribunal previously established by law, guaranteed by the ECHR, that everyone must, in principle, have the possibility of invoking an infringement of that right in every judicial instance.[6]

## B. VIOLATION OF THE RIGHT TO BE TRIED BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL ESTABLISHED BY LAW

[1] European Convention on Human Rights ("ECHR").
[2] European Court of Human Rights ("ECtHR"), *Guðmundur Andri Ástráðsson v. Iceland*, 26374/18, Grand Chamber, Judgment, 1 December 2020 ("*Guðmundur* Judgment"), para. 211 (emphasis added).
[3] KSC-BC-2020-06/F00260, Prosecution response to preliminary motions concerning the status of the Kosovo Specialist Chambers and allegations of rights violations, 23 April 2021 ("SPO Response"), para. 2.
[4] KSC-BC-2020-06/F00217, Motion challenging jurisdiction on the basis of violations of fundamental rights enshrined in the Constitution, 12 March 2021 ("Thaçi Request"), paras. 36-51.
[5] Constitution of the Republic of Kosovo ("Constitution"), Article 22(2).
[6] This was recently established by the Grand Chamber of the European Court of Justice ("ECJ") following an extensive review of the ECtHR case law: *see* ECJ, *Review Simpson and HG v Council and Commission*, C-542/18 RX-II and C-543/18 RX-II, ECLI:EU:C:2020:232, Grand Chamber, Judgment of the Court, 26 March 2020, para. 57: 'the guarantees of access to an independent and impartial tribunal previously established by law, and in particular those which determine what constitutes a tribunal and how it is composed, represent the cornerstone of the right to a fair trial. That right means that every court is obliged to check whether, as composed, it constitutes such a tribunal where a serious doubt arises on that point. That check is necessary for the confidence which the courts in a democratic society must inspire in those subject to their jurisdiction.'

## 1. Constitutionality of KSC

2. The SPO's claim that the compatibility of the KSC with the Constitution has already been established by the Constitutional Court of the Republic of Kosovo ("KCC")[7] ignores that the law establishing the KSC has not been the subject of a constitutional review. Importantly, Article 162(1) of the Constitution provides that "[…] the Republic of Kosovo may establish Specialist Chambers and a Specialist Prosecutor's Office within the justice system of Kosovo. The organisation, functioning and jurisdiction of the Specialist Chambers and Specialist Prosecutor's Office shall be regulated by this Article and by a specific law." As such, the KCC Judgment was limited to ruling on the compatibility of the idea of the specialised court, and not the Court that was ultimately established.

3. Furthermore, the KCC Judgment defined the notion of 'extraordinary court' without reliance on any authority. Significantly, the KCC's interpretation of 'established by law' *predates* the ECtHR Grand Chamber judgment of 1 December 2020 in which the Court refined and clarified 'the meaning to be given to the concept of a "tribunal established by law", and to analyse its relationship with the other "institutional requirements" under Article 6 § 1, namely, those of independence and impartiality.'[8]

## 2. Failure to take account of the most recent ECHR case law

4. This leading ECtHR Grand Chamber judgment of 1 December 2020 is not mentioned let alone analysed by the SPO. This omission is particularly troubling when viewed in the light of the SPO's reliance on a 1978 decision of the European Commission of Human Rights, which concerns the Austrian system of labour courts,

[7] SPO Response, paras. 3-8, referring to Constitutional Court of the Republic of Kosovo, Assessment of an Amendment of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433/DO-318, Judgment in Case No. KO26/15 ("KCC Judgment").
[8] *Guðmundur* Judgment, para. 218.

to argue that a law does not need to regulate 'each and every detail' to satisfy the 'established by law' criterion. This 1978 decision has no precedential value and, in any event, is of no relevance to assess Article 6(1) ECHR compliance of a modern, hybrid, criminal tribunal such the KSC, which is exclusively staffed by international judges and personnel, has no Kosovo judges among the judiciary, and no connection to or interaction with Kosovo courts other than in name.

5. Instead, the SPO refers to the KCC's interpretation of the three criteria[9] it had itself decided to use to assess the constitutionality of the KSC, but without explaining the extent to which those criteria satisfy the 'established by law' criterion set out in the *Guðmundur* Judgment – the case providing the most recent, authoritative interpretation of the requirements. The fact that the KSC was 'envisaged in the Exchange of Letters'[10] is wholly irrelevant when it comes to assessing whether (i) the KSC amounts to an extraordinary court and/or (ii) complies with Article 6(1) ECHR requirements. References to several judgments of the KCC in relation to the Rules[11] similarly do not demonstrate compliance of the law establishing the KSC with the Constitution and, in particular, the Article 6(1) ECHR requirements.

6. The SPO recalls the KCC's reference to the ECtHR judgment in *Fruni v Slovakia*[12] but does not, however, refer to *Erdem v. Germany* which, as submitted previously,[13] was relied upon in error by the KCC. With respect to *Fruni*, the Constitutional Court of Slovakia had held the relevant domestic body to have been established *in violation* of the Slovakian Constitution as it had mixed features of a specialised court and an extraordinary court. Furthermore, *in abstracto* constitutional review cannot be equated with the *in concreto* review undertaken by the ECtHR which only assesses, on a case

[9] SPO Response, para. 11.
[10] *Ibid*, para. 12.
[11] *Ibid*.
[12] *Ibid*, fn 39.
[13] Thaçi Request, para. 42.

by case basis, whether a violation of the ECHR can be established. The fact that the ECtHR found no violation of Article 6(1) ECHR in *Fruni* cannot be equated with a general proposition that specialised criminal courts are always compatible with the ECHR, let alone that the KSC resembles the Slovakian body at issue which, in any event, was found to be unconstitutional.

### 3. Failure to understand ECtHR case law and the process of constitutional review

7. The SPO also misunderstands how the ECtHR has interpreted the 'established by law' criterion by relying, *inter alia,* on a 1978 decision of a European Commission of Human Rights.[14] The mere adoption of a law regulating organisation, functioning and jurisdiction[15] does not, in and of itself, preclude a violation of this criterion no matter how detailed this national law may be. Similarly, the fact that the KCC 'had before it a fulsome set of comments on the proposed constitutional amendments'[16] does not automatically mean that ECHR requirements have not been violated by the law establishing the KSC.

8. It is difficult to understand therefore how the SPO can claim that 'all relevant matters were before the KCC at the time of its judgment' and that '[w]hether or not the Law itself was before the KCC is irrelevant'.[17] Constitutional review of legislation is not considered done or 'irrelevant' just because some aspects of a not yet adopted law were to be found in unidentified 'documents before the KCC at the relevant time'.[18] This is not how constitutional review of legislation works in any democratic country based on the rule of law.

### 4. Misrepresentation of ECtHR case law and analysis offered by the Defence

[14] SPO Response, para. 13 and fn. 38.
[15] *Ibid*, para. 5.
[16] *Ibid*, para. 7.
[17] *Ibid*, para. 8.
[18] *Ibid*.

9. The SPO also accuses the Defence of 'neglecting to mention' the 2013 case of *Maktouf and Damjanović v. Bosnia and Herzegovina*,[19] and claims that the ECtHR's ruling in this case relates to an 'equivalently situated chamber, being the war crimes chambers established within the state court of Bosnia and Herzegovina'.[20] First, if this were indeed the 'most relevant ECtHR Grand Chamber case on this matter'[21] as claimed by the SPO, the KCC would have been expected to consider it. It did not. Secondly, this case does not address either the issue of extraordinary courts versus specialised courts, or the 'established by law' criterion, which explains its absence from the KCC Judgment. In this respect, the Constitution of Bosnia does not prohibit extraordinary courts, unlike the Constitution of Kosovo. Thirdly, the SPO wrongly claims that the *Maktouf and Damjanović* Judgment sets out 'at some length the legal requirements for independence and impartiality'.[22] This is not correct. Indeed, in its leading case on judicial independence and impartiality, the ECJ does not refer once to *Maktouf and Damjanović* when offering a detailed overview of the case law of the ECtHR.[23]

10. Significantly, in the *Maktouf and Damjanović* Judgment, the ECtHR stressed that the appointment of international judges was 'made on the basis of a recommendation from the highest judicial figures in Bosnia and Herzegovina'.[24] In doing so, the ECtHR endorsed the Constitutional Court of Bosnia's reasoning in relation to the appointment of international judges to the State Court and according to which it was 'particularly important that the High Judicial and Prosecutorial Council, an independent body competent to appoint national judges, was involved in the

[19] ECtHR, *Maktouf and Damjanović v. Bosnia and Herzegovina*, 2312/08 and 34179/08, Grand Chamber, Judgment, 18 July 2013 ("*Maktouf and Damjanović* Judgment).
[20] SPO Response, fn 60.
[21] *Ibid*.
[22] *Ibid*.
[23] The key paragraphs from this Grand Chamber judgment of the ECJ of 19 November 2019 are reproduced in *Guðmundur* Judgment, para. 138.
[24] *Maktouf and Damjanović* Judgment, para. 51.

procedure preceding the appointment'.[25] There is no equivalent involvement of the Kosovo Judicial Council as regards the KSC. Lastly, the ECtHR judgment in *Maktouf and Damjanović* does not offer any specific assessment of the requirements relating to 'established by law' but rather the analysis focuses on the independence of the BiH State Court's war crimes chambers within the meaning of Article 6(1) ECHR.

**5. Extraordinary Court**

11. Generally speaking, the SPO never answers the Thaçi Request submissions regarding the extraordinary nature of the KSC, beyond simply asserting that the KSC constitute specialist chambers and is not an extraordinary court.[26] To defend the establishment of the KSC, the SPO refers to the alleged fulfilment of an international obligation based on the Marty Report,[27] but a report has no legally binding value and does not amount to an international agreement. In answer to the submissions that the KSC is 'unique' or 'unprecedented in the history of modern criminal justice',[28] the SPO refers to jurisdictions 'far more limited than that of the KSC' and mentions, *inter alia*, the *Extraordinary* African Chambers.[29] This may be understood as unintentionally admitting that the KSC has a wider jurisdiction than an *extraordinary* criminal court, whereas extraordinary courts are prohibited under the Kosovo Constitution.

12. The Thaçi Request position regarding the departure and replacement of Mr. Schwendiman have been called 'false submissions' on the basis that, according to the SPO, 'it is a matter of public record that the Prior Specialist Prosecutor left the SPO after the expiry of a fixed-term appointment'.[30] The circumstances of his departure, 18

[25] *See* para. 46 of the judgment of the Constitutional Court of Bosnia of 30 March 2007, reproduced in *Maktouf and Damjanović* Judgment, para. 15.
[26] SPO Response, para 12 and p. 2.
[27] *Ibid*, para. 18.
[28] *See* KSC-BC-2020-06/F00224, Preliminary motion of the Defence of Kadri Veseli to Challenge Jurisdiction on the basis of violations of the Constitution, 15 March 2021, para. 9. *See also* submissions made in the Thaçi Request, paras. 40 and 49.
[29] SPO Response, para. 20 (emphasis added).
[30] *Ibid*, fn. 52.

months into a four-year term,[31] remain as opaque as the SPO submissions thereon. The SPO cites the 'public record', without any attempt to point the parties or the Pre-Trial Judge to where the matter is clarified.

13. If the 'fixed-term appointment' to which the SPO refers is that of a U.S. 'Senior Foreign Service Officer', then this is problematic. All concerned parties, including the U.S. State Department, the EU, and the Prior Specialist Prosecutor himself, knew of his status in the U.S. at the time of his appointment for a four-year term as SPO. The Prior Specialist Prosecutor only agreed to take the position "on condition that its financial and political independence could be assured and that he would serve a full four-year term until 2020".[32] If indeed he was a "retiree called back into service" as he claimed,[33] a fixed term contract from the U.S. State Department was merely an instrument for his secondment to the SPO, and would not have been an impediment to the completion of his mandate. Nor can this explain the abrupt enforcement of the term's expiry, or the 'radio silence' the Prior Specialist Prosecutor received from the U.S. State Department after asking for an explanation.[34] Particularly given that no successor was in place.[35]

14. What is known, is that the Prior Specialist Prosecutor said the following during a speech at Leiden University in March 2018, namely after he had been informed of

[31] Mr Schwendiman's appointment as Specialist Prosecutor commenced on 1 September 2016 and ended on 31 March 2018: *see* KSC Press Release, 'David Schwendiman Appointed Specialist Prosecutor', 5 September 2016; KSC Press Release, 'Specialist Prosecutor Explains Imminent Departure', 15 February 2018 ("Departure Press Release"). *See also,* Article 35(8), Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law"), which provides: "The Specialist Prosecutor shall serve for a four-year term and be eligible for reappointment."
[32] Julian Borger, *The Guardian,* 'Kosovo: top war crimes prosecutor forced to leave amid US state department inertia', 28 February 2018 (*The Guardian* Article).
[33] *See* Departure Press Release, where Mr Schwendiman stated: "This must happen because the US administration is unable to overlook my status as a retiree called back into service – something the law won't let me change regardless how much I might want to stay."
[34] *The Guardian* Article.
[35] *Ibid*: "But he heard only a fortnight ago that he had to leave by April, leaving virtually no time to find a replacement. Schwendiman said he had no idea whether a search has begun for a successor."

his removal.[36] After discussing the narrow mandate of the SPO, the importance of prosecutorial integrity, and the standards for issuing indictments, he said: "we must never promise more than we can deliver nor more than our mandate and resources permit", and that "[w]ell-meaning donors must avoid making institutions like the Prosecutor's Office more vulnerable by failing to grasp the nature of criminal investigations and prosecutions of atrocity crimes and expecting too much of them."[37] Unless these were statements made completely in the abstract, they reveal, at the very least, that the Prior Specialist Prosecutor had been at odds with donors as a result of their expectations.

15. Regardless, the identified problem is the following: even if the Prior Specialist Prosecutor was removed from the position following the expiry of a fixed-term contract, he was still removed by a decision of the U.S. Government under U.S. Law, (and not the KSC Law or Constitution) which directly limited his functional independence, meaning a violation of Article 35(5) of the KSC Law, as submitted in the Thaçi Request.[38]

### C. VIOLATION OF THE PRESUMPTION OF INNOCENCE

16. The SPO Response defends the Marty Report[39] against claims that it violates the presumption of innocence, and concludes '[n]o one reading the report could be left with anything other than the impression that the matters discussed in the report were unproven allegations.' [40]

[36] David Schwendiman, Leiden University, 'Reflections on My Time as Specialist Prosecutor and the Challenges Ahead', 22 March 2018.
[37] *Ibid,* pp. 22-23.
[38] Thaçi Request, fn. 92.
[39] Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Doc. 12462, 'Report: Inhuman treatment of people and illicit trafficking in human organs in Kosovo', 7 January 2011 ("Marty Report"),
[40] SPO Response, paras. 29-31.

17. The 'caveat' in the Marty Report, that it is not in a position to pronounce upon guilt or innocence, is hard to reconcile with statements like: '[e]verything leads us to believe that all these men would have been convicted of serious crimes and would by now be serving lengthy prison sentences'. The same paragraph speaks of how 'their impunity' has been 'consolidated'.[41] The Report also claims that 'Thaçi and these other Drenica Group members are consistently named as "key players" in intelligence reports on Kosovo's mafia-like structures of organised crime'.[42] Marty says: 'I have examined these diverse, voluminous reports with consternation and a sense of moral outrage.' What the SPO calls the 'careful caveats' of the Marty Report must be weighed against these reckless allegations.

18. The SPO then concedes[43] that the Marty Report 'is a document forming part of the framework governing the jurisdiction of the KSC'. The SPO goes on to claim that '[t]here is nothing prejudicial in the KSC making references to, or summarising the content of, a report which is itself referenced in the Law'.[44] That is a trite statement. If the Report is prejudicial, then a reference to it may also be prejudicial. Reference in legislation to the Report of a political body that is extraneous to the legislative system itself, whether domestic or international, is an extremely unusual phenomenon.

19. The SPO then accuses the Defence of not establishing how 'professional and independent judges before the KSC would fail to appreciate that distinction'.[45] However, the case law of the ECtHR does not offer any suggestion that violations of the presumption of innocence as a result of condemnation in public extra-judicial statements are somehow remedied by trial before 'professional and independent judges'.

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[41] Marty Report, para. 69.
[42] *Ibid*, para. 70.
[43] SPO Response, para. 32.
[44] *Ibid.*
[45] *Ibid*, para. 31.

20. By arguing that the Marty Report is not 'a statement by a representative or authority of any state with jurisdiction in respect of the matter',[46] the SPO misunderstands or misrepresents the Thaçi Request. It is not the Marty Report treated in isolation that violates Mr. Thaçi's presumption of innocence in these proceedings. It is the endorsement of the Report in the applicable legislation as well as in statements by the KSC and by its representatives in which the Report is invoked. These materials, taken individually and as a whole, convey the message that the accused is 'the boss' of a criminal organisation who 'would have been convicted of serious crimes and would by now be serving lengthy prison sentences'. As the ECtHR has affirmed, the presumption of innocence applies to 'all statements made by a public authority'.[47]

### D. VIOLATION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

21. The SPO position is that Mr. Thaçi was not 'substantially affected' until 17 November 2019, when he was served with a summons. Prior to that date, says the SPO, 'no competent authority had taken any measure either officially notifying THAÇI of a criminal allegation against him or which otherwise would have substantially affected him'.[48]

22. The 'competent authority' notion is a complete invention of the SPO with no basis in the case law of the ECtHR in issues concerning the 'substantially affected' criterion. In support, the SPO refers to two cases, neither one of which is relevant.[49] In the first, an Italian case,[50] a judge was investigated by a parliamentary commission. The judge invoked various provisions of Article 6 of the ECHR, although not the 'reasonable time' issue. The ECtHR found the application to be inadmissible because

[46] *Ibid*, para. 33.
[47] ECtHR, *Coşkun v. Turkey*, 45028/07, Second Section, Judgment, 28 March 2017, para. 42.
[48] SPO Response, para. 34.
[49] *Ibid*, para. 39 and fn. 118.
[50] ECtHR, *Montera v Italy*, 64713/01, First Section, Decision, 9 July 2002.

the parliamentary commission was not a court as this term is understood in Article 6 of the ECHR. The decision has nothing to do with whether investigative activities of non-judicial bodies during preliminary stages of criminal proceedings may have as a consequence that the accused is 'substantially affected'. The second case cited by the SPO, *Benham v. United Kingdom*,[51] is similarly irrelevant to the issue in dispute. It concerns the scope of the term 'charged with a criminal offence' where the Government claimed that summary proceedings for failure to pay a local tax were not subject to the fair trial guarantees of Article 6 of the ECHR.

23. Case law of the ECtHR supports the view that a person may be 'substantially affected' prior to the filing of charges and even before a formal investigation has begun. The SPO does not address this point in its response, although the case law is well-known and the point was made clearly in the Thaçi Request. In a Slovenian case, for example, the ECtHR noted that 'preliminary proceedings' involve the collection of enough evidence 'to enable the public prosecutor to substantiate all the elements of the request for an investigation'. The ECtHR concluded 'that the activities of the police in the preliminary proceedings must have substantially affected the applicant's situation at the material time'. These activities involved interviewing witnesses but not, apparently, the accused, and they took place well before formal changes had been laid.[52] The SPO claims that because the accused had not been 'interviewed, searched, arrested, or subjected to any other form of investigative measure' he could not therefore have been 'substantially affected'.[53] No authority in the ECtHR's case law is cited for this proposition because none exists. Moreover, the temporal limitation on criminal investigations imposed by Article 159 of the Criminal Procedure Code of Kosovo[54] is a useful interpretative aid, being a recognition of the impact that unlimited

[51] ECtHR, *Benham v. the United Kingdom*, 19380/92, Grand Chamber, Judgment, 10 June 1996.
[52] ECtHR, *Šubinski v. Slovenia*, 19611/04, Third Section, Judgment, 18 January 2007, para. 65.
[53] SPO Response, para. 37.
[54] Code No. 04/L-123 on the Criminal Procedure Code of Kosovo.

investigations can have on the rights of the accused. Mr. Thaçi should not be prejudiced by being subjected to the KSC's jurisdiction, rather than an ordinary Kosovo court.

24. The SPO alleges that in the Marty Report, 'THAÇI is identified as one amongst a large number of other named and unnamed potential perpetrators'.[55] This is a disingenuous statement. Mr. Thaçi is mentioned by name 28 times in the Marty Report. Ten other individuals are named. Taken all together, they are named a total of 31 times. Clearly, Mr. Thaçi was the Marty Report's 'prime suspect'. Moreover, he was also the 'prime suspect' in the costly and complex investigation conducted by the SITF, an institution subsequently absorbed into the SPO. Both the Marty Report and the SITF are part of the process that has led to the charges issued by the KSC. The website of the KSC makes this quite clear.[56]

25. The SPO submits that the right to trial within a reasonable time does not protect individuals 'from public opinion or general suspicion'.[57] This argument is completely beside the point. The Defence submits that authorities involved in criminal justice in Kosovo placed Mr Thaçi under 'general suspicion' from at least January 2011, and that as a result he was 'substantially affected', beginning a process in which he had a right to justice being delivered within a 'reasonable time'.

26. Should the KSC agree that the accused was 'substantially affected' prior to November 2019, as the Defence contends, the SPO has an obligation to offer evidence or explanation to rebut the presumption that the 'reasonable time' standard was not respected. The ECtHR has regularly insisted that respondent States provide

[55] SPO Response, para. 36.
[56] *See e.g.* "Foundational Documents" listing the Marty Report, available at: https://www.scp-ks.org/en/documents/foundational-documents; the overview of the "Special Investigative Task Force", available at: https://www.scp-ks.org/en/spo/special-investigative-task-force.
[57] SPO Response, para. 38.

explanations for delay, failing which it may conclude that there is a violation. In a case where there was a delay of six years, the Grand Chamber observed that 'the Government did not supply any explanation for this delay, which seems manifestly excessive'.[58] It has said it 'cannot regard lengthy periods of unexplained inactivity as reasonable',[59] confirming the existence of an onus on the State to explain the reasons for the delay. In another case, the ECtHR found a violation because 'the Government have not provided a plausible explanation for the delay'.[60] In yet another, it observed that 'the Government have not provided any explanation to justify such a long period of inactivity'.[61]

27. The only explanation offered by the SPO is that the case is complicated for various reasons. As set out in the Thaçi Request, the ECtHR has never accepted nine years as 'reasonable' for the purposes of an investigation and trial. In August 2014, Mr. Williamson indicated that the investigations were substantially completed. President Trendafilova, on 18 January 2019, said that '[a]fter three years, the Chief Prosecutor of the SITF, Clint Williamson, announced that the evidence obtained was of sufficient weight to file an indictment'.[62] No explanation is offered for the five years that elapsed before the summons was issued. Nor does the SPO address the Thaçi Request submission that the abrupt and unexpected departure of Prosecutor Schwendiman may have contributed to the delay.[63] With no replacement appointed, this is at least a reasonable inference.[64]

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[58] ECtHR, *Frydlender v. France*, 30979/96, Grand Chamber, Judgment, 27 June 2000, para. 44.
[59] ECtHR, *Sociedade de Construções Martins & Vieira, Lda. And Others v. Portugal*, 56637/10, 59856/10, 72525/10, 7646/11 and 12592/11), First Section, Judgment, 30 October 2014, para. 47.
[60] ECtHR, *Vergelskyy v. Ukraine*, 19312/06, Fifth Section, Judgment, 12 March 2009, para. 120. *See also* ECtHR, *Azyukovska v. Ukraine*, 47921/08, Fifth Section, Judgment, 17 December 2019, para. 39.
[61] ECtHR, *Cuško v. Latvia*, 32163/09, Fifth Section, Judgment, 7 December 2017, para. 40.
[62] Jan Lhotský, 'Interview with the President of the Kosovo Specialist Chambers in The Hague, Ekaterina Trendafilova: The Court is Ready for its First Indictments', 18 January 2019.
[63] Thaçi Request, para. 27.
[64] *See, e.g.* Dick Marty, *Une certain idée de la Justice* (Favre, 2018), p. 257: "Alors que le nouveau procureur, aussi américain, s'apprête a communiquer les noms des personnes mises en accusation, un nouveau coup de théâtre a lieu: le procureur David Schwendiman s'en va! De prétendues dissensions avec le

28. Because the burden of explanation falls to the SPO, the Court must assume that the elapsed time fails the standard in Article 6(1) of the ECHR. Moreover, the failure to provide any explanation manifests an indifference of the SPO to the right of the accused to trial within a 'reasonable time'. The SPO's attempt to invoke the defence requests for time to prepare its case is plainly misconceived.[65] Ignoring the right of the accused set out in Article 6(3)(b) of the ECHR to 'adequate time and facilities for the preparation of his defence', the SPO suggests that nine years for an SPO investigation is normal and reasonable but that eighteen months for a defence investigation is not.

**[Word count: 4621]**

Respectfully submitted,

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**Specialist Counsel for Hashim Thaçi**

14 May 2021

At London, United Kingdom

Département d'Etat quant à son statut seraient à l'origine de ce départ abrupt. Le procès va donc subir un autre retard et les questions sur le sérieux de la mission d'EULEX se posent une fois de plus."

[65] SPO Response, para. 41: "It is instructive that, in alleging this violation of rights, the THAÇI Defence seeks to rely on its own unsubstantiated request that trial not start for a further 18 months as part of the time period to be taken into consideration."