



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

**In:** KSC-BC-2020-06  
**Before:** Pre-Trial Judge  
Judge Nicolas Guillou  
  
**Registrar:** Dr Fidelma Donlon  
**Filing Participant:** Specialist Prosecutor  
**Date:** 12 July 2021  
**Language:** English  
**Classification:** Public

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**Public Redacted Version of**

**Prosecution response to Thaçi Defence Submissions on Detention Review**

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## I. INTRODUCTION

1. The continued detention of Hashim THAÇI remains necessary.<sup>1</sup> There has been no relevant change in circumstances detracting from the established reasons for detention.<sup>2</sup> Rather, the Article 41(6)(b) risks have increased since the latest decision.<sup>3</sup>

2. The Pre-Trial Judge ('PTJ') previously found: (i) grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC');<sup>4</sup> (ii) articulable grounds to believe that the Accused will obstruct the progress of criminal proceedings, and will repeat or attempt to repeat the criminal offences;<sup>5</sup> and (iii) that the release conditions proposed by the Accused insufficiently mitigated the Article 41(6)(b) risks.<sup>6</sup> These findings continue to be true in all respects.

## II. SUBMISSIONS

3. For purposes of a detention review under Rule 57(2), the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.<sup>7</sup> That determination inevitably concerns what has changed, if anything, since the previous ruling on detention. The Pre-Trial Judge is not required to make findings on the factors

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<sup>1</sup> *Contra* Thaçi Defence Submissions on Detention Review, KSC-BC-2020-06/F00377, 30 June 2021, Confidential (with two annexes) ('THAÇI Submissions').

<sup>2</sup> See Article 41 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Article' or 'Articles' herein refer to articles of the Law, and all references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>3</sup> Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release, KSC-BC-2020-06/F00177/RED, 22 January 2021 (redacted version notified 26 January 2021) ('THAÇI Release Decision'), upheld by Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA004/F00005/RED, 30 April 2021 ('THAÇI Release Appeal Decision').

<sup>4</sup> See THAÇI Release Decision, KSC-BC-2020-06/F00177/RED, para.27.

<sup>5</sup> THAÇI Release Decision, KSC-BC-2020-06/F00177/RED, paras 35-44. The Pre-Trial Judge also found that the Accused was a flight risk, but determined that this risk could be mitigated by release conditions.

<sup>6</sup> THAÇI Release Decision, KSC-BC-2020-06/F00177/RED, paras 52-58.

<sup>7</sup> *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

already decided upon in the initial ruling on detention,<sup>8</sup> and any Defence arguments suggesting otherwise must be rejected.<sup>9</sup>

4. Below, the SPO addresses new arguments concerning the Accused's detention. None of them constitute a relevant change in circumstances, impact the Pre-Trial Judge's previous findings, or detract from the need for the continued detention of the Accused.

A. RECENT DEVELOPMENTS INCREASE THE RELEVANT RISKS

5. The SPO has disclosed voluminous Rule 102(1)(b) material since the last detention decision. As the disclosure process reaches an advanced stage,<sup>10</sup> the Accused has an ever-growing account of the SPO's case against him, which only increases his incentive to attempt to unlawfully evade or obstruct the proceedings, including through a repetition of criminal offences.

6. The prior finding that THAÇI is in a position of influence and authority over former subordinates and supporters was upheld on appeal,<sup>11</sup> and this potential network remains as active as ever.<sup>12</sup> The 'Freedom has a name, the KLA' campaign was set up shortly after the Accused's arrest.<sup>13</sup> The campaign has been highly vocal in

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<sup>8</sup> KSC-BC-2020-07/IA002/F00005, para.55.

<sup>9</sup> See THAÇI Submissions, KSC-BC-2020-06/F00377, para.7. See also June 2021 KRASNIQI Detention Decision, KSC-BC-2020-06/F00371, paras 17-19 (not adopting a functionally identical submission by the KRASNIQI Defence).

<sup>10</sup> Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, KSC-BC-2020-06/F00218, 12 March 2021, para.22.

<sup>11</sup> See THAÇI Release Appeal Decision, KSC-BC-2020-06/IA004/F00005, para.47.

<sup>12</sup> See United States Department of State, Kosovo 2020 Human Rights Report, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kosovo/> ('[l]eading politicians and civil society leaders, particularly veterans' organizations, publicly denounced the SPO and the KSC and worked to undermine public support for the work of the SPO and the KSC. These efforts included public protests, a petition drive to abrogate the court, and a legislative initiative proposed by former president Thaci that could have undermined the KSC's mandate').

<sup>13</sup> Balkan Transitional Justice, Serbeze HAXHIAJ, Kosovo: Top Politicians Sent to Hague to Face War Charges, 28 December 2020, available at <https://balkaninsight.com/2020/12/28/kosovo-top-politicians-sent-to-hague-to-face-war-charges/> ('KLA war veterans were furious at the indictment, however. A nationwide campaign was launched under the slogan "Freedom has a name" by artists, veterans and politicians as a sign of support for the former KLA leaders facing trial').

recent months, demonstrating a concrete and active support network for the Accused.<sup>14</sup>

7. On 4 June 2021, Faton KLINAKU, the acting chairman of the KLA War Veterans Association ('KLA WVA') - an association comprised of former subordinates of the Accused with an asserted membership of 40,000<sup>15</sup> - gave an interview whereby he promised he would publish more confidential KSC documents if he obtained them.<sup>16</sup> This is extraordinary, noting that Mr KLINAKU is the acting chairman because the previous head and deputy head of the KLA WVA are being prosecuted before the KSC for identical conduct.<sup>17</sup> That the law is no constraint for the acting head of the KLA WVA is emblematic of the lengths the Accused's supporters are willing to go to obstruct these proceedings.

#### B. PROTECTIVE MEASURES DO NOT CONSTITUTE CHANGED CIRCUMSTANCES

8. That protective measures would be adopted in this case was eminently foreseeable as of the last detention decision – the SPO's first and largest protective measures request had already been ruled upon<sup>18</sup> and a calendar for further protective

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<sup>14</sup> See BIRN, Perparim Isufi, In Kosovo, New Political Generation Sweep Old Guard Aside, 15 June 2021, available at <https://balkaninsight.com/2021/06/15/in-kosovo-new-political-generation-sweep-old-guard-aside/> ("Heroes of war and peace" reads the billboard featuring a KLA emblem and Thaci's and Veseli's pictures at both ends. Together with the slogan "Freedom Has a Name", the billboards have bloomed everywhere in Kosovo since November 2020, when the Hague-based Specialist Court indicted both men for committing war crimes and crimes against humanity in the independence struggle of the late-1990s').

<sup>15</sup> See Public 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/RED, 17 November 2020, para.5, citing AFP, Kosovo's guerrilla 'heroes' fear war crimes court, 15 February 2018, at <https://www.france24.com/en/20180215-kosovos-guerrilla-heroes-fear-war-crimes-court>.

<sup>16</sup> Faton KLINAKU interview with KlanKosovaTv, 4 June 2021, 100911-100915 ('[w]e, as a Veterans Association, have opposed the Special Court because it is a monoethnic court and prosecutes only the KLA, after they were served the files by Serbia, like UNMIK and EULEX did earlier, and they do not deal with the crimes and massacres committed by the Serb occupier during the war in Kosovo. As we have been against this Court, we will make public any material we receive that is in everybody's interest').

<sup>17</sup> *Prosecutor v. Gucati and Haradinaj*, KSC-BC-2020-07.

<sup>18</sup> Confidential Redacted Version of Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00133/COR/CONF/RED, 10 December 2020, Confidential (corrected confidential redacted version notified 14 December 2020).

measures requests was established.<sup>19</sup> That witnesses were granted protective measures since the last decision does not constitute a changed circumstance,<sup>20</sup> and the Pre-Trial Judge recently found in relation to THAÇI's co-accused that '[t]he case record shows that the risk of intimidation or interference for witnesses and/or their family members is inherently high, and the Pre-Trial Judge is not convinced that the risk of obstruction can be efficiently mitigated relying only on protective measures'.<sup>21</sup> This finding is particularly true in light of the clear evidence that accused in this case, including THAÇI, have the incentive and ability to obtain confidential materials, [REDACTED].<sup>22</sup>

9. The protective measures required to prosecute this case illustrate the seriousness of the risks.<sup>23</sup> The efficacy of these measures will be fatally compromised if the Accused is released from detention.

#### C. THAÇI'S INFLUENCE AND AUTHORITY TRANSCEND ANY RECENT POLITICAL DEVELOPMENTS

10. The Defence's reliance on recent Kosovo election results – where THAÇI's political opponents gained control over a majority of parliament seats<sup>24</sup> - is likewise misplaced. The present-day performance of THAÇI's political party is a poor measure of his capacity to obstruct the proceedings.<sup>25</sup> THAÇI's position of influence is

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<sup>19</sup> Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020, para.99(c).

<sup>20</sup> THAÇI Submissions, KSC-BC-2020-06/F00377, paras 23-27.

<sup>21</sup> June 2021 KRASNIQI Detention Decision, KSC-BC-2020-06/F00371, para.39.

<sup>22</sup> [REDACTED].

<sup>23</sup> In this regard, see Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021 ('VESELI Release Appeal Decision'), para.51 (finding no error in the Pre-Trial Judge's assessment in considering issues of witness security and protection of potential witnesses).

<sup>24</sup> THAÇI Submissions, KSC-BC-2020-06/F00377, paras 17-22, 40.

<sup>25</sup> See similarly June 2021 Krasniqi Detention Decision, KSC-BC-2020-06/F00371, para.36; ICC, *Prosecutor v. Abd-Al-Rahman*, Judgment on the appeal of Mr Abd-Al-Rahman against Pre-Trial Chamber II's 'Decision on the review of detention', ICC-02/05-01/20-415, 2 June 2021, paras 59-60 (present day indigence not indicative of influence, with emphasis in original: '[t]he Pre-Trial Chamber concluded that it was irrelevant to establish that Mr Abd-Al-Rahman has no assets today, because even if

premised primarily on his past positions in the KLA and in government, including as a prominent KLA General Staff member, KLA Commander-in-Chief, Prime Minister and, as of last year, President of Kosovo. With the contacts and network established through these past positions, THAÇI does not need to be a member of the most popular political party in order to obstruct the proceedings. The Appeals Panel has already upheld the Pre-Trial Judge's finding that THAÇI continues to exercise a certain degree of influence over former subordinates despite his resignation as President of Kosovo.<sup>26</sup>

11. THAÇI's submissions on how the new government is systematically removing officials appointed by him also omit important context. To take one example, THAÇI relies on the dismissal of the THAÇI appointed head of the Kosovo Intelligence Agency ('AKI'), Kreshnik GASHI, in December 2020 by then acting President Vjosa OSMANI.<sup>27</sup> What THAÇI fails to mention is that the reason why the AKI head was dismissed was that an AKI agent, together with the secretary of THAÇI's office, attempted to break into the Presidential safe.<sup>28</sup> This incident occurred one day after THAÇI's arrest, and at a time when search and seizure operations at THAÇI's residence were ongoing. Far from indicating a lack of influence, the circumstances surrounding the dismissal of the AKI head is further proof of the unlawful lengths to which the Accused's supporters and former subordinates are prepared to go.

#### D. CONDITIONS REMAIN UNABLE TO MITIGATE THE RISKS

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confirmed, it would not eliminate the possibility that he *never* had a leadership role *before* or that he could not *still* have supporters and sympathisers *today* [...] the Appeals Chamber considers that Mr Abd-Al-Rahman seems to disagree with the Pre-Trial Chamber's factual assessment that evidence of his current monetary condition is irrelevant, and that he failed to show that the Pre-Trial Chamber erred in law or was unreasonable in its assessment of the facts before it').

<sup>26</sup> THAÇI Release Appeal Decision, KSC-BC-2020-06/IA004/F00005, para.50.

<sup>27</sup> THAÇI Submissions, KSC-BC-2020-06/F00377, para.20.

<sup>28</sup> Balkan Insight, Adelina Ahmeti and Xhorxhina Bami, Kosovo Fires Intelligence Chief Over 'Raid on President's Safe', 18 December 2020, available at <https://balkaninsight.com/2020/12/18/kosovo-fires-intelligence-chiefover-raid-on-presidents-safe/>.



12. The risks posed by THAÇI if released are clear and pronounced.<sup>29</sup> The Pre-Trial Judge concluded that no conditions could mitigate them, and this conclusion has been upheld on appeal.<sup>30</sup> The latest Defence submissions provide no information warranting a different assessment.

13. The new conditions proposed – some repeated from prior submissions<sup>31</sup> - are only partial and imperfect substitutes for what can be monitored from a controlled environment in the detention centre.<sup>32</sup> An inherent, fatal defect of releasing THAÇI to a guarded residence in Kosovo or a third state is that he will have regular opportunities to speak privately with those who have the freedom to come and go from his residence. THAÇI would have access to family members and the third state's security forces, with whom he can have any number of unmonitorable communications.<sup>33</sup> No amount of security at THAÇI's residence can stop the contents of those unmonitored conversations from reaching the outside world.

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<sup>29</sup> See THAÇI Release Appeal Decision, KSC-BC-2020-06/IA004/F00005, paras 76-77 (citations removed: '[t]he Panel recalls that to reach his ultimate finding on the existence of a risk of obstruction, the Pre-Trial Judge relied on a combination of individual factors, notably Thaçi's influence and authority (as a founding member of the KLA, member of the KLA General Staff, KLA Commander-in-Chief and more recently as Prime Minister and President of Kosovo) over a network of supporters; Thaçi's letter to the United States Secretary of State, Thaçi's [REDACTED] and the reduction of the sentences of former KLA members as a pattern of consistently undermining the Specialist Chambers; a scheme of benefits offered to persons summonsed by the SPO as attempts to interfere in the proceedings; and Thaçi's [REDACTED] as an attempt to gain insight into evidence provided by persons summonsed by the SPO; together with contextual factors linked to the general climate of witness intimidation and interferences with criminal proceedings against former KLA members. [...] The Court of Appeals Panel further finds that these factors amply support the Pre-Trial Judge's conclusion that there is a risk that, if released, Thaçi will obstruct the progress of the criminal proceedings.')

<sup>30</sup> THAÇI Release Appeal Decision, KSC-BC-2020-06/IA004/F00005, paras 82-90.

<sup>31</sup> Compare THAÇI Submissions, KSC-BC-2020-06/F00377, para.37 (and KSC-BC-2020-06/F00377/A01, p.3) with Public Redacted Version of Application for Interim Release on behalf of Mr Hashim Thaci, KSC-BC-2020-06/F00120/RED, 4 December 2020 (public version notified 7 December 2020), paras 62-63 (proposing since rejected conditions, including surrender of travel documents, prohibition on approaching third persons, and prohibition on political or media activity).

<sup>32</sup> July 2021 Veseli Detention Decision, KSC-BC-2020-06/F00380, para.48 (rejecting a similar – and in many instances more robust - list of conditions proposed by the VESELI Defence).

<sup>33</sup> Nowhere in the proposed conditions does it indicate that police monitor the conversations THAÇI has at his residence – only telecommunications and internet communications are proposed for monitoring. Indeed, the contact prohibitions proposed do not even extend to those in THAÇI's immediate family. In contrast, see Article 15(1) of the Registry Practice Direction on Detainees Visits

14. The limitations of the proposed conditions would be apparent with respect to any accused. THAÇI, however, is not just any accused. THAÇI is the former President of Kosovo. THAÇI's array of previous positions is extensive, as is his resulting network. He has made previous efforts to obstruct KSC proceedings. Each of the Article 41(6)(b) risks – and the question of whether they can be effectively mitigated outside of detention – must be assessed in that light. THAÇI's communications with the outside world cannot be meaningfully monitored with the conditions proposed. The Article 41(6) risks are such that anything short of detention creates an unacceptable opportunity for clandestine communications. Even a single such communication could have grave consequences.

15. Release to any third state, though generally statutorily permissible,<sup>34</sup> creates inherent difficulties in THAÇI's situation. Third states do not have the same obligation to cooperate with the KSC like Kosovo does.<sup>35</sup> Should a THAÇI release agreement with a third state be broken or unilaterally amended, the KSC/SPO have virtually no recourse. This is because release to any third state fundamentally compromises the KSC and SPO's efforts to enforce and monitor conditions, as the KSC only exercises jurisdiction within Kosovo and, equally, SPO police powers can only be exercised within those same jurisdictional limits.<sup>36</sup> It must be emphasised that detection of acts of interference, or other violations, let alone tracing of such acts to an accused, is exceptionally difficult. Such risks are inevitably heightened, and the chances of detection and prevention drastically reduced, if someone of THAÇI's influence is located outside of the jurisdiction of the relevant judicial authorities.

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and Communications, KSC-BD-09/Rev1/2020, 23 September 2020 ('[v]isits with a Detainee pursuant to this Chapter shall be conducted within the sight and hearing of Detention Officers').

<sup>34</sup> Rule 56(4).

<sup>35</sup> Compare Article 53 with Article 55. In this respect, the possibility of re-arrest by the KSC is lower than that at the ICC. At the ICC, Article 89(1) of the ICC Statute obligates all 123 ICC States Parties to arrest and surrender ICC accused. Under the Law, only one country – Kosovo – has a comparable statutory obligation.

<sup>36</sup> Article 35(3).



16. The third states identified by THAÇI have provided their views on conditional release by virtue of the correspondence annexed to the THAÇI Submissions. Further submissions are not necessary when conditional release is inappropriate in the circumstances.<sup>37</sup> If no condition can mitigate the risks identified, as in the present case, a chamber is not obligated to assess a State's willingness and ability to enforce conditions.<sup>38</sup> In light of the insufficiency of any conditions to mitigate the risks posed, there is no utility in seeking further submissions on the conditions identified by THAÇI.<sup>39</sup>

17. Nevertheless, it must be emphasised that, even if a framing of conditions were possible, the third states guarantees presented do not adequately mitigate the risks presented by Hashim THAÇI.

18. [REDACTED]. [REDACTED].

19. [REDACTED].

20. [REDACTED]. [REDACTED].<sup>40</sup> [REDACTED].<sup>41</sup> [REDACTED].<sup>42</sup>  
[REDACTED]. [REDACTED].<sup>43</sup>

21. [REDACTED]. [REDACTED].<sup>44</sup> [REDACTED].<sup>45</sup> [REDACTED]. [REDACTED].

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<sup>37</sup> THAÇI Release Appeal Decision, KSC-BC-2020-06/IA004/F00005, para.89.

<sup>38</sup> ICC, *Prosecutor v. Gbagbo*, 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'", ICC-02/11-01/11-278-Red, 26 October 2012, para.80.

<sup>39</sup> *Contra* THAÇI Submissions, KSC-BC-2020-06/F00377, paras 3, 42.

<sup>40</sup> [REDACTED].

<sup>41</sup> [REDACTED].

<sup>42</sup> [REDACTED].

<sup>43</sup> [REDACTED].

<sup>44</sup> [REDACTED].

<sup>45</sup> [REDACTED]. [REDACTED].

22. [REDACTED].<sup>46</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>47</sup>  
[REDACTED].<sup>48</sup>

23. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

24. [REDACTED]. [REDACTED]. [REDACTED].<sup>49</sup> [REDACTED].<sup>50</sup>  
[REDACTED].<sup>51</sup> [REDACTED].

25. [REDACTED].<sup>52</sup> [REDACTED].<sup>53</sup> [REDACTED]. [REDACTED].  
[REDACTED].<sup>54</sup>

26. [REDACTED].<sup>55</sup> [REDACTED].

27. In the particular circumstances of this case as concerns Mr THAÇI, there is nothing that Kosovo or any other state could do to sufficiently mitigate the Article 41(6) risks from becoming manifest. Should this occur, it will irreversibly damage the integrity of these proceedings. Continued detention is the only way to address the risks entailed.

#### E. DETENTION REMAINS PROPORTIONATE

28. None of the parties' trial commencement estimates were relied upon in the Pre-Trial Judge's assessment, and the Appeals Panel determined that the Pre-Trial Judge was not required to estimate the probable length of detention.<sup>56</sup> Moreover, all deadlines set by the Pre-Trial Judge in the case to date have been met or extended for

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<sup>46</sup> [REDACTED]. [REDACTED].

<sup>47</sup> [REDACTED]. [REDACTED].

<sup>48</sup> [REDACTED].

<sup>49</sup> [REDACTED].

<sup>50</sup> [REDACTED].

<sup>51</sup> [REDACTED].

<sup>52</sup> [REDACTED].

<sup>53</sup> [REDACTED].

<sup>54</sup> [REDACTED].

<sup>55</sup> [REDACTED].

<sup>56</sup> See VESELI Release Appeal Decision, KSC-BC-2020-06/IA001/F00005, para.59.

good cause. There is no indication that the SPO has been dilatory, and trial preparations are proceeding in an expeditious manner.<sup>57</sup>

29. As the SPO has stated previously, '[t]he length of pre-trial detention must be balanced against the Article 41(6) risks and the circumstances of the case as a whole, including the potential penalties for the crimes charged. [...] In the course of this balancing exercise, even significant pre-trial detention may still be reasonable.'<sup>58</sup> The Accused has been detained for eight months on a vast array of war crimes and crimes against humanity committed over a near two-year period. The scale of these charges affects all aspects of the trial process, including preparations and the necessity of continued detention.

30. The Defence's insistence that pre-trial proceedings must certainly be too long conveniently ignores its own responsibility in this regard. The Defence received two extensions of time to file the present detention submissions,<sup>59</sup> as well as its preliminary motions<sup>60</sup> (which must all have a final resolution before the case can be sent to a trial panel).

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<sup>57</sup> *Contra* THAÇI Submissions, KSC-BC-2020-06/F00377, paras 9-16, 41. It is noted in this regard that the principal change to the established disclosure calendar to date has been the result of Defence requests for additional sub-categorisation of disclosed material. The SPO did not in fact seek an extension of deadline for disclosure of Rule 102(1)(b) materials. Rather, that change was necessitated in light of Defence requests. *See* Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, KSC-BC-2020-06/F00218, 12 March 2021, para.22. Equally, no deadline was set, and consequently no deadlines have been altered, for provision of witness and exhibit lists.

<sup>58</sup> Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli, KSC-BC-2020-06/F00161, 4 January 2021, para.10, n.16, *citing* ICC, *Prosecutor v. Bemba et al.*, Judgment on the appeals against Pre-Trial Chamber II's decision regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, 29 May 2015, ICC-01/05-01/13-969, para.45. Incidentally, this same ICC judgment makes clear that ICC chambers may determine that persons have been detained for an unreasonable period, even absent inexcusable delay by the Prosecutor. ICC-01/05-01/13-969, para.43. As such, the ICC's framework is more similar to the KSC framework than what is argued by the THAÇI Defence. *Contra* THAÇI Submissions, KSC-BC-2020-06/F00377, para.8.

<sup>59</sup> Decision on Thaçi Additional Request for Extension of Time Limit, KSC-BC-2020-06/F00327, 28 May 2021; Decision on Thaçi's Request for Extension of Time Limit, KSC-BC-2020-06/F00292, 12 May 2021.

<sup>60</sup> Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions, KSC-BC-2020-06/F00150, 16 December 2020, para.30(f).

31. Nothing about the Accused's detention thus far has been unreasonable. There have not been any unjustified delays. The Accused's rights have been fully respected.<sup>61</sup> Defence arguments on the proportionality of detention must therefore be rejected.

### III. CLASSIFICATION

32. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version will be filed.

### IV. RELIEF REQUESTED

33. For the foregoing reasons, the relief sought by the THAÇI Defence should be rejected.

**Word count: 3,569**



**Jack Smith**  
**Specialist Prosecutor**

Monday, 12 July 2021

At The Hague, the Netherlands.

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<sup>61</sup> THAÇI argues that the limitations imposed by the COVID-19 pandemic do not allow for the exercise of his rights. THAÇI Submissions, KSC-BC-2020-06/F00377, paras 30-31. This is premised on an assumption that these limitations would not exist if released, which is not necessarily the case.