

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 Thaçi Defence Submissions on
Second Detention Review**

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I. INTRODUCTION

1. The Kosovo Specialist Chambers (“KSC”) was established on the basis of the so-called Marty Report, a deeply flawed and dishonest document that relied on racist anti-Albanian tropes and stereotypes to capture the attention of Europe. And it succeeded. Marty’s tales of Albanians harvesting the organs of prisoners in a yellow house, which he claimed he could prove through “corroborated, first hand testimony from former KLA fighters,”¹ found fertile ground in a Europe all too willing to believe that Kosovo Albanians are capable of such barbaric tactics. This falsehood led to the creation of the KSC. Unsurprisingly, in the eleven years since the Marty Report’s publication, the KSC has never been able to substantiate Marty’s allegations.

2. The Marty Report’s tropes did not stop with the sensationalist and discriminatory allegations of organ harvesting. It also alleged that Mr. Taçi and others, “*would have been convicted of serious crimes [by UNMIK, the ICTY and EULEX] and would by now be serving lengthy prison sentences, but for two shocking dynamics that have consolidated their impunity: first, they appear to have succeeded in eliminating, or intimidating into silence, the majority of the potential and actual witnesses against them (both enemies and erstwhile allies), using violence, threats, blackmail, and protection rackets...*”² The KSC has never been able to substantiate any of these allegations.

3. But the taint of the Marty Report’s unsubstantiated allegations, and its subtle racism through reference to Kosovo Albanians as members of “clans” with “entrenched clan loyalty” making “most witnesses unreachable,”³ nevertheless hangs like a dark cloud over the proceedings at the KSC: not a single Kosovo Albanian has

¹ 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”), para. 133.

² Marty Report, para. 69.

³ Marty Report, paras. 3, 25, 26, 172.

been granted provisional release. The KSC's treatment of Kosovo Albanians stands in stark contrast to the procedural fairness afforded to accused persons at the ICTY, which found the guarantees of Kosovo sufficient to grant accused persons provisional release.

4. There are always excuses set forth to justify the KSC's policy of non-release of Kosovo Albanians. In Mr. Thaçi's case, these excuses include the "risk" that he "might" abscond, even though he voluntarily surrendered and has never shown an intent to abscond; the "risk" that he "might" obstruct proceedings and interfere with witnesses, despite any evidence that he has done or would do so; and the "risk" that he will commit crimes similar to those charged in the Indictment, despite any actual evidence that he would do so. These theoretical "risks" existed for every ICTY accused, but the ICTY nevertheless granted provisional release. Not so at the KSC. Mr. Thaçi has not been demonstrated to pose any greater risk on provisional release than the numerous ICTY detainees granted provisional release. When Mr. Thaçi offers guarantees from third states, more excuses are offered and those guarantees are disregarded.

5. The only difference between those provisionally released ICTY detainees (including Kosovo Albanian ICTY detainees) and Mr. Thaçi is the KSC's application of harsher standards and criteria to Kosovo Albanian accused.

6. The SPO now advances more arguments that have roots in the anti-Albanian stereotypes that are the foundation of the Marty Report. The SPO now attacks the credibility of the Kosovo Police ("KP") itself, not with evidence but with innuendo. These attacks on the credibility of the KP play on stereotypes of Kosovo as a failed state, and its people as prone to corruption. But in light of how much Dick Marty and the SPO have been able to accomplish through the use of anti-Albanian innuendo, it

is not surprising that the SPO would resort to these tactics in its Response⁴ to Thaçi Defence Submissions on Second Detention Review.⁵

7. The defence for Mr Hashim Thaçi (“the defence”) hereby replies to the Prosecution Response.

II. SUBMISSIONS

8. Contrary to the SPO’s submissions,⁶ the automatic review every two-months under Rule 57(2) of the Rules is *not* strictly limited to whether a change of circumstances occurred; such a change may be determinative and shall be taken into consideration if raised before the Panel or *proprio motu*.⁷ The SPO bears the burden of demonstrating that the Accused’s pre-trial detention remains necessary at the *current* stage of the proceedings.⁸

A. THE SPO’S PORTRAIT OF MR THAÇI, THE KOSOVO POLICE AND KOSOVO AS CRIMINAL IS OUTRAGEOUS AND ILL-FOUNDED

9. The SPO’s arguments should be summarily dismissed as being premised on prejudicial subjective grounds against Mr Thaçi, the KP and Kosovo. These submissions rest on speculative domestic media reports, baseless political intrigue and Russia’s disinformation campaign portraying Kosovo as a failed criminal State

⁴ KSC-BC-2020-06/F00583, Prosecution response to Thaçi Defence Submissions on Second Detention Review, dated 29 November 2021, notified on 30 November 2021 (“Prosecution Response”).

⁵ KSC-BC-2020-06/F00570, Thaçi Defence Submissions on Second Detention Review, dated 16 November 2021.

⁶ Prosecution Response, paras. 1, 3.

⁷ KSC-BC-2020-06/IA010/F00008, Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention, 27 October 2021, para. 19.

⁸ KSC-BC-2020-06/IA001/F00005, Court of Appeals, Decision on Kadri Veseli’s Appeal Against Decision on Interim Release, 30 April 2021, para. 14.

and Mr Thaçi and the KLA as criminal at their core. The SPO appeals to the same prejudicial stereotypes that Dick Marty did.

10. Through its emphasis on Mr Thaçi's former positions and supposed influence, the SPO is essentially arguing that Mr Thaçi should be kept in detention primarily because of who he is or, rather, who he was. Such a subjective approach reveals a manifest prejudice against him, in violation of his basic rights.

11. Essentially, the SPO contends that because Mr Thaçi was a senior KLA member, and later Prime Minister and President of Kosovo, he has the means, and is inclined to use those means, to abscond and/or obstruct the KSC proceedings. To date, the SPO has been completely unable to prove this allegation on any objective grounds. All evidence, including Mr Thaçi's surrender to the Court, suggests the opposite. The SPO's justifications for Mr Thaçi's continued detention are based on distortions of fact and half-truths inspired by Russia's propaganda, Mr Thaçi's political opponents and unreliable media articles.

12. The SPO effectively implies that Mr Thaçi, in his capacity as Prime Minister and President, led Kosovo as a criminal state. Namely, that Mr Thaçi (mis)used the public offices he held to establish his own personal organized crime network, consisting of the entire state apparatus, that now stands ready to assist him to abscond and/or obstruct KSC proceedings. This shameless argument is offensive to Kosovo as a State, to its democratically elected representatives, and to its people, who (indirectly) elected Mr Thaçi to public office.

13. Similarly, the SPO seeks to paint the KP as a criminal organization and, as a result, portray Kosovo as a failed criminal state. In support of these unprecedented and entirely unsubstantiated accusations, the SPO mischaracterizes official functions of Kosovo dignitaries as meetings of organized crime leaders and members.

14. Thus, the SPO criticises [REDACTED].⁹ The SPO tenders no evidence of any inappropriate behaviour [REDACTED]. It relies on a photograph of Mr Thaçi [REDACTED],¹⁰ [REDACTED].

15. In reality, this photo comes from the official Facebook profile of then Kosovo Minister of Justice, Abelard Tahiri, dated 29 September 2018. It depicts Mr Thaçi, then President of Kosovo, having a field meeting with then Chief of the KP, Rashit Qalaj, then Director of Kosovo Intelligence Agency, Shpend Maxhuni, Mr Tahiri, and then Minister of Finance, Bedri Hamza, following their official visit to the Kosovo-Serbia border crossing in Brnjak and the neighbouring Ujman Lake. The SPO conceals the text from Mr Tahiri's post, explaining the purpose of the visit: *"It was an honor to be part of the delegation of the President of Kosovo, Mr Thaçi, in his visit to Brnjak and Ujman. The dream for a sovereign and compact Kosovo has become our permanent reality."* Even worse, the SPO disregards the visit's context: the Kosovo delegation visited these locations to ease inter-ethnic tensions following the unlawful, incognito and provocative visit to Lake Ujman by the President of Serbia.¹¹ The actual context of the photo is unimportant to the SPO; the only context that matters to the SPO is that Kosovo is a failed criminal state. Accordingly, [REDACTED] official interactions of public officials in the exercise of their public functions – are deliberately mischaracterised by the SPO as evidence of meetings and interactions of the leaders or members of a criminal enterprise.

16. The SPO further argues that *"[p]rominent figures in the KP leadership have connections to the KLA"* [REDACTED].¹² [REDACTED]. In addition, there is no

⁹ Prosecution Response, paras. 35-37.

¹⁰ KSC-BC-2020-06/F00562, 8 November 2021 ("SPO Response to the KP"), p. 9.

¹¹ <https://www.euractiv.com/section/enlargement/news/kosovo-president-visits-disputed-area-after-similar-visit-by-serbian-leader/>.

¹² Prosecution Response, para. 23.

evidence [REDACTED]. [REDACTED]. In addition, the SPO is calling numerous former members of the KLA to testify against the Accused; this demonstrates that their former KLA affiliation is not evidence of permanent allegiance to this movement or to its previous members/leaders.

17. Thus, the SPO statement pursuant to which *“the allegiances within the KP to THACI are pronounced and would fundamentally compromise conditional release”* is wholly unfounded. The defence notes that the SPO asserted the same thing, in its Response to the KP,¹³ [REDACTED].¹⁴

18. Under this rationale, any senior KLA member or state official of Kosovo indicted by the SPO must be detained indefinitely, irrespective of whether there are objective grounds to justify their detention under Article 41(6)(b) of the KSC Law. Likewise, the KP cannot be trusted as it is, according to the SPO, a clan-based criminal enterprise. This is not only manifestly unfair, but incompatible with the presumption in favour of liberty, with provisional release being the exception and strictly limited to what is necessary.

1. Disinformation campaigns from Russia

19. The SPO's preposterous and offensive theories echo the rhetoric of the disinformation campaigns spearheaded by Russia's state and non-state actors against Kosovo.

20. The contextual theory under which SPO seeks to discredit the KP and keep Mr Thaçi in detention stems from the statement of the Russian Ministry of Foreign Affairs,

¹³ SPO Response to the KP, para. 24.

¹⁴ Prosecution Response, para. 23.

on 9 November 2020, following the arrest of Mr Thaçi.¹⁵ While endorsing the arrest of Mr Thaçi and the other accused, the Russian Ministry of Foreign Affairs, qualified the KLA as a “heinous entity” and stated that the SPO’s indictment established “*that for many years there have been people at the head of the Kosovo quasi-state, with respect to whom strong evidence has been gathered tying them to illegal activities in Kosovo, including organized crime and terrorism.*” Notably, the Ministry then expressed the hope that the work of the SPO will force the West to “*finally heed the warnings about the true nature of Kosovo’s ‘statehood’ [...].*”

21. More recently, the Spokesperson of the Russian Ministry of Foreign Affairs, in an interview for a Serbian tabloid, said that Kosovo is a:

complete failure [...], a black hole of Europe, where organized crime and corruption are prospering, where terrorist and extremist recruitment cells are located, where the atmosphere of national and religious hatred and intolerance is fostered, and the ideology of justifying the mass ethnic cleansing of non-Albanian population is imposed.¹⁶

22. Russia’s deliberate disinformation campaign against the Western Balkans in general, and Kosovo specifically, seeking to portray the latter as a failed criminal state, has been featured in NATO’s Strategic Communications, Center of Excellence report ‘*Russia’s Narratives for the Western Balkans: Analysis of Sputnik Srbija.*’ According to this report, which examined media coverage of Kosovo by Sputnik Srbija in 2018, one of the sub-narratives pursued by Russia against Kosovo was to portray Kosovo as a “criminal state.” The report identified 47 articles supporting this sub-narrative.

23. Such a partial, politically motivated, and ill-funded narrative, portraying Kosovo and the KP as criminal, appears to have been fully endorsed by the SPO. Its attack on the professionalism and integrity of the KP is otherwise incomprehensible, particularly in light of its own regular cooperation with the KP, such as for the arrest

¹⁵ https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/ckNNonkJE02Bw/content/id/4419121.

¹⁶ https://www.euractiv.com/section/politics/short_news/russia-the-wests-kosovo-project-has-failed/.

of Mr Thaçi and the other accused. Indeed, the record shows that, to date, the KP's cooperation with the SPO and the KSC has been exemplary.

2. False allegations from Mr Thaçi's political opponents and tabloid newspapers

24. The SPO cannot satisfy its burden of proof by relying on domestic speculative media reports and political intrigue, without testimony by their authors in open court.

25. In an effort to portray the KP as a criminal enterprise, the SPO quotes former political adversaries of Mr Thaçi, who not only had a direct interest in tainting Mr Thaçi's political record for personal political gain, but also had a direct conflict of interest against the KP, having been arrested for criminal offenses throughout their erratic political careers.

26. In an unprecedented manner, SPO has exhibited an unreliable chart of alleged criminal networks within the KP,¹⁷ attributed to [REDACTED],¹⁸ [REDACTED].¹⁹ [REDACTED].²⁰ Thus, the SPO is quoting a career felon as an "authority" on the professionalism and integrity of the KP. Even for the SPO, this is a new low. [REDACTED] chart cannot be relied on in this context.

27. The SPO's efforts to politicize these proceedings by relying on domestic political intrigue as "evidence" must be condemned. The statements by Mr Thaçi's political opponents, made outside the courtroom to the tabloid media, have no probative value.

¹⁷ Prosecution Response, para. 37, footnote 68.

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

28. The SPO puts its own credibility at stake by quoting an unreliable and uncorroborated tabloid article to assert that *“allegations surfaced that the Kosovo Intelligence Agency had two agents pose as witnesses to give fabricated evidence linking THAÇI’s political opponents to terrorist organizations”*.²¹ The article, published by questionable news portal, is full of sensational allegations aimed solely at attracting public attention²² and is irrelevant to the issue in question. From the article, it is unclear whether the Kosovo Intelligence Agency officers testified under their undercover aliases or because of other national security reasons. Article 24 of the Law on Kosovo Intelligence Agency²³ provides that operatives can work under an alias, just like any other intelligence agency. In any event, the article does not say that Mr Thaçi ordered the witnesses to give fabricated evidence. Such irrelevant and uncorroborated allegations should be disregarded.

3. The SPO submissions regarding Mr Thaçi and the KP’s integrity and efficiency are misleading and characterised by bad faith

29. The SPO is so desperate to prevent the Accused’s interim release that it is ready to employ any means, including by resorting to Mr Thaci’s political opponents, uncorroborated and/or anonymous sources, to attack the integrity of the KP and to blame the Accused’s influence and authority. Such unsupported allegations should be summarily discarded.

B. THE KP’S INTEGRITY AND EFFICIENCY ARE RECOGNISED NATIONALLY AND INTERNATIONALLY

²¹ Prosecution Response, para. 11, footnote 21.

²² <https://arbk.rks-gov.net/page.aspx?id=1,38,221107>.

²³ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2538>.

30. The SPO submissions are undermined by the widespread commendation of the KP's reliability and efficiency, and related institutions, by numerous domestic and international actors and organizations.

1. United States Government

(a) *2019 U.S. Ambassador to Kosovo, Philip Kosnett's, Remarks at the 20th Anniversary Celebration of KP*

31. On the occasion of the KP's 20th Anniversary Celebration on 6 September 2019, the U.S. Ambassador to Kosovo, Philip Kosnett, praised the KP as one of the great success stories of Kosovo:

We can point to the development of the KP – a professional organization with representation from all of Kosovo's diverse communities – as one of the great success stories of the past two decades in Kosovo. Today, Kosovo citizens rate their Police as the most trusted institution in the country. The United States is proud to have played a role in the development and professionalization of the Police, through funding, training, and operational cooperation.²⁴

(b) *Bureau of International Narcotics and Law Enforcement Affairs: Kosovo Summary*

32. In a summary published on the website of the Bureau of International Narcotics and Law Enforcement Affairs of the U.S. Department of State,²⁵ the KP was ranked as one of the most professional police forces in the region and one of the most trusted public institutions in Kosovo.²⁶

(c) *International Criminal Investigative Training Assistance Program*

²⁴ Ambassador Kosnett's Remarks at Kosovo Police's 20th Anniversary Celebration, para. 2, 6 September 2019, <https://xk.usembassy.gov/ambassador-kosnetts-remarks-at-kosovo-polices-20th-anniversary-celebration/>.

²⁵ Bureau of International Narcotics and Law Enforcement Affairs: Kosovo Summary, para. 3, <https://www.state.gov/bureau-of-international-narcotics-and-law-enforcement-affairs-work-by-country/kosovo-summary/>.

²⁶ *Ibid*, para. 4.

33. On the 15th anniversary of the Police Inspectorate of Kosovo on 2 July 2021, the International Criminal Investigative Training Assistance Program of the U.S. Department of Justice praised the KP Inspectorate for its achievements,²⁷ noting that it had “*expanded from its initial mission of investigation of administrative violations within the KP to now handling the most complicated criminal allegations against members of the KP staffed at over 9000 employees.*”²⁸

(d) *U.S. Mission to the OSCE*

34. The U.S. Mission to the OSCE has applauded the action of the KP, dated 28 May 2019, arresting individuals for smuggling and organized crime, and has praised “law enforcement efforts by the Kosovo government to combat corruption and strengthen the rule of law”.²⁹

2. European Union

(a) *Kosovo Progress Reports*

35. A *Kosovo Report 2021*, issued by the European Commission on 19 October 2021, highlighted the efficiency of the KP and stressed that numerous European and non-European security forces cooperated intensively with the KP. It noted the following:

- The KP “has adequate capacity and capability to combat organized crime in Kosovo.”³⁰

²⁷ Kosovo: ICITAP Recognized during 15th Anniversary Celebration at the Police Inspectorate of Kosovo, 2 July 2021, <https://www.justice.gov/criminal-icitap/blog/kosovo-icitap-recognized-during-15th-anniversary-celebration-police>.

²⁸ *Ibid.*

²⁹ Letter by Acting Political Counselor Lane D. Bahl to Permanent Council, Vienna, 30 May 2021, <https://osce.usmission.gov/continuing-efforts-by-kosovo-police-to-combat-corruption/>.

³⁰ EU Commission – Kosovo Report 2021, 19 October, 2021, page 41, para. 4, https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en.

- “The KP has a consistently growing cooperation with police services in EU Member States on a bilateral basis, including through joint investigation teams and exchange of information on civil and criminal cases.”³¹
- “Kosovo and Europol have concluded a working arrangement in July 2020.”³²
- **The KP participates in Europol’s Platform for Witness Protection.**³³

(b) *European Union Rule of Law Mission in Kosovo (“EULEX”)*

36. The commitment of the KP in the fight against human trafficking and organized crime was commended in 2013 by Harry Long, Head of EULEX Police, following an operation in which the KP arrested eight persons suspected of being involved in human trafficking and organized crime. He praised “the increasing professionalism of the KP.”³⁴

3. International and Domestic Non-Governmental Organizations

37. The credibility of the KP has been acknowledged by international non-governmental agencies as well. In the report *Fighting Corruption in the Western Balkan and Turkey: Priorities for Reform*, dated 10 November 2016, Transparency International considered the KP as “independent and trusted”,³⁵ stressing that “[c]ompared to its neighbors, institutional independence of the police is relatively strong in Kosovo” and that “the police are most trusted law enforcement institution in Kosovo.”³⁶ It considered that the reason for the high level of the institutional independence of the

³¹ *Ibid*, para. 6.

³² *Ibid*, page 109, para. 2.

³³ *Ibid*, page 41, para. 7.

³⁴ EULEX Statement on KP – Harry Long, 24 July 2013, <https://www.eulex-kosovo.eu/?page=2,10,1502>.

³⁵ *Fighting Corruption in the Western Balkan and Turkey: Priorities for Reform* – Transparency International, 10 January 2016, page 16, https://images.transparencycdn.org/images/NISWBT_EN.pdf.

³⁶ *Ibid*.

KP is “because the criteria for the selection, nomination and dismissal of officials are comparatively objective and transparent.”³⁷

38. In addition, according to the “Rule of Law Performance Index in Kosovo,” published by the Group for Legal and Political Studies in January 2020, the citizens of the Republic of Kosovo consider the KP as the institution with the least political interference: “[b]ased on the questionnaire, it is shown that citizens perceive the KP as among the least influenced institutions by politics.” [*Emphasis added*]³⁸

39. Finally, the KP was ranked as the most reliable public institution in Kosovo by an opinion poll prepared by Kosovo Center for Security Studies in 2020.³⁹

40. Thus, the observations above from various, national and international credible sources demonstrate that the KP is sufficiently trained, equipped, and reliable to implement with success any measures ordered by the PTJ in the framework of Mr Thaci’s interim release in Kosovo.

C. THE KP IS WILLING AND COMPETENT TO IMPLEMENT HOUSE ARREST IN KOSOVO

41. The defence recalls that the KSC has been established by a Kosovo law, like the KP. A PTJ or Panel sitting at the KSC should trust the KP, which forms part of the overall institution to which it also belongs.

42. The SPO’s criticism of the KP is not convincing, because it has the authority and the responsibility to cooperate with the KP⁴⁰ and has regularly relied on its assistance,⁴¹

³⁷ *Ibid.*

³⁸ Rule of Law Performance Index in Kosovo – Group for Legal and Political Studies, January 2020, page 10, para. 2, https://www.rolpik.org/wp-content/uploads/2020/01/RoLPIK_5th_editioneng-final.pdf.

³⁹ News report “POLL: KSF AND KOSOVO POLICE MOST TRUSTED INSTITUTIONS,” www.rtklive.com/en/news-single.php?ID=18252.

⁴⁰ Article 35(2)(k) of the KSC Law.

⁴¹ Article 35(4) of the KSC Law.

in particular to implement arrest warrants or in the collection of evidence. As such, the SPO's contention that the KP would not be able to handle confidential and sensitive information, related to protected witnesses for instance,⁴² is completely unjustified.

1. The ICTY ordered the interim release of several Accused on Kosovo territory

43. Notably, the ICTY itself considered that the KP was sufficiently reliable and ordered the interim release of several Kosovars in Kosovo.⁴³

44. The ICTY also granted interim release to numerous Serbs into Serbia,⁴⁴ despite the massive violations of human rights perpetrated by this State's security forces – violations of a far greater scale than those imputed to the KLA or the Accused in the current case. In those cases, the ICTY respected the guarantees provided by Serbia despite the atrocities committed by its government toward the Albanians. Of course, these State guarantees and the conditions of release and return were routinely respected.

45. Pursuant to an established ICTY practice, when a Suspect or Accused voluntarily surrendered, interim release was routinely granted pending trial. The return of

⁴² Prosecution Response, para. 32.

⁴³ See, *inter alia*, ICTY, [Prosecutor v. Haradinaj et al.](#), IT-04-84-T, Trial Chamber I, Decision on Motion on Behalf of Lahi Brahimaj for Provisional Release, 14 December 2007; ICTY, [Prosecutor v. Haxhiu](#), IT-04-84-R77.5, Trial Chamber I, Decision on Provisional Release of Baton Haxhiu, 23 May 2008; ICTY, [Prosecutor v. Haradinaj et al.](#), IT-04-84-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005; ICTY, [Prosecutor v. Haraqija & Morina](#), IT-04-84-R77.4, Trial Chamber I, Decision on Defence Application for Provisional Release of the Accused Astrit Harqija, 15 September 2008; ICTY, [Prosecutor v Haraqija & Morina](#), IT-04-84-R77.4, Trial Chamber I, Decision on Defence Application for Provisional Release of the Accused Bajrush Morina, 15 September 2008.

⁴⁴ See, *inter alia*, ICTY, [Prosecutor v. Jokic](#), IT-01-42-PT, Trial Chamber, Order on Miodrag Jokic's Motion for Provisional Release, 20 February 2002; ICTY, [Prosecutor v. Plavšić](#), IT-00-39 & 40-PT, Trial Chamber, Decision on Biljana Plavsic's Application for Provisional Release, 5 September 2001; ICTY, [Prosecutor v. Brdjanin & Talic](#), IT-99-36-T, Trial Chamber II, Decision on the Motion for Provisional Release of the Accused Momir Talic, 20 September 2002.

Accused to detention during the trial itself, was a consequence of The Netherlands' refusal to authorise provisional release on their territory;⁴⁵ rather than any recognition that provisional release pre-trial had been unwarranted.

46. When viewed against the ICTY's consistent practice, the fact that no Kosovar has been released by the KSC pending trial is utterly unjustifiable. Particularly given the relative gravity of the charges as between the KSC and the ICTY, time elapsed since the alleged events, and the strength of Kosovo's institutions – which have only increased over the years – to which the KSC belongs. The systematic incarceration of anyone charged before the KSC gives rise to the objective impression that this Court is hampered by a patent bias against any Accused from Kosovo.

47. Thus, there appears to be a 'double standard'⁴⁶ between the ICTY and KSC's approach towards the reliability of the KP and Kosovo's institutions and interim release of Kosovar Accused, which is unjustified, manifestly unfair, and prejudicial to Mr Thaçi and all Kosovar Accused.

2. The KP Security Assessment of Mr Thaçi's residence confirms the possibility to implement house arrest at his residence with all the required safeguards

48. The SPO incorrectly maintains that the KP security assessment of Mr Thaçi's residence is insufficiently detailed.⁴⁷

⁴⁵ See, *inter alia*, ICTY, [Prosecutor v. Ademi](#), IT-01-46-PT, Trial Chamber, Order on Motion for Provisional Release, 20 February 2002, para. 6; ICTY, [Prosecutor v. Jokic](#), IT-01-42-PT, Trial Chamber, Order on Miodrag Jokic's Motion for Provisional Release, 20 February 2002, para. 5.

⁴⁶ See, for instance, ICTY, [Prosecutor v. Mrksic](#), IT-95-13/1-AR65, Appeals Chamber, Decision on Appeal against Refusal to Grant Provisional Release, 8 October 2002, para. 9.

⁴⁷ Prosecution Response, paras. 18-22.

49. In particular, the SPO complains that the KP does not propose specific measures to monitor the activities [REDACTED],⁴⁸ which is excessive and unwarranted. The defence notes that the KP does suggest to control the activities [REDACTED]. Mr Thaçi is not under permanent video surveillance in the detention unit,⁴⁹ and therefore such a measure should not be required for house arrest. Nevertheless, while the presence of cameras in the bedrooms, bathrooms, etc., is unwarranted, Mr Thaçi is willing to accept their installation, if ordered by the PTJ. In addition, if required to do so, the KP could secure [REDACTED]. This should address any remaining concerns of inappropriate, unmonitored communications between Mr Thaçi and his visitors.⁵⁰

50. The SPO's submissions simply underscore the need for a hearing where both the SPO and the PTJ could ask the KP whether it can implement particular measures. Thus, if the SPO or the PTJ were to consider that additional staff or CCTV, for example, is necessary, this could then be put in place by the KP, which has demonstrated that it has the capacity and willingness to implement any measures ordered by the PTJ.

51. The SPO's criticism of the alleged lack of details of the proposed communications monitoring, and the alleged lack of an articulated legal basis, is unwarranted.⁵¹ The KP Security Assessment must be read in conjunction with its previous general observations⁵² in response to the PTJ's order.⁵³ In his order, the PTJ explicitly mentioned the legal basis, *i.e.* the Law No. 05/L-030 on Interception of Electronic Communications, and the KP confirmed that it was authorised to performed such monitoring upon a judicial order.⁵⁴ In its Initial Report, the KP explained that it can:

⁴⁸ Prosecution Response, paras. 23-25.

⁴⁹ See Rule 1 of the House Rules and Rule 41 of the Rules of Detention.

⁵⁰ *Contra*, Prosecution Response, paras. 29-30.

⁵¹ Prosecution Response, paras 25-26, 31.

⁵² KSC-BC-2020-06/F00548/eng, Answer to the Request number KSC-BC-2020-06, dated 13 October 2021, 26 October 2021 ("KP Initial Report").

⁵³ KSC-BC-2020-06/F00513, Order to the Kosovo Police to Provide Information with confidential Annex, 9 October 2021.

⁵⁴ KP Initial Report, p. 7.

[REDACTED].⁵⁵

As such, the KP has submitted more than sufficient information to enable the PTJ to assess the efficiency of such communications monitoring. A hearing would permit the KP to further elaborate, and answer any remaining questions.

52. In response to the SPO's observations,⁵⁶ the defence clarifies that [REDACTED].

53. The SPO further questions the legal basis of the house arrest in Kosovo.⁵⁷ Both the KSC Law and Rules, Article 183 of the Kosovo Criminal Procedure Code⁵⁸ and the Law No. 05/L-030 on Interception of Electronic Communications constitute sufficient provisions to implement house arrest in Kosovo with communications monitoring.

54. Rather than limiting an assessment to particular provisions, the legal framework as a whole must be taken into account, which includes the powers vested in the PTJ and Appeal Panel. Thus, the sufficiency of the provisions quoted above must be assessed in light of the fact that the house arrest and the corresponding monitoring regime would be ordered on the basis of an individualised and reasoned decision justifying the measures in question, in light of the legitimate aims pursued; the decision could be the subject of an appeal and would be regularly reviewed, which would prevent any abuse and ensure the respect of Mr Thaçi's rights, in conformity with the case law of the European Court of Human Rights ("ECtHR").⁵⁹

⁵⁵ *Ibid.*

⁵⁶ Prosecution Response, para. 27.

⁵⁷ Prosecution Response, para. 28.

⁵⁸ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>.

⁵⁹ See ECtHR, *Gorlov and Others v. Russia*, 27057/06 56443/09 25147/14, 2 July 2019, paras 96-97, where the Court considered the fact that "the national law offers virtually no safeguards against abuse by State officials", which is not the case of the proceedings before the KSC.

55. Mr Thaçi reiterates that he is willing to waive any rights which may be infringed upon by the conditions set by the PTJ, including through a formal affidavit if required. The case law quoted by the SPO does not exclude such a possibility.⁶⁰

3. The KSC and/or the SPO can provide support to the KP to ensure compliance with any order of the PTJ

56. Without prejudice to the above, any deficiencies of Kosovo, the KP or any other public authority of Kosovo, including the KSC and the SPO, cannot be used to deny Mr Thaçi's constitutional right to be released pending trial, if the criteria for release have been fulfilled.

57. The SPO, which has its own police officers, is a public authority of Kosovo. As is the KP. The SPO cannot rely on an alleged lack of resources of these public institutions – of which it forms a part - to justify Mr Thaçi's ongoing detention. The KP is not a contractor, judged by its technical capacities. It is a public authority that must have all the capacities that are needed to implement the law and court orders.

58. House detention is provided for by Article 41(12) of the KSC Law. The SPO cannot claim that this provision of the KSC Law cannot be implemented because the KP does not have adequate resources. If needed, the SPO should deploy its police officers along with the KP to monitor the conditions of Mr Thaçi's house detention.

D. HOUSE ARREST WITHIN THIRD STATES CAN ALSO MITIGATE ANY REMAINING RISK

⁶⁰ In ECtHR [GC], *Buzadji v. Moldova*, 23755/07, 5 July 2016, paras 106-109, the Court considered that the person who agreed to house arrest did so under a state of duress, particularly in light of his poor health, which is why it ruled that it did not amount to a waiver of rights – Mr Thaçi, who has no medical issue, who voluntarily surrendered to the KSC, and now asks for interim release under house arrest in Kosovo, is in a different position.

59. The defence submits, in response to the SPO observations,⁶¹ that if the PTJ has the discretionary power to seek further information from [REDACTED], then it is the appropriate time to do so, in light of the length of time elapsed since Mr Thaçi's arrest; the seriousness of the guarantees provided by both governments; and the necessity of convening a hearing at which each party could ask the State authorities to clarify any remaining issues, and determine the measures which may be adopted to order Mr Thaçi's release under house arrest. There is no reason to doubt the reliability of the guarantees given by those States in the circumstances of the present case.⁶²

E. THE DETENTION IS NO LONGER PROPORTIONATE

60. The SPO's position that the case is actively progressing towards trial, is simply not credible.⁶³ The PTJ is aware that the SPO routinely misses even those deadlines it has set for itself. The SPO continues to disclose its Rule 102(1)(b) material intermittently, and on a disorganised basis. Despite defence requests, the SPO has never disclosed batches of documents by witness. Despite its statements at the last status conference, the SPO has not yet created any complete single witness entity in Legal Workflow. The defence has been disclosed only a limited amount of Rule 103 material, in comparison with the volume of incriminating material disclosed. The trial will not start before late 2022 at the earliest, which further warrants the immediate release of Mr Thaçi.

III. CONCLUSION

61. For the forgoing reasons, the defence maintains its requests that the PTJ:

⁶¹ Prosecution Response, para. 45.

⁶² See, for instance, ICTY, *Prosecutor v. Mrksic*, IT-95-13/1-AR65, Appeals Chamber, Decision on Appeal against Refusal to Grant Provisional Release, 8 October 2002, para. 9.

⁶³ Prosecution Response, para. 48.

- (i) convene a hearing in order to address (a) the views of the KP on the feasibility of the release of Mr Thaçi under house arrest at his residence in Kosovo; (b) the views of the Governments of [REDACTED] on the release of Mr Thaçi into their respective territories; (c) the views of the parties; and
- (ii) order Mr Thaçi's interim release on such conditions considered appropriate.

Word count: 5,457 words

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a white rectangular redaction box.

Gregory W. Kehoe

Counsel for Hashim Thaçi

Monday, 8 December 2021

At Tampa, United States