



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:** 20 December 2021  
**Language:** English  
**Classification:** Public

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**Public Redacted Version of**

**Prosecution response to Thaçi Defence Submissions on Second Detention Review,  
KSC-BC-2020-06/F00583, dated 29 November 2021**

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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 Appeals Panel confirmed that Article 41(6)(b) risks continued to exist.<sup>3</sup>

2. In its latest decision on detention review, the Appeals Panel confirmed the Pre-Trial Judge's previous findings that: (i) the PDK's electoral performance is not determinative of THAÇI's position of authority and influence; (ii) THAÇI's increased awareness of the evidence underlying the charges against him provides an increased ability to obstruct the proceedings; and (iii) the length of the pre-trial detention is not unreasonable at this stage.<sup>4</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).<sup>5</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 already decided upon in the initial ruling on detention,<sup>6</sup> and any Defence arguments

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<sup>1</sup> *Contra* Thaçi Defence Submissions on Second Detention Review, KSC-BC-2020-06/F00570, 16 November 2021, Confidential ('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 Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA010/F00008/RED, 27 October 2021 ('THAÇI Detention Appeal Decision').

<sup>4</sup> THAÇI Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, paras 35, 40, 52.

<sup>5</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.

<sup>6</sup> KSC-BC-2020-07/IA002/F00005, para.55.

suggesting otherwise must be rejected.<sup>7</sup> There continues to be a grounded suspicion that THAÇI has committed crimes within the jurisdiction of the KSC,<sup>8</sup> and, as set out below, each of the Article 41(6)(b) risks remain high.

A. RISK OF FLIGHT (ARTICLE 41(6)(B)(I))

4. The Pre-Trial Judge has found on several occasions that a risk of flight continues to exist in relation to THAÇI, but that such risk could be sufficiently mitigated by certain release conditions. The Appeals Panel has twice summarily dismissed THAÇI's arguments related to the factors relied upon by the Pre-Trial Judge in his assessment of THAÇI's risk of absconding to the extent that these factors did not also form part of the Pre-Trial Judge's determination on THAÇI's continued detention.<sup>9</sup>

5. The SPO maintains its submissions regarding the continued existence of this risk, including on the basis of THAÇI's influence and authority, his ability to travel, his knowledge of the charges against him and serious sentence in the event of conviction, and his increased insight into the evidence underpinning the charges.<sup>10</sup> In its latest submissions, the Defence merely repeats previously raised arguments, which have been unsuccessful and already rejected by the Pre-Trial Judge.<sup>11</sup>

6. In particular, the Defence is yet again trying to portray THAÇI's cooperation with the SPO and the KSC in 2019 and 2020 as sufficient factors to eliminate THAÇI's

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<sup>7</sup> See THAÇI Submissions, KSC-BC-2020-06/F00570, para.7. See also Decision on Review of Detention of Jakup KRASNIQI, KSC-BC-2020-06/F00371, 25 June 2021, paras 17-19 (not adopting a functionally identical submission by the KRASNIQI Defence).

<sup>8</sup> Decision on Review of Detention of Hashim THAÇI, KSC-BC-2020-06/F00417, 23 July 2021 ('THAÇI's Decision on Review of Detention'), paras 20-21.

<sup>9</sup> 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 Interim Release Appeal Decision'), para.32; THAÇI Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.29.

<sup>10</sup> THAÇI's Decision on Review of Detention, KSC-BC-2020-06/F00417, paras 27-32.

<sup>11</sup> Public redacted version of Decision on Hashim THAÇI's Application for Interim Release, KSC-BC-2020-06/F00177/RED, 22 January 2021, paras 32, 42.

flight risk.<sup>12</sup> The SPO recalls the Appeals Panel upheld the Pre-Trial Judge's finding that THAÇI's public activities, cooperation, and efforts to establish these institutions ran parallel with his less public activities tending to undermine the KSC through the influence he enjoyed as a result of his prior positions.<sup>13</sup>

7. Furthermore, the Defence also ignores the Appeals Panel's confirmation that the Pre-Trial Judge's findings in relation to THAÇI's significant role in Kosovo are unequivocally based on the positions occupied by THAÇI in the past, and therefore any recent change in the political landscape in Kosovo is of little relevance.<sup>14</sup>

8. The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention,<sup>15</sup> and such repetitive arguments by the Defence should be dismissed.

B. RISK OF OBSTRUCTION OF PROCEEDINGS (ARTICLE 41(6)(B)(II))

9. Article 41(6)(b) of the Law requires only a sufficiently real possibility that an attempt to obstruct proceedings will occur.<sup>16</sup> The Appeal Panel has confirmed that the factors previously relied upon by the Pre-Trial Judge in respect of THAÇI 'amply support' the existence of this risk.<sup>17</sup>

10. Those factors include THAÇI's influence and authority over a network of supporters derived from his previous positions (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), and THAÇI's [REDACTED].<sup>18</sup> Additional

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<sup>12</sup> THAÇI Submissions, KSC-BC-2020-06/F00570, paras 17-18.

<sup>13</sup> THAÇI's Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, para.49.

<sup>14</sup> THAÇI Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, paras 34-35. *Contra*. THAÇI Submissions, KSC-BC-2020-06/F00570, para.20. It is nonetheless noted that, in the recent local elections, the PDK won the joint highest (8) number of municipalities out of the Albanian parties.

<sup>15</sup> KSC-BC-2020-07/IA002/F00005, para.55.

<sup>16</sup> THAÇI's Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, para.45.

<sup>17</sup> THAÇI's Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, para.77.

<sup>18</sup> [REDACTED].

factors include THAÇI's involvement in a pattern of efforts to undermine the KSC and benefits offered to witnesses as an attempt to interfere in the proceedings.<sup>19</sup>

11. The risk is also heightened by the well-established climate of interference with the judicial process in Kosovo which has been comprehensively detailed in previous filings.<sup>20</sup> More recently, 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.<sup>21</sup> The conduct of the KLA War Veterans Association leaders, including Faton Klinaku's statements this summer,<sup>22</sup> together with the crimes alleged to have been committed in *Gucati & Haradinaj*, clearly demonstrate that this climate persists.

12. The risk of obstruction is further heightened by the Accused's increasing access to incriminating evidentiary material, as well as to the identities of witnesses. Increased insight into the evidence underpinning the charges based on the ongoing disclosure process supports the existence of a risk of obstruction.<sup>23</sup>

13. Contrary to Defence submissions,<sup>24</sup> and as affirmed by the Appeals Panel in previous detention decisions, 'the protective measures in place are not sufficient to mitigate the "inherently high" risk of witness intimidation or interference'.<sup>25</sup> At this stage of the proceedings, the Accused have 'already or will be provided with the

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<sup>19</sup> THAÇI's Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, paras 51-68, 76; THAÇI's Decision on Review of Detention, KSC-BC-2020-06/F00417, para.36.

<sup>20</sup> Third Confidential Redacted Version of 'Request for arrest warrants and related orders', KSC-BC-2020-06/F00005, 28 May 2020, KSC-BC-2020-06/F0005/CONF/RED3, 17 June 2021. *See also* THAÇI's Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, para.76

<sup>21</sup> See Annex 1.12 to KSC-BC-2020-06/F00562: <https://paparaci.live/2021/10/22/skandal-agjente-te-aki-se-deshmitare-te-rrejshem-permenden-thaci-veseli-kurti-e-konjufca/>.

<sup>22</sup> See Public Redacted Version of Prosecution response to THAÇI Defence Submissions on Detention Review, KSC-BC-2020-06/F00394/RED, 12 July 2021, para.7 (and citations therein).

<sup>23</sup> THAÇI Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, para.38.

<sup>24</sup> THAÇI Submissions, KSC-BC-2020-06/F00570, paras 21-22.

<sup>25</sup> Public Redacted Version of Decision on Jakup Krasniqi's Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA006/F00005/RED, 1 October 2021 ('Krasniqi Appeal Decision'), para.35.

identities of most of the protected witnesses'.<sup>26</sup> Given the high risk identified, and the [REDACTED], the insufficiency of the applicable protective measures to mitigate the risk of witness intimidation/interference, if the Accused are released, is reinforced. These same findings apply equally to THAÇI.

C. RISK OF COMMITTING CRIMINAL OFFENCES (ARTICLE 41(6)(B)(III))

14. The factors underpinning the determination that a risk of obstruction exists, are of relevance to the assessment of the risk of committing further crimes in the circumstances of the present case.<sup>27</sup> It is sufficient that the Accused instigates or assists others in the commission of such crimes or contributes to their commission.<sup>28</sup>

15. The Appeals Panel did not disturb the Pre-Trial Judge's finding that THAÇI will commit further crimes against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the KSC.<sup>29</sup> The Pre-Trial Judge's determination was based, *inter alia*, on the prevalent climate of witness intimidation and THAÇI's position of influence due to his past positions, his course of conduct aimed at undermining the KSC and SPO, and attempts to interfere with the proceedings.<sup>30</sup> This risk continues to exist in respect of THAÇI, and remains high.

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<sup>26</sup> Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.35.

<sup>27</sup> THAÇI's Decision on Review of Detention, KSC-BC-2020-06/F00417, para.43; Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576, 23 November 2021, Confidential ('Veseli Decision on Remanded and Periodic Detention Review'), para.54.

<sup>28</sup> Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para.57.

<sup>29</sup> THAÇI's Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, para.78.

<sup>30</sup> THAÇI's Decision on Review of Detention, KSC-BC-2020-06/F00417, para.44.

D. CONDITIONS REMAIN UNABLE TO MITIGATE THE RISKS

16. No conditions of release in Kosovo can mitigate the particular risks identified. The existence of the risks has been amply demonstrated in THAÇI's case. Moreover, the context in which a house arrest would take place is relevant in assessing the adequacy of any release conditions.<sup>31</sup> Given his status as a former high-ranking KLA member and political figure, THAÇI continues to exercise a degree of influence and control over his former subordinates, allowing him to elicit the support of sympathizers. This and the persisting climate of witness intimidation and interference in Kosovo provides the context against which the risk of THAÇI obstructing the progress of the proceedings is to be analysed in this case.<sup>32</sup>

**1. Kosovo Police ('KP') Submissions<sup>33</sup>**

17. The risks that must be mitigated to justify conditional release are those of obstructing the proceedings and committing further offences.<sup>34</sup> These risks have been assessed in a holistic manner and are grounded on a wide variety of amply demonstrated individual and contextual factors, reliance upon which was upheld on appeal.<sup>35</sup>

18. The Kosovo Police's ('KP') latest Submissions to THAÇI's Request<sup>36</sup> to provide further details regarding the KP's resources to enforce, implement, and monitor any

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<sup>31</sup> Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para.95.

<sup>32</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.34; THAÇI's Decision on Review of Detention, KSC-BC-2020-06/F00417, para.40.

<sup>33</sup> The SPO notes that the Defence has had the translation of the KP Submissions since 18 November 2021 but has opted not to supplement their submissions in relation to it (THAÇI Submissions, KSC-BC-2020-06/F00570, para.12). The related, otherwise ungrounded, request for an oral hearing in relation to the KP Submissions should also be denied.

<sup>34</sup> Article 41(6)(b)(ii)-(iii).

<sup>35</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.43.

<sup>36</sup> Transmission of Information from the Kosovo Police, KSC-BC-2020-06/F00569/A01, 15 November 2021, ('KP Submissions'), pgs 3-4. These Submissions are in addition to the KP Response to the Pre-Trial Judge's questions submitted on 26 October 2021.

measures ordered by the Pre-Trial Judge do not change the previous findings that conditional release will not be effectively enforceable given the risks posed by THAÇI.

19. On what is now their fifth attempt, even after being provided with a precise location and residential address where THAÇI would be released, the KP still cannot provide sufficient information regarding the specific measures that will restrict and monitor communications enough to justify conditional release.

20. The Defence requested the KP to perform a comprehensive security assessment and/or assessment of suitability of THAÇI's residence for the implementation, supervision, and enforcement of the conditions addressed in the 8 October 2021 Order<sup>37</sup> and the 26 October 2021 KP Response.<sup>38</sup> The security assessment should have explained, in detail, how the conditions mentioned in the Order and the Response would be concretely implemented, supervised, and enforced by the KP at the specific location, as per the Defence's request.<sup>39</sup>

21. Despite this being an opportunity for the KP to alleviate any remaining concerns the SPO and/or Pre-Trial Judge might have in relation to the conditional release of the Accused, the KP did not address key-points raised in the SPO's submissions in response to the KP Response from 26 October 2021. The result is that the most crucial aspects of the enforceability of conditional release are not addressed.

22. Whereas the KP Submissions address in great detail points (ii), (iii), (iv) and (v) of the Defence's inquiry, not the same level of detail is provided in relation to (i) (analysis of the location for the purpose of implementing, supervising and enforcing the conditions outlined in the Order and Response), and (vi) (any details for the implementation of the other remaining conditions mentioned in the Order and

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<sup>37</sup> Order to the Kosovo Police to Provide Information, with confidential Annex, KSC-BC-2020-06/F00513/A01 ('Order'), 8 October 2021.

<sup>38</sup> Letter 01/0846 of Kosovo Police addressed to the Pre-Trial Judge of the Kosovo Specialist Chambers, KSC-BC-2020-06/F00548 ('KP Response'), 26 October 2021.

<sup>39</sup> See KP Submissions, KSC-BC-2020-06/F00569/A01 with headings (i)-(vi).



Response at the specified location).<sup>40</sup> Instead of providing an analysis in relation to the actual implementation, supervision and enforcement of the conditions outlined in the Order, the KP Submissions focus on the pre-existing infrastructure already in place at the location. The KP Submissions may set out conditions to protect a former President from external threats to him or his residence,<sup>41</sup> but this same framework is patently ill-suited for monitoring and supervising the conditional release of Hashim THAÇI.

(a) Conditions remain insufficient

23. *Surveillance.* In this regard, the KP Submissions, once again, do not address the issues raised by the SPO in relation to [REDACTED]. On the contrary, the KP Submissions now mention a total number of [REDACTED].<sup>42</sup>

24. The KP Submissions mention a total number of [REDACTED].<sup>43</sup> This leaves ample opportunity for [REDACTED].

25. *Communications monitoring.* Once again, the KP Submission do not address any specific measures to monitor [REDACTED]. Nor do they mention any legal basis for mandatory monitoring of communications.

26. As opposed to the governing regime at the KSC Detention Centre, where THAÇI does not have access to internet-enabled devices, the KP Submissions simply undertake to [REDACTED], should the Court so order. Furthermore, no details are provided in relation to [REDACTED].

27. Equally, the question of whether it is proposed that there would be other persons residing in the house with THAÇI is not clearly addressed in the THAÇI

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<sup>40</sup> See KP Submissions, KSC-BC-2020-06/F00569/A01 with headings (i)-(vi).

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

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

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

Submissions, nor is how any obvious resultant risks could be adequately managed and monitored in a manner consistent with the rights of those third parties.<sup>44</sup>

28. Nothing in the KP Submissions demonstrates that a complex house arrest regime could be ordered within Kosovo on a legal basis that satisfies the requirements of the ECtHR.<sup>45</sup> The KP Submissions continue to not answer the Pre-Trial Judge's questions about the legal basis authorizing such surveillance measures, which may well affect the lives and rights of others in proximity to THAÇI. This is even more problematic now, after having been provided with a precise location, which is surrounded by public institutions, [REDACTED].<sup>46</sup> Without a clear legal basis for such measures, it is impossible to protect against the arbitrariness and coercive nature of such measures and complex follow-up litigation can be expected if they would be ordered.

29. Even assuming that a legal basis for mandatory monitoring exists, and further assuming that such a measure could be implemented, nothing would prevent a person from passing on messages orally or using other devices than those which are monitored.<sup>47</sup>

30. Moreover, and perhaps most significantly, the measures proposed – [REDACTED]– do nothing to address the principal risk that confidential information could be communicated by THAÇI to others –[REDACTED] by a wide variety of

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<sup>44</sup> Noting also that contact restrictions for house arrest in Kosovo do not extend to those living with the Accused (Art.183(3) of the Kosovo Code of Criminal Procedure).

<sup>45</sup> In this regard, *see* ECtHR [GC], *Buzadji v. Moldova*, 23755/07, 5 July 2016, paras 106-109 (the fact that a person himself agrees to, or even initiates, house arrest does not amount to a waiver of rights and does not affect the need for a sound legal basis for it – as such, convening an oral hearing to hear THAÇI on the question of waiver would not advance the matter (*contra*. THAÇI Submissions, KSC-BC-2020-06/F00570, para.38); ECtHR, *Gorlov and Others v. Russia*, 27057/06 56443/09 25147/14, 2 July 2019, paras 85-100 (the ECHR requires a clear and detailed basis in national law in order to prevent arbitrary or unjustified deprivations of liberty). *See also* Constitution, Article 55; KSC-CC-PR-17-01/F00004, paras 61-75.

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

<sup>47</sup> Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para. 87.

means.<sup>48</sup> The current proposals from the KP would appear to leave such communications entirely unmonitored. As previously found by the Pre-Trial Judge, this is in stark contrast to the applicable regime at the KSC Detention Unit which, through active and passive monitoring regimes, can facilitate the immediate or subsequent identification of potential violations.<sup>49</sup> Even if some form of monitoring were in place, the KP would not, as addressed below, be in a position to recognise obscure or coded references to protected witnesses or other confidential information in the case.

31. Turning to the issue of [REDACTED], the KP Submissions fail to provide any clarity as to [REDACTED]. As indicated previously, details about [REDACTED] are necessary to properly assess the likelihood that [REDACTED].<sup>50</sup> It remains unclear even after the latest KP Submissions what would happen if [REDACTED].

32. *Officer training.* The KP Submissions refer to a general [REDACTED].<sup>51</sup> These KP Submissions, like the previous one, similarly do not address the Pre-Trial Judge's specific question regarding the use of coded or obscure language at all. Nor could they adequately do so, given that the KP are not well-placed to monitor such communications with the degree of vigilance and knowledge needed in this case, in light of the established risks posed by THAÇI.

(b) The KP cannot effectively enforce sufficient conditions

33. Despite yet another opportunity to sufficiently demonstrate that it is willing and able to enforce sufficient conditions of release, the KP has once more failed to do so, even after another detailed Defence inquiry. The Pre-Trial Judge need only assess

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<sup>48</sup> See *similarly* Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, paras 82-86.

<sup>49</sup> Registry Submissions, KSC-BC-2020-06/F00536, para.32; Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, paras 83-85.

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

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

the appropriateness of relevant conditions once there is a state both willing and able to effectively enforce conditions,<sup>52</sup> which is not the case in this instance.

34. The SPO does not doubt that there are well-intentioned and able officers within the KP. However, corruption within Kosovo's criminal justice system is widely recognised, and is a particularly relevant factor when considering the KP's ability to effectively monitor a person who wields the influence and authority that THAÇI does.<sup>53</sup> The United Nations,<sup>54</sup> EULEX,<sup>55</sup> the European Commission,<sup>56</sup> and the Council of Europe<sup>57</sup> have all reported recent findings regarding the extent to which corruption

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<sup>52</sup> ICC, *Prosecutor v. Bemba*, [Judgment on the Provisional Release Appeal](#), ICC-01/05-01/08-1722 OA8, 9 September 2011, para. 39.

<sup>53</sup> See also Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para.94 (noting this factor as a relevant contextual consideration).

<sup>54</sup> United Nations Interim Administration Mission in Kosovo, 'Report of the Secretary-General', U.N.Doc. S/2020/964, 1 October 2020, accessed at [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2020\\_964.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2020_964.pdf), para.30 ('[a]t the same time, local civil society organizations continued to report slow progress in addressing corruption and organized crime, expressing concern over the often-lenient sentences imposed').

<sup>55</sup> EULEX, 'EU Rule of Law Mission Justice Monitoring Report', October 2020, accessed at [https://www.eulex-kosovo.eu/eul/repository/docs/19102020\\_EU%20Rule%20of%20Law%20Mission%20Justice%20\\_EN.pdf](https://www.eulex-kosovo.eu/eul/repository/docs/19102020_EU%20Rule%20of%20Law%20Mission%20Justice%20_EN.pdf), p.21 ('[i]t was generally recognised that many suspects and defendants in corruption trials were considerably wealthy and influential, with powerful political connections or financial links, which could arguably lead to pressure or interference into these criminal proceedings').

<sup>56</sup> European Commission, Kosovo Report 2021, 19 October 2021, accessed at [https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en), pp.23, 25 ('[o]verall, corruption is widespread and remains an issue of serious concern. Despite efforts made, there is a need for strong and continual political will to effectively address systemic corruption risks, as well as a robust criminal justice response to high-level corruption. [...] The decision of the previous government in October 2020 to abolish the special Anti-Corruption Task Force within the Kosovo Police and also dismiss the Director of the police, raised serious concerns about Kosovo's commitment to the fight against corruption and organised crime').

<sup>57</sup> Council of Europe, 'Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo\* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)', 23 September 2021, accessed at <https://rm.coe.int/1680a3ea32>, p.30 ('[...] further action is required to tackle the phenomenon of corruption and to gain the trust of prisoners in the proper functioning and fairness of the prison system and, more generally, the criminal justice system. The Committee emphasises in this respect that the existence of a widespread belief among prisoners that anything can be bought inevitably undermines attempts to create order within a prison and to develop positive staff-prisoner relations. Moreover, corruption brings in its wake discrimination, violence, insecurity and, ultimately, a loss of respect for authority').

is an ongoing issue. In the words of the United States State Department in 2020: '[s]ecurity forces did not ensure compliance with court orders when local officials failed to carry them out. Although some police officers were arrested on corruption charges during the year, impunity remained a problem'.<sup>58</sup> Media and NGOs have reached similar conclusions.<sup>59</sup>

35. [REDACTED],<sup>60</sup> [REDACTED].<sup>61</sup> [REDACTED],<sup>62</sup> [REDACTED].<sup>63</sup> On this basis, a real possibility exists that THAÇI could use his demonstrated influence in

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<sup>58</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, '2020 Country Reports on Human Rights Practices: Kosovo', 2020, accessed at <https://www.state.gov/wp-content/uploads/2021/03/KOSOVO-2020-HUMAN-RIGHTS-REPORT.pdf>, p.5.

<sup>59</sup> 21 Media, Egzona Mehmeti, 27 police officers arrested this year, 65 others suspended, July 2021, accessed at <https://en.rtv21.tv/27-police-officers-arrested-this-year-and-65-others-suspended/> ('[f]or six months in Kosovo, 27 police officers were arrested, while 65 other employees were suspended. Ill-treatment in the exercise of official duty and abuse of official authority are the two most common offenses for which members of the Kosovo Police are being investigated'); Kosovar Centre for Security Studies, Plator Avdiu and Shpat Balaj, State Of Play Of Integrity Policies In The Kosovo Police, December 2020, accessed at [http://www.qkss.org/repository/docs/State\\_of\\_play\\_of\\_integrity\\_policies\\_in\\_the\\_Kosovo\\_Police\\_English\\_Version\\_13188.pdf](http://www.qkss.org/repository/docs/State_of_play_of_integrity_policies_in_the_Kosovo_Police_English_Version_13188.pdf), p.3 ('[i]n recent years, Kosovo's security sector integrity practices, in particular Kosovo Police ones, have run into severe challenges, which have been exacerbated by the current Covid-19 pandemic the country is dealing with. Numerous police officers are subjected to criminal investigations by relevant rule-of-law mechanisms (Police Inspectorate of Kosovo and State Prosecution) for alleged criminal offenses related to breaches of legal procedures governing their official duties. On the other hand, the Prime Minister's decision of October 2020 to discharge the former General Director of the Kosovo Police, has both directly and indirectly paved the way for political influence over the Kosovo Police by ruling parties. Furthermore, this may have a significant impact on discouraging structural reforms in the police, particularly in human resource management'); Pointpulse Network, Assessment of Police Integrity in Kosovo, 2015, accessed at [http://www.qkss.org/repository/docs/Assessment-of-Police-Integrity-in-Kosovo\\_779436.pdf](http://www.qkss.org/repository/docs/Assessment-of-Police-Integrity-in-Kosovo_779436.pdf), p.12 ('[i]t is worth mentioning that citizens of Kosovo believe that political influence on the KP is quite strong. According to an opinion poll conducted during [...] mid-2015 within the POINTPULSE project, 91 percent of the citizens are of the opinion that the police are politicized and under the political control of the Kosovo institutions'); Prison Insider, Kosovo: "corruption cases have destroyed the prison system", 24 September 2019, accessed at <https://www.prison-insider.com/en/articles/kosovo-les-affaires-de-corruption-ont-mis-a-mal-le-systeme-penitentiaire> ('[h]opes for an improved prison system were undermined by corruption cases and ties between some prisoners and influential politicians').

<sup>60</sup> [REDACTED].

<sup>61</sup> [REDACTED].

<sup>62</sup> [REDACTED].

<sup>63</sup> [REDACTED].

Kosovo over his former subordinates, acquired on the basis of his previous positions, to circumvent the conditions of house arrest.

36. [REDACTED].

37. [REDACTED] has the connections and position to do whatever is necessary to breach release conditions in order to secure THAÇI's acquittal. [REDACTED].<sup>64</sup>

38. [REDACTED]. [REDACTED].<sup>65</sup> [REDACTED].<sup>66</sup> [REDACTED]. The objectivity of these men, and those subordinate to them, in enforcing conditional release for their former superiors in the KLA war cannot be assured.

39. The very reason for establishing the KSC and for relocating it away from Kosovo was that criminal proceedings against high-ranking former KLA members could not be conducted in Kosovo given the persisting climate of witnesses' intimidation and interference.<sup>67</sup> The procedural framework and operational practice of the KSC were specifically designed to ensure witness and victims' protection.<sup>68</sup>

40. Despite numerous and ample opportunities to sufficiently demonstrate their willingness and ability to enforce sufficient conditions of release, the KP has failed to do so. The repeated failures to provide sufficient information are itself an indication of the KP's actual capacity to effectively enforce sufficient conditions. KP's continuous focus on [REDACTED], is also indicative of their inability to effectively enforce such conditions. Furthermore, the allegiances within the KP to THAÇI are pronounced and would fundamentally compromise conditional release.

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<sup>64</sup> [REDACTED].

<sup>65</sup> [REDACTED].

<sup>66</sup> [REDACTED].

<sup>67</sup> Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para.94.

<sup>68</sup> Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para.94.

## 2. Third States

41. The Defence merely repeats arguments in relation to the guarantees submitted by [REDACTED]. The extremely general character of the guarantees provided cannot be considered an unequivocal acceptance to enforce specific conditions of release. This was confirmed by the Appeals Panel.<sup>69</sup>

42. The Defence's reliance on concurring and/or dissenting opinions of the judges of the Court of Appeal constitutes a mere disagreement with the majority's decision to deny THAÇI's appeal. The Appeals Panel confirmed that seeking additional submissions on alternative conditions was not an obligation but rather a discretionary power of the Pre-Trial Judge's to do so.<sup>70</sup>

43. Furthermore, consultations with a Third State to which a detained person seeks to be released, as provided under Article 41(11) of the Law and Rule 56(4) of the Rules, is compulsory only when the panel intends to grant interim release or envisages the possibility thereof.<sup>71</sup>

44. The Appeals Panel also held that while State guarantees may carry considerable weight in support of an application for provisional release, they are not dispositive and the Pre-Trial Judge must still assess the weight to be given to such guarantees, in particular given THAÇI's influential position and ability to obtain sensitive information.<sup>72</sup>

45. As to the request for an oral hearing, the Pre-Trial Judge has enough information to resolve the request on the written filings alone. Moreover, the Appeals Panel found that given the Pre-Trial Judge's findings that he is not convinced that he

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<sup>69</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.66.

<sup>70</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.67, THAÇI's Interim Release Appeal Decision, KSC-BC-2020-06/IA004/F00005/RED, para.84.

<sup>71</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.67.

<sup>72</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.66.

should grant THAÇI's request for conditional release at all, not seeking further details from [REDCATED] fell squarely within his discretionary power.<sup>73</sup>

#### E. DETENTION REMAINS PROPORTIONATE

46. The Appeal Panel upheld the Pre-Trial Judge's assessment of the circumstances of the case as a whole and his consideration of several factors when finding that the length of the pre-trial detention is not unreasonable at this stage, as well as his finding that any discussion as to the expected total length of THAÇI's pre-trial detention remains premature and speculative.<sup>74</sup>

47. What is proportionate in terms of pre-trial detention depends upon the specific circumstances of the case.<sup>75</sup> Proportionality needs to be assessed at the relevant time and remains subject to regular periodic reviews in accordance with the Rules. Estimates, past or present, are not determinative of the proportionality of the pre-trial detention's length and have not been the basis for prior detention findings by either the Pre-Trial Judge or the Appeals Panel.<sup>76</sup>

48. Moreover, the case is actively progressing towards trial, with the Defence having received the vast majority of all new Rule 102(1)(b) materials by August 2021, having received a preliminary witness list on 22 October 2021, and with SPO's deadline to file its Pre-Trial Brief, and related Rule 95 materials, on 17 December 2021.

49. Substantial procedural steps have been completed with a view to transmitting the case to trial.<sup>77</sup> All necessary pre-trial processes in the case are advancing

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<sup>73</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.67.

<sup>74</sup> THAÇI's Detention Appeal Decision, KSC-BC-2020-06/IA010/F00008/RED, para.52.

<sup>75</sup> ECtHR, *Shabani v Switzerland*, 29044/06, Judgment, 5 November 2009 (even a pre-trial detention of five years was not too excessive under the ECHR). See also e.g., ICTR, *Prosecutor v. Kanyabashi*, Decision on the Defence Motion for the Provisional Release of the Accused, 21 February 2001, paras 8, 12 (similarly relating to a pre-trial detention period of 5 years).

<sup>76</sup> Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para.109.

<sup>77</sup> Veseli Decision on Remanded and Periodic Detention Review, KSC-BC-2020-06/F00576, para.109.



expeditiously and in parallel. Many of these steps – such as final resolution of all preliminary motions – are necessary pre-conditions to the case going to trial.

50. In this context, given, *inter alia*, the scope and complexity of the instant case, the necessity of enabling the parties to fully exercise their rights to litigate pre-trial matters, the continuing expeditious progress in pre-trial milestones, the lengthy custodial sentence, if convicted, and the heightened risks of obstruction if released, pre-trial detention continues to be reasonable and proportionate.

### III. CLASSIFICATION

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

### IV. RELIEF REQUESTED

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

**Word count: 4,927**



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

Monday, 20 December 2021

At The Hague, the Netherlands.