

**In:** KSC-CC-2022-15

**Before:** **The Specialist Chamber of the Constitutional Court**  
Judge Vidar Stensland, Presiding  
Judge Roumen Nenkov  
Judge Romina Incutti

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 30 March 2022

**Language:** English

**File Name:** Referral by Hashim Thaçi to the Constitutional Court Panel Concerning the Fundamental Rights to an Independent and Impartial Tribunal Established by Law and to a Reasoned Opinion

**Classification:** **Public**

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**Thaçi Request for a Variation of the Time to Submit Written Submissions**

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**Applicant**

Hashim Thaçi

**Specialist Prosecutor**

Jack Smith

## I. PROCEDURAL BACKGROUND

1. On 28 February 2022, Mr Hashim Thaçi (“the Applicant”) filed a ‘Referral to the Constitutional Court Panel on the violation of Mr Thaçi’s fundamental rights to an independent and impartial tribunal established by law, and to a reasoned opinion’.<sup>1</sup>

2. On 15 March 2022, the Specialist Chamber of the Constitutional Court assigned to consider the Referral issued a ‘Decision on Further Submissions’,<sup>2</sup> asking questions to the parties concerning the Applicant’s Referral. The Chamber then directed:

- (i) The SPO to file written submissions on the questions by 29 March 2022; and
- (ii) The Applicant to file written submissions on the questions and/or comment on the SPO’s written submissions, if any, by 5 April 2022.

3. On 30 March 2022, the SPO filed its ‘Response to Decision on Further Submissions in Relation to Thaçi Referral’.<sup>3</sup> The SPO Response **was accordingly out of time**. No justification was presented by the SPO for its violation of the timeframe set by the Chamber, nor did it seek a variation for the timeframe in advance, with a showing of good cause, as required.

4. The SPO Response is 20 pages in length. In addition to being out of time, the structure of the SPO Response does not follow the questions as set out by the Chamber, but is organised by way of different headings that purport to answer one or more of the questions posed (paras (1)(a) & (b), or paras 1(a) & (e), for example),

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<sup>1</sup> KSC-CC-2022-15/F00001, Referral to the Constitutional Court Panel on the violation of Mr Thaçi’s fundamental rights to an independent and impartial tribunal established by law, and to a reasoned opinion, 28 February 2022 (“Referral”).

<sup>2</sup> KSC-CC-2022-15/F00004, Decision on Further Submissions, 15 March 2022 (“Decision”), pp. 5 and 7.

<sup>3</sup> KSC-CC-2022-15/F00005, Prosecution Response to Decision on Further Submissions in Relation to Thaçi Referral (KSC-CC-2022-15/F00004), 29 March 2022. The SPO subsequently filed a corrected version: KSC-CC-2022-15/F00005/COR, Corrected version of ‘Prosecution Response to Decision on Further Submissions in Relation to Thaçi Referral (KSC-CC-2022-15-F00004)’, 29 March 2022 (“SPO Response”). Although the filing itself is dated 29 March 2022, the time of filing is identified as “30/03/2022 09:59:00”.

making the submissions difficult to align with the questions asked. The SPO Response also contains sections that have no relationship to the questions asked by the Chamber, and respond to the substance of the Referral itself.

## II. SUBMISSIONS

5. In accordance with the Decision, the Defence for the Applicant (“Defence”) intends to file written submissions responding to the questions, and commenting on the SPO’s written submissions.

6. Pursuant to Rule 6(4)(a) of the Rules,<sup>4</sup> the Constitutional Court Panel may, *proprio motu* or on showing of good cause by a participant in the proceedings, extend any time limit prescribed the Rules or set by the Panel. The Defence hereby respectfully requests a limited extension of the time limit to file its written submissions until Tuesday, 12 April 2022.

7. As noted by the President of the Kosovo Specialist Chambers, “ruling on a request for extension of time limits lies exclusively within the competence of an assigned Panel”.<sup>5</sup> The Chamber assigned to consider the Referral is therefore the appropriate Panel to consider the Defence’s request.

8. The Defence submits that good cause exists for the reasonable and proportionate extension requested. The questions asked by the Chamber address central issues of admissibility, exhaustion of remedies, and the qualification of a final ruling. The scope of the KSC Constitutional Court’s jurisprudence on these issues is understandably limited, given the early state of the KSC’s operation. This means that the Defence does not have easy recourse to an established body of guiding principles from the Court on

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<sup>4</sup> Rules of Procedure for the Specialist Chamber of the Constitutional Court, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

<sup>5</sup> KSC-BC-2020-06/IA009/F00004, Decision Assigning a Court of Appeals Panel to Consider Requests Regarding Time Limits, 27 July 2021, para. 9.

these central issues, as demonstrated by the Chamber's questions themselves. As such, the parties must return to first principles and formulate fuller arguments in order to set out their positions, and assist the Chamber. This also means that a limited extension of time in the present case will not necessarily give rise to equivalent requests in the future.

9. The importance is also heightened by the significance of the litigation in question. This Constitutional Referral is a significant procedural step, taken only after extensive and exhaustive litigation of the issues in question at the lower levels. The Applicant, as the party bringing the challenge, should be afforded every opportunity to craft and present submissions on the issues identified as most important by the Chamber itself.

10. In addition, the Defence has a dual responsibility in these submissions: it is responding to the questions posed by the Chamber, and also responding to the submissions made by the SPO. In this context, a timeframe of seven days is objectively tight, particularly when the SPO Response was itself filed out of time. Moreover, the SPO submissions are lengthy. They cite extensively to caselaw from other jurisdictions, including from the European Court of Human Rights, which will require review and analysis. The SPO Response does not follow the structure of the questions asked by the Chamber, but rather combines and conflates them, making a reply necessarily more complicated. Moreover, rather than being limited to these questions, the SPO responds to the merits of the Referral, warranting consideration by the Defence of arguments in reply.

11. On this basis, additional time would assist the Defence to prepare meaningful submissions on these matters, and to ensure a full litigation and exposure of the issues to assist the Chamber.<sup>6</sup> For these reasons, good cause exists for a variation of the time limit on the basis of the present application.

### III. REQUESTED RELIEF

12. Accordingly, the Defence respectfully requests the Specialist Chamber of the Constitutional Court to:

- a. **FIND** that good cause exists pursuant to Rule 6(4)(a) of the Rules for a variation of the time limit; and
- b. **ORDER** that the Applicant's written submissions be filed by Tuesday, 12 April 2022.

[Word count: 1,019 words]

Respectfully submitted,



**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Wednesday, 30 March 2022

At Tampa, United States

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<sup>6</sup> KSC-BC-2020-06/IA009/F00005, Decision on Requests for Variation of Time Limits, 28 July 2021, para. 5.