



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

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 Prosecutor

Date: 31 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**

Prosecution Response to Thaçi Request for Extension of Time

Specialist Prosecutor's Office

Jack Smith

Applicant

Hashim Thaçi

I. SUBMISSIONS

1. The Specialist Prosecutor's Office ('SPO') hereby responds to the 'Thaçi Request for a Variation of the Time to Submit Written Submissions'¹ ('Request'). Thaçi requests that the Specialist Chamber Constitutional Court ('SCCC') Panel ('Panel') double the time the Panel had previously permitted for Thaçi to make submissions following the SPO's submissions.² For the reasons explained below, the Request should be rejected because Thaçi has failed to show good cause for an extension.

2. The Request is unwarranted. As an initial matter, Thaçi had—and took full advantage of—two months³ to formulate his Referral⁴ following the Court of Appeals Panel's decision.⁵ He had an obligation to ensure that the Referral comported with the SCCC's admissibility requirements, and to address such requirements in the Referral, from the outset.

3. Further, Thaçi has been in possession of the Panel's specific questions contained in the Decision since 15 March 2022, in which time he could have been doing relevant, entirely predictable research, and preparing his submissions. Thaçi's need to do research and 'formulate ... arguments'⁶ therefore does not justify an extension beyond the reasonable time already provided. It was incumbent on Thaçi to consider 'issues of admissibility, exhaustion of remedies, and the qualification of a final ruling'⁷ before filing the Referral, let alone during the two weeks following the Panel's

¹ Thaçi Request for a Variation of the Time to Submit Written Submissions, KSC-CC-2022-15/F00006, 30 March 2022.

² See Decision on Further Submissions, KSC-CC-2022-15/F00004, 15 March 2022, para.2.

³ Rules of Procedure for the Specialist Chamber of the Constitutional Court Rule 20(1)(b).

⁴ 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, KSC-CC-2022-15/F00001, 28 February 2022 ('Referral').

⁵ Decision on Appeals Against 'Decision on Motions Challenging the Jurisdiction of the Specialist Chambers', KSC-BC-2020-06/IA009/F00030.

⁶ Request, KSC-CC-2022-15/F00006, para.8 ('the Defence does not have easy recourse to an established body of guiding principles ... the parties must return to first principles and formulate fuller arguments').

⁷ Request, KSC-CC-2022-15/F00006, para.8.

issuance of the Decision. Thaçi's own asserted belief that the 'Constitutional Referral is a significant procedural step'⁸ only serves to emphasize that these are topics that he should have already spent considerable time on.

4. Thaçi seeks to blame the SPO for his extension request by claiming that the Response⁹ is 'difficult to align with the questions asked' and contending that portions of the Response 'have no relationship to the questions asked.'¹⁰ In actuality, the SPO confined itself strictly to the questions posed by the Panel, and indicated clearly in the subtitle of each section of the Response to which paragraphs of the Decision's invitations it was responding.

5. Finally, contrary to the Thaçi Defence submissions,¹¹ the SPO clarifies that the Response was submitted within the deadline, on 29 March 2022. Subsequently, on the morning of 30 March 2022, the Registry notified the SPO that the Response needed to be re-submitted, as the KSC-BC-2020-06 number had been selected in Legal Workflow, rather than the KSC-CC-2022-15. On receiving this information, the SPO promptly re-filed the Response.¹² While this error is regrettable, it in no way supports Thaçi's contention that he requires an extension. The SPO also notes that the filing error resulted in, at most, a delay of a few hours in the notification of its Response to Thaçi.¹³

II. RELIEF REQUESTED

6. For the foregoing reasons, the SPO respectfully requests that the Request be rejected.

⁸ Request, KSC-CC-2022-15/F00006, para.9.

⁹ Corrected version of 'Prosecution Response to Decision on Further Submissions in Relation to Thaçi Referral (KSC-CC-2022-15/F00004), KSC-CC-2022-15/F00005/COR ('Response').

¹⁰ Request, KSC-CC-2022-15/F00006, para.4.

¹¹ Request, KSC-CC-2022-15/F00006, paras 3, 10.

¹² A corrected version was also subsequently filed shortly afterwards on the morning of 30 March 2022, making certain format adjustments to the cover page.

¹³ Any filing made in the evening of 29 March 2022 would not have been notified until the morning of 30 March 2022 regardless.

Word count: 649



Jack Smith

Specialist Prosecutor

Thursday, 31 March 2022

At The Hague, the Netherlands.