

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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**Public Redacted Version of Thaçi Defence Reply to
Prosecution response to Hashim Thaçi's Submissions on Third Detention Review**

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I. SUBMISSIONS

1. The automatic review of the necessity of detention, every two months under Rule 57(2) of the Rules, is **not** strictly limited to whether or not a change of circumstances occurred in the case.¹ Such a change **may** be determinative and shall be taken into consideration if raised before the Panel or *proprio motu*.² The SPO bears the burden of demonstrating that the Accused's pre-trial detention remains necessary at the **current** stage of the proceedings.³

Mr Thaçi is not a flight risk

2. Mr Thaçi resigned the presidency, and surrendered to the Court. The Defence objections to the Pre-Trial Judge's continued reliance on the apparent "network of supporters" in Kosovo who would facilitate his flight from justice and apparent life on the run, are on the record.⁴ Nothing is conceded in this regard.⁵

3. The SPO now downplays its 2020 press release accusing Mr Thaçi of being criminally responsible for "nearly 100 murders"⁶ on the basis that it contained "no evidentiary content", a remarkable statement which seems to indicate that SPO Press Releases cannot be accepted at face value. Importantly, the SPO does not dispute that

¹ KSC-BC-2020-06/F00786, Prosecution response to Hashim Thaçi's Submissions on Third Detention Review, dated 29 April 2022 ("SPO Response").

² KSC-BC-2020-06/IA010/F00008, Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021, para. 19.

³ 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.

⁴ KSC-BC-2020-06/IA004/F00001, Thaçi Defence appeal against the "Decision on Hashim Thaçi's Application for Interim Release" With Public Annexes 1 and 2, 3 February 2021, paras. 22-25; KSC-BC-2020-06/F00377, Thaçi Defence Submissions on Detention Review with Confidential Annexes A and B, 30 June 2021, paras. 17-22; KSC-BC-2020-06/IA010/F00004, Thaçi Defence Appeal against Decision on Review of Detention of Hashim Thaçi, 16 August 2021, paras. 17-23.

⁵ SPO Response, para. 7.

⁶ SPO, "Press Statement", 24 June 2020, available at <https://www.scp-ks.org/en/press-statement>.

the case now presented is far less broad in scope and severity than alleged at the time that Mr Thaçi took the decision to surrender.

4. Instead, the SPO submits that Mr Thaçi's surrender predated the Specialist Chamber of the Constitutional Court's decision, that allegedly "rejected amendments to the Constitution of Kosovo that arguably could have terminated some or all charges against him".⁷ This is incorrect. The constitutional amendment in question would not have resulted in the dismissal of charges against Mr Thaçi. On the contrary, it sought to remove the five-year limitation to KSC's temporal mandate, and the SPO submissions are without merit.

The proposed conditions of detention can mitigate the risk

5. Lack of resources, or an unwillingness to spend them, cannot be a basis for denying the fundamental rights of accused, all other conditions having been met. In the context of the 250 million euros expended on the Kosovo Specialist Chambers to date,⁸ it cannot sensibly be argued pre-trial release should be granted only if it can be done cheaply enough.

6. Moreover, the SPO claims the proposed measures will involve the expenditure of "exorbitant resources",⁹ without providing the Pre-Trial Judge with any kind of estimate despite it being in a position to obtain one. The SPO submissions also fail to consider that the resources would be largely being re-deployed, rather than newly created, while other costs would disappear entirely under a house arrest regime.

⁷ SPO Response, para. 13.

⁸ According to an article published in the news portal *Nacionale* on 16 April 2022, <https://www.nacionale.com/Lajmet/Ngjarja/-Buxhet-marramendes--per-shtate-vjet-Gjykata-Speciale-shpenzoi-275-milione-euro-2743>, the KSC budget between 2016 and 2023 amounts to 275.672 million euros.

⁹ SPO Response, para. 35.

Citing examples of the Pre-Trial Judge and Appeals Chamber considering the question of resources in other contexts does not substantiate the abstract claim that the Defence measures are prohibitively expensive.¹⁰

7. Regardless, the SPO's unsubstantiated objections to house arrest on the premise of how much it would allegedly cost,¹¹ are inconsistent with the KSC's status as an extraordinary court, where the accused have been incarcerated in a country separated from their families, rather than in Kosovo. The KSC's status therefore warrants exceptional measures, not only for the protection of witnesses but also, if required, to ensure respect for the family life and other basic rights of the accused.

8. The SPO's failure to challenge the Defence submissions about the unlikelihood of [REDACTED] engaging in obstruction or harassment of witnesses is significant. Given that this is now unchallenged, the SPO's insistence on the need for [REDACTED] is inconsistent with the right of accused to family life as protected by Article 8 of the ECHR,¹² and the body of international norms which dictate that detainees should be imprisoned as close to their homes and families as possible, requiring that "special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both."¹³

¹⁰ SPO Response, para. 33.

¹¹ SPO Response, paras. 33 and 35.

¹² See also Universal Declaration on Human Rights, Article 16; International Covenant on Civil and Political Rights, Article 23; African Charter on Human and People's Rights, Article 18.

¹³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988, Principle 20; Mandela Rules United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Resolution adopted by the General Assembly on 17 December 2015 A/RES/70/175, Rules 59 and 106.

9. As regards visitors' phones,¹⁴ the monitoring could be done by the KSC Registry or Detention staff virtually or via audio recording of the visits, [REDACTED], which the SPO again raises as an obstacle.¹⁵

10. The suggestion that measures would not be commensurate with the Detention Facility because the KSC Detention Officers would be "separated" from the support of the Detention Facility itself is neither substantiated nor explained.¹⁶ Repeating at length the Pre-Trial Judge's objection to the Kosovo Police,¹⁷ does not address the reality that the Defence's measures are designed to address these objections. Regardless, the Pre-Trial Judge can also rely on the European Gendarmerie Force, an institution that is 92-members strong and which is mandated with assisting EULEX and SPO with the implementation of its mandate.¹⁸

11. The SPO's assertion that re-incarcerating Mr Thaçi 30 days prior to the start of trial is of "little protection", cannot be reconciled with this specific measure having been sought by the SPO and granted by the Pre-Trial Judge.¹⁹ The rampant speculation that **other** witnesses could still "be subject to intimidation, harassment, or worse"²⁰ is irrelevant to the effectiveness of the proposed timing of the re-incarceration as an additional mitigating factor.

12. Importantly, the SPO's submissions about Mr Thaçi's apparent intention to harass witnesses is undermined significantly by the recent revelations that the Serbian intelligence services have ordered the assassination of Mr Dick Marty, in an attempt

¹⁴ SPO Response, para. 28(i).

¹⁵ SPO Response, para. 31.

¹⁶ SPO Response, para. 34.

¹⁷ SPO Response, paras. 23-25.

¹⁸ See "EULEX to reinforce its Formed Police Unit with a Reserve Unit of 92 gendarmes", at <https://www.eulex-kosovo.eu/?page=2,10,2540>.

¹⁹ SPO Response, para. 30.

²⁰ SPO Response, para. 30.

to have his death blamed on Kosovo. As a result, Mr Marty has been under police protection in Switzerland for nearly a year.²¹ This is further proof of a larger effort to portray Kosovo Albanians generally, and Mr Thaçi specifically, as a threat to witnesses, and aligns with the evidence of Serbian officials boasting about feeding information to Dick Marty's investigators which influenced his report.²² It is now no longer acceptable for the Court to accept blindly the narrative pushed by the Serbian authorities about the heightened threats to witnesses in this case.

The detention is no longer proportionate

13. The SPO submits that detention remains proportionate because the case is actively progressing to trial.²³ The Pre-Trial Judge is aware of the fact that the SPO routinely misses even those deadlines it has set for itself. The SPO continues to disclose its Rule 102(2)(b) material intermittently, on a disorganised basis. Despite Defence requests, the SPO has never disclosed batch of documents organised by witness, and the fields in Legal Workflow of witness information remain largely incomplete. The Defence has been disclosed only a limited amount of Rule 103 material, in comparison with the volume of incriminating material disclosed. The Defence also awaits the disclosure of a significant number of items pursuant to Rule 102(3). These further delays render the SPO incapable of offering even an estimated proposed start date for the trial, and it does not attempt to do so. The immediate release of Mr Thaçi is warranted.

²¹ See, e.g. <https://www.rts.ch/play/tv/mise-au-point/video/mise-au-point?urn=urn:rts:video:13009164>; <https://allinoneoffers.co.uk/2022/04/09/under-the-threat-of-death-dick-marty-has-been-living-under-heavy-guard-for-sixteen-months/>; <https://www.swissinfo.ch/eng/former-swiss-prosecutor--targeted-by-serbian-assassins-/47506812> and KSC Weekly Media Review 9 April – 14 April 2022, pp. 3-7.

²² <https://insajderi.com/protiq-une-e-binda-dick-marty-n-qe-te-shkruante-raportin-per-kosoven/>

²³ Prosecution Response, para. 20.

II. CONCLUSION

14. As such, the Defence maintains its requests that the Pre-Trial Judge:

- (i) convene a hearing in order to hear (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;
- (ii) order Mr Thaçi's interim release on such conditions considered appropriate.

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Respectfully submitted,



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Thursday, 2 June 2022

At Tampa, United States