



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

In: KSC-BC-2020-06
Specialist 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 Prosecutor

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Prosecution submissions on detention review of Hashim Thaçi

Specialist Prosecutor's Office

Jack Smith

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagenda

I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes these submissions concerning the detention of accused Hashim Thaçi ('Thaçi'). The Pre-Trial Judge ('PTJ') and the Court of Appeals have each determined on multiple occasions that Thaçi's detention is merited under the circumstances. Since the most recent of these decisions, on 29 September 2022, there has been no change in circumstances that would favour a different determination, and Thaçi has made no submissions on this or any other basis. Thaçi's detention should be maintained.

II. PROCEDURAL HISTORY

2. Thaçi was taken into custody on 5 November 2020.³ The PTJ issued orders for his continued detention on 22 January 2021,⁴ 23 July 2021,⁵ 14 December 2021,⁶ 26 May 2022,⁷ and 29 September 2022.⁸

3. The Court of Appeals confirmed orders for Thaçi's continued detention on 30 April 2021,⁹ 27 October 2021,¹⁰ 5 April 2022,¹¹ and 22 August 2022.¹²

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Notification of Arrest of Hashim Thaçi Pursuant to Rule 55(4), F00051, 5 November 2020.

⁴ Decision on Hashim Thaçi's Application for Interim Release, F00177, 22 January 2021.

⁵ Decision on Review of Detention of Hashim Thaçi, F00417, 23 July 2021.

⁶ Decision on Review of Detention of Hashim Thaçi, F00624, 14 December 2021 ('Third Detention Decision').

⁷ Decision on Periodic Review of Detention of Hashim Thaçi, F00818, 26 May 2022.

⁸ Decision on Periodic Review of Detention of Hashim Thaçi, F00994, 29 September 2022 ('Fifth Detention Decision').

⁹ Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, IA004/F00005, 30 April 2021.

¹⁰ Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, IA010/F00008, 27 October 2021.

¹¹ Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, IA017/F00011, 5 April 2022 ('Appeals Decision').

¹² Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention, IA022/F00005, 22 August 2022.

III. SUBMISSIONS

4. In assessing whether detention remains warranted, the PTJ will consider both whether there has been any change in circumstances, and ‘assess whether he is still satisfied that, at the time of the review and under specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.’¹³ In making this determination, the PTJ ‘is neither required to make findings on the factors already decided upon in the initial ruling on detention nor to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.’¹⁴

A. GROUNDED SUSPICION

5. There remains a grounded suspicion that Thaçi has committed a crime within the jurisdiction of the SC.¹⁵ The Confirmation Decision determined that there is a suspicion that Thaçi is liable for crimes against humanity and war crimes as identified in Articles 13, 14, and 16,¹⁶ to a standard that exceeds that required for detention of ‘grounded

¹³ Third Detention Decision, F00624, para.27.

¹⁴ Third Detention Decision, F00624, para.27.

¹⁵ See Article 41(6)(a); Fifth Detention Decision, F00994, para.26; Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, F00026/RED, 26 October 2020, para.521(a).

¹⁶ Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, F00026/RED, 26 October 2020, para.521(a).

suspicion'.¹⁷ Nothing has occurred since that time that would detract from this determination, and Thaçi makes no arguments claiming any such change.

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

6. The Appeals Panel has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.¹⁸

7. In general terms the three grounds under Article 41(6)(b) justifying detention are: 1) risk of flight; 2) potential obstruction; and, 3) risk of additional crimes. The applicable standard is articulable grounds that support a 'belief' that one of the Article 41(6)(b) grounds will occur.¹⁹ The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence. In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.'²⁰

8. The PTJ has previously held that all three factors were satisfied.²¹ Since the last detention review decision on 29 September 2022, nothing has transpired that would decrease the support for an affirmative finding on any of the factors. Moreover, since that date the SPO has made substantial additional disclosures,²² increasing the risk of the occurrence of the events underlying the factors.

i. Risk of Flight (Article 41(6)(b)(i))

9. Thaçi continues to satisfy the applicable risk of flight standard. The SPO submits that Thaçi's ability to flee remains unchanged from the Fifth Detention Decision.

¹⁷ Third Detention Decision, F00624, para.30.

¹⁸ Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, IA010/F00008, 27 October 2021, para.44.

¹⁹ Third Detention Decision, F00624, para.32.

²⁰ Third Detention Decision, F00624, para.32.

²¹ Fifth Detention Decision, F00994, paras 30-41.

²² Prosecution notification of disclosure, F01034, 13 October 2022.

10. Thaçi continues to wield influence and authority that could aid him in absconding. His past and recent influential positions include being (i) a founding member of the KLA, (ii) a member of the KLA General Staff, (iii) KLA Commander-in-Chief, (iv) Prime Minister, and (v) President of Kosovo.²³ The Pre-Trial Judge has previously held that ‘Thaçi’s knowledge of the charges against him and the possibility of a serious sentence in the event of conviction increases his risk of flight.’²⁴ In addition, over and above Thaçi’s knowledge of the charges and the possible lengthy sentence, the PTJ has also held that by receiving additional evidence during the disclosure process ‘Thaçi has gained increased insight into the evidence underpinning these very charges.’²⁵ Since the last detention decision, Thaçi has been informed of additional witnesses that the SPO intends to rely on,²⁶ he has received updated witness and exhibit lists,²⁷ and also received extensive additional disclosures.

ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))

11. The SPO submits that Thaçi continues to present a risk of obstructing proceedings. The PTJ has previously found that Thaçi ‘(i) attempted to undermine the SC and offered benefits to persons summoned by the SPO; (ii) has a demonstrated interest and ability to obtain evidence provided by persons summoned by the SPO; and (iii) continues to have authority and influence in Kosovo.’²⁸ In addition, the PTJ has held that intimidation or interference of witnesses and others cannot be effectively mitigated by protective measures alone, and that there is ‘persisting climate of intimidation of witnesses and

²³ Third Detention Decision, F00624, para.36; *see also* Fifth Detention Decision, F00994, para.31.

²⁴ Fifth Detention Decision, F00994, para.32.

²⁵ Third Detention Decision, F00624, para.37.

²⁶ *See* Confidential Redacted Version of Decision on Prosecution Rule 102(2) Submission and Related Requests, F01057/CONF/RED, 27 October 2022; Confidential Redacted Version of Decision on Decision on Prosecution Request to Add Two Witnesses and Associated Materials, F01058/CONF/RED, 27 October 2022.

²⁷ Prosecution submission of amended witness and exhibit lists, F01078, 2 November 2022.

²⁸ Fifth Detention Decision, F00994, para.35.

interference with criminal proceedings against former KLA members in Kosovo.²⁹ There has been no change in these considerations, and there remains a risk that Thaçi could interfere with proceedings.

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

12. The factors assessed as to whether there is a risk of obstructing proceedings under Article 41(6)(b)(ii) are also relevant when considering whether there is a risk of further crimes were Thaçi to be released.³⁰ Under Article 41(6)(b)(iii) it is sufficient that there is a belief of a risk that Thaçi will instigate or assist others to commit crimes, or contribute in any other way to their commission.³¹

13. The PTJ has previously held that, in addition to the climate of witness intimidation, Thaçi has:

- (i) the interest and ability to obtain evidence provided by persons summoned by the SPO; (ii) attempted to undermine the SC and offered benefits to persons summoned by the SPO; (iii) a position of influence in Kosovo which could allow him to elicit the support of sympathizers; and (iv) an increased account of the SPO's case against him since [the last detention decision] as a result of [additional materials by the SPO].³²

14. This remains true today, and there continues to be a risk that Thaçi may commit additional crimes.

C. NO CONDITIONS SUFFICIENTLY MITIGATE THE ESTABLISHED RISKS

15. No alternative measures sufficiently mitigate all of the Article 41(6)(b) risks described above. The PTJ has previously considered and rightly rejected all reasonable, realistic alternatives to detention at the KSC detention facilities.³³ Since making these assessments, there has been no change that would merit re-consideration or favour alternative

²⁹ Fifth Detention Decision, F00994, para.35.

³⁰ Fifth Detention Decision, F00994, para.50.

³¹ Fifth Detention Decision, F00994, para.38.

³² Fifth Detention Decision, F00994, para.39.

³³ Fifth Detention Decision, F00994, paras 44-48.

measures over detention at the KSC detention facilities, and Thaçi has not made submissions on additional measures.

D. DETENTION REMAINS PROPORTIONAL

16. 'The reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.'³⁴ This includes assessing the length of detention as compared to the Article 41(6)(b) factors 'in order to determine whether, all factors being considered,' the detention continues to be reasonable.³⁵ The 'proportionality of pre-trial detention shall not be assessed against its expected length but against the risks under Article 41(6)(b) of the Law together with ... other factors.'³⁶

17. Here, taking all factors into consideration, Thaçi's detention continues to be reasonable. The Court of Appeals has held that 'the Pre-Trial Judge identified multiple and serious risks pursuant to Article 41(6) of the Law, as well as other relevant factors'³⁷ that justified continued detention. These include: Thaçi's influence and authority; his knowledge of the charges and the evidence against him, and a possibly lengthy prison sentence; the risk that Thaçi would obstruct KSC proceedings; the risk of committing, instigating, or assisting further crimes; that restrictive measures on release are not sufficient to mitigate risks; the gravity and the complexity of the charges against Thaçi; and that progress continues to be made towards the start of trial.³⁸ These conditions persist, and Thaçi has made no argument to attempt to displace them.

18. Moreover, Thaçi's detention will continue to be subject to at least bi-monthly review pursuant to Article 41(10) and Rule 57(2) of the Rules, allowing re-consideration should circumstances change.

³⁴ Appeals Decision, IA017/F00011, para.65.

³⁵ Appeals Decision, IA017/F00011, para.65.

³⁶ Appeals Decision, IA017/F00011, para.67

³⁷ Appeals Decision, IA017/F00011, para.68 (citations omitted).

³⁸ See Appeals Decision, IA017/F00011, para.68 and sources cited at fns 190-191.

IV. CONCLUSION

19. For the foregoing reasons, the SPO respectfully submits that Thaçi should remain detained.

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Jack Smith

Specialist Prosecutor

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At The Hague, the Netherlands.