

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

Date: 9 November 2022

Language: English

Classification: Confidential

Thaçi Defence Request for an Extension of Time for Submissions on Review of Detention

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I. INTRODUCTION

1. On 29 September 2022, the Pre-Trial Judge ordered the continued detention of Mr Hashim Thaçi.¹ In this decision, the Pre-Trial Judge also set the timetable for the next review of detention, including ordering the SPO to “file submissions on the next review of Mr Thaçi’s detention by no later than **Friday, 4 November 2022**, and the Defence, if it wishes to do so, to file their submissions by no later than **Tuesday, 15 November 2022.**”²

2. On 4 November 2022, the SPO filed the ‘Prosecution submissions on detention review of Hashim Thaçi’.³ Consequently, in accordance with the orders of the Pre-Trial Judge in the Detention Decision, any response to the SPO Submissions by the Defence for Mr Hashim Thaçi (“Defence”) would be due on Tuesday, 15 November.

3. At the Fifteenth Status Conference on 4 November 2022, the Defence, and the Defence for Mr Kadri Veseli (“Veseli Defence”) raised new disclosure issues relating to the ‘Joint Defence Motion for Disclosure Pursuant to Rule 103’.⁴ The Pre-Trial Judge therefore authorised the filing of supplemental submissions to the Disclosure Motion, and set a timetable as follows: (1) Defence filing of supplemental submissions by Monday, 14 November 2022; (2) SPO response by Thursday, 24 November 2022; and (3) Defence reply (if any) by 29 November 2022.⁵ The Defence intends to file supplemental submissions in accordance with the timetable set by the Pre-Trial Judge.

¹ KSC-BC-2020-06/F00994, Pre-Trial Judge, Decision on Periodic Review of Detention of Hashim Thaçi, 29 September 2022, Confidential (“Detention Decision”), para. 58(a).

² Detention Decision, para. 58(c) (emphasis in original).

³ KSC-BC-2020-06/F01086, Prosecution submissions on detention review of Hashim Thaçi, 4 November 2022, Public (“SPO Submissions”).

⁴ KSC-BC-2020-06/F00877/COR, Corrected Version of Joint Defence Motion for Disclosure Pursuant to Rule 103, With Public Annexes 1-3 and Confidential Annex 4 (F00877, dated 12 July 2022), 21 July 2022, Confidential (“Disclosure Motion”).

⁵ KSC-BC-2020-06, Transcript of Fifteenth Status Conference, 4 November 2022, Confidential (“Fifteenth Status Conference Transcript”), Oral Order 5, p. 1692 lines 5-11.

The impact of this question on the current review of detention was also discussed at the Fifteenth Status Conference.⁶

4. Thus, pursuant to Rule 9(5)(a) of the Rules,⁷ the Defence requests a variation of the time limit set by the Pre-Trial Judge to file submissions on the next review of detention in order that such submissions be provided, if necessary, following resolution of the Disclosure Motion, and review of any consequent disclosure.

II. SUBMISSIONS

5. Good cause exists for the requested extension. The submissions made by the Defence at the Fifteenth Status Conference revealed problematic information about the sources of information in the SPO's possession, and how this potentially tainted information may have been used.⁸ It is clear that broader review and consideration is required to determine the precise relevance of this material to the review of detention. In particular, as submitted at the Status Conference, the Defence first requires full disclosure of all relevant materials, as well as information about how these materials may have been used or relied upon by the SPO, or others.⁹ The Defence therefore submits that further submissions on whether reasons for continued detention still exist would benefit from being made following receipt and consideration of any decision on the Disclosure Motion, including resolution of the issues raised in the supplemental submissions, and receipt and consideration of any consequent disclosure that is ordered.

⁶ See, e.g., Fifteenth Status Conference Transcript, pp. 1604-1605, 1608-1609.

⁷ KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 ("Rules").

⁸ Fifteenth Status Conference Transcript, pp. 1591-1618.

⁹ Fifteenth Status Conference Transcript, pp. 1605, 1609, 1611-1612.

6. The Defence also notes that the Veseli Defence have requested a similar extension, waiving the detention review for Mr Veseli until the Pre-Trial Judge has issued his decision and they have received any required disclosure from the SPO.¹⁰

7. Considering the requested extension requires the waiver of Mr. Thaçi's right to have his detention reviewed on a two-monthly basis, in accordance with Article 41(10) of the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rule 57(2) of the Rules, the Defence confirms that, exceptionally, Mr. Thaçi waives his right to review of the detention during the period required for the relief sought in the present request.

8. Accordingly, the Defence respectfully requests the Pre-Trial Judge to:

FIND that good cause exists pursuant to Rule 9(5)(a) of the Rules for a variation of the time limit; and

ORDER that submissions on whether reasons for continued detention still exist be filed, if necessary, following resolution of the Disclosure Motion, and review of any consequent disclosure.

[Word count: 781 words]

¹⁰ Fifteenth Status Conference Transcript, pp. 1617-1618; KSC-BC-2020-06/F01091, Veseli Defence Notice of Waiver of Detention Review, 7 November 2022, Public, para. 1.

Respectfully submitted,



Gregory W. Kehoe

Counsel for Hashim Thaçi

Wednesday, 9 November 2022

At Tampa, United States