



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

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Language: English

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**Public Redacted Version of
Decision on Periodic Review of Detention of Hashim Thaçi**

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TRIAL PANEL II of the Kosovo Specialist Chambers (“Panel”), pursuant to Article 41(2), (6), (10), and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. The procedural background concerning the periodic reviews of the detention of Hashim Thaçi (“Mr Thaçi”) has been set out extensively in previous decisions. Relevant events since the fifth review of Mr Thaçi’s detention on 29 September 2022 include the following.

2. On 4 November 2022, the SPO filed its submissions on the sixth review of Mr Thaçi’s detention (“SPO Submissions”).¹ On the same day, the Thaçi Defence and Veseli Defence raised new issues relating to the evidence relied upon for their detention.² In this regard, the Veseli Defence asked that the next review of detention be suspended until the Parties make new submissions on the issues raised.³ Both Defence teams were ordered to file waivers from the Accused of the statutory two-month period if they sought suspension of the period for review of detention.⁴

3. On 9 November 2022, the Thaçi Defence submitted a request for an extension of time for its submissions on the sixth review of pre-trial detention pursuant to

¹ KSC-BC-2020-06, F01086, Specialist Prosecutor, *Prosecution Submissions on Detention Review of Hashim Thaçi*, 4 November 2022, public.

² KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, confidential, p. 1604, lines 8-22, p. 1611, lines 11-16. A public redacted version of the transcript was filed on the same day.

³ KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, confidential, p. 1605, lines 14-19. A public redacted version of the transcript was filed on the same day.

⁴ KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, public, p. 1617, line 24 to p. 1618, line 16.

Article 41(10) of the Law until the resolution of the issues raised in the 15th status conference and upon review of any resulting document disclosure by the SPO.⁵

4. On 11 November 2022, the Pre-Trial Judge issued a decision amending the schedule of submissions for the sixth review of Mr Thaçi's detention. Therein, the Pre-Trial Judge: (i) postponed the review of Mr Thaçi's detention until 19 December 2022; (ii) directed the Thaçi Defence to file a notice indicating that Mr Thaçi waives the right to have his detention reviewed before the two-month time limit in that provision; (iii) ordered the SPO, if it wished to do so, to supplement its submissions on continued detention by no later than 9 December 2022; and (iv) ordered the Thaçi Defence, if it wished to do so, to respond to any of the SPO's submissions by no later than 14 December 2022.⁶

5. On 15 November 2022, the Thaçi Defence filed a notification indicating that Mr Thaçi waived his right to have his detention reviewed within two months of the prior decision on detention, until 19 December 2022 as indicated by the Pre-Trial Judge.⁷

6. On 30 November 2022, the President assigned KSC-BC-2020-06 to the Panel.⁸

7. On 9 December 2022, the SPO filed a supplement to its earlier submissions on the sixth review of Mr Thaçi's detention ("SPO Supplement").⁹

⁵ KSC-BC-2020-06, F01095, *Thaçi Defence Request for an Extension of Time for Submissions on Review of Detention*, 9 November 2022, confidential.

⁶ KSC-BC-2020-06, F01098, Pre-Trial Judge, *Decision on Thaçi Defence Request for an Extension of Time for Submissions on Review of Detention*, 11 November 2022, public, para. 19.

⁷ KSC-BC-2020-06, F01104, Specialist Counsel, *Thaçi Defence Notification of Waiver of Detention Review with Confidential Annex 1*, 15 November 2022, public, with confidential annex 1 (F01104/A01/CONF).

⁸ KSC-BC-2020-06, F01132, President, *Decision Assigning Trial Panel II*, 30 November 2022, public. Pursuant to this decision of the President and the subsequent decision of the Pre-Trial Judge transmitting the case file to the Panel (Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel II*, 15 December 2022, public), the Panel issues the present decision notwithstanding that the submissions of the Parties were filed before the Pre-Trial Judge.

⁹ KSC-BC-2020-06, F01147, Specialist Prosecutor, *Prosecution Supplement to Detention Filings F01069 and F01086*, 9 December 2022, public.

8. On 14 December 2022, the Thaçi Defence filed its response to the SPO Submissions and the SPO Supplement (“Thaçi Response”).¹⁰

9. On 16 December 2022, the Panel held a status conference in KSC-BC-2020-06, during which it indicated the tentative start date for the trial of 1 March 2023.¹¹

II. SUBMISSIONS

10. The SPO submits that the Pre-Trial Judge and the Court of Appeals have each determined on multiple occasions that Mr Thaçi’s detention is justified. According to the SPO, since the last decision on review of Mr Thaçi’s detention, there has been no change in circumstances that would warrant a different conclusion.¹² The SPO further points to the fact that the case has now been transmitted to a Trial Panel as further justification for the continued detention of Mr Thaçi.¹³

11. The Thaçi Defence requests the immediate release of Mr Thaçi from detention, with conditions assessed to be appropriate in the circumstances.¹⁴ It submits that Mr Thaçi has reduced influence and authority in Kosovo and this in turn reduces his ability to abscond from justice. The Thaçi Defence further argues that the SPO case against Mr Thaçi is flawed and there is an absence of evidential support for its accusations. This is compounded by the fact that there are nine witnesses with central roles who are willing to be called on behalf of Mr Thaçi. Thus, the Thaçi Defence argues that Mr Thaçi’s heightened knowledge of the SPO case does not increase his incentive to abscond.¹⁵

¹⁰ KSC-BC-2020-06, F01156, Specialist Counsel, *Thaçi Defence Response to Prosecution submissions on detention review of Hashim Thaçi*, 14 December 2022, confidential.

¹¹ KSC-BC-2020-06, Transcript of Hearing, 16 December 2022, public., p. 1773, lines 5-6.

¹² SPO Submissions, paras 1, 19.

¹³ SPO Supplement, para. 3.

¹⁴ Thaçi Response, para. 39.

¹⁵ Thaçi Response, paras 13-22.

12. Regarding the risk of obstruction of the proceedings, the Thaçi Defence submits that there are no concrete examples of witness intimidation or harassment implicating Mr Thaçi.¹⁶

13. Regarding the risk of further commission of crimes, the Thaçi Defence argues that there is no indication that, in the past two years, Mr Thaçi has engaged his alleged networks or sympathisers, or used his purported ongoing influence and authority in Kosovo, to commit offences against the administration of justice.¹⁷

14. The Thaçi Defence points out that Mr Thaçi has agreed to submit to restrictive conditions if released pending trial, including house arrest, and he has provided guarantees from third states willing to facilitate his release and ensure his return to the SC.¹⁸

15. Finally, in light of the duration of pre-trial proceedings, the Thaçi Defence submits that Mr Thaçi's detention is no longer reasonable and the fact that his detention is periodically reviewed does not negate the unreasonableness of this period of pre-trial detention.¹⁹

III. APPLICABLE LAW

16. The law applicable to deciding the present matter is set out in Article 41 of the Law, and Rules 56 and 57 of the Rules, and has been laid out extensively in earlier decisions. The Panel will apply these standards to the present decision.

¹⁶ Thaçi Response, paras 23-24.

¹⁷ Thaçi Response, paras 25-29.

¹⁸ Thaçi Response, para. 30.

¹⁹ Thaçi Response, paras 32-36.

IV. DISCUSSION

A. PRELIMINARY ISSUE

17. The Panel recalls that in the 15th Status Conference before the Pre-Trial Judge, the Thaçi Defence and the Veseli Defence raised an issue relating to the disclosure of material from the SPO concerning the credibility of two SPO witnesses with an alleged connection to Serbian intelligence. According to the Veseli Defence, the information from these witnesses may have been relied upon for the Pre-Trial Judge's prior decisions on detention. Mr Thaçi waived his right to the review of his detention within the two-month period set out in Article 41(10) of the Law and, upon the Thaçi Defence's request, the Pre-Trial Judge extended the schedule for the Thaçi Response specifically to allow sufficient time for the Thaçi Defence to address the disclosure issue that it raised in the 15th Status Conference.

18. The Panel further notes that in a decision of 9 December 2022, the Pre-Trial Judge ordered the SPO to disclose various documents relating to the issue raised at the 15th Status Conference.²⁰ In that decision, the Pre-Trial Judge also rejected the Thaçi Defence's request to make further submissions on detention only after receiving from the SPO the documents that are the subject of the order.²¹

19. The Thaçi Defence continues to challenge the credibility of SPO witnesses with an alleged Serbian connection. The Panel finds that the Pre-Trial Judge's decision to continue detention was not based in any material way on information that is unreliable, or that no reasonable judge could take it into consideration for the limited purpose of deciding this matter. The Panel also finds that the impugned information has no direct bearing on any of the factors set out in

²⁰ KSC-BC-2020-06, F01149, Pre-Trial Judge, *Decision on Joint Defence Motion for Disclosure Pursuant to Rule 103*, 9 December 2022, confidential, para. 85.

²¹ KSC-BC-2020-06, F01149, Pre-Trial Judge, *Decision on Joint Defence Motion for Disclosure Pursuant to Rule 103*, 9 December 2022, confidential, para. 83.

Article 41 of the Law or would materially affect the Panel's findings in respect of any of these factors.

B. ARTICLE 41 CRITERIA

20. The Court of Appeals Panel has held that a panel has an obligation to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law. The Panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the Panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.²² Moreover, a review of detention under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred in the case. However, such a change can nonetheless be determinative and shall be taken into consideration if raised before the relevant panel or *proprio motu*.²³

i. Grounded Suspicion

21. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.²⁴

22. The Panel notes that, in the Confirmation Decision, the Pre-Trial Judge determined that, pursuant to Article 39(2) of the Law, there was a well-grounded

²² KSC-BC-2020-07, F00005, Court of Appeals, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 55.

²³ KSC-BC-2020-06, IA010/F00008, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, para. 19.

²⁴ See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

suspicion that Mr Thaçi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.²⁵ Moreover, the Pre-Trial Judge found that a well-grounded suspicion has also been established with regard to new charges brought by the SPO against Mr Thaçi.²⁶ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.²⁷

23. Absent any new material circumstances affecting the above findings, the Panel finds that there continues to be a grounded suspicion that Mr Thaçi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

ii. Necessity of Detention

24. With respect to the grounds for continued detention, Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be

²⁵ KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*, para. 521(a). A confidential redacted version was filed on 19 November 2020, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED.; KSC-BC-2020-06, F00417, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi* ("Second Decision on Detention"), 23 July 2021, confidential, para. 20. A public redacted version was filed on the same day, F00417/RED; KSC-BC-2020-06, F00624, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi* ("Third Decision on Detention"), 14 December 2021, confidential, para. 30. A public redacted version was filed on 25 January 2022, F00624/RED; KSC-BC-2020-06, F00818, Pre-Trial Judge, *Decision on Periodic Review of Detention of Hashim Thaçi* ("Fourth Decision on Detention"), 26 May 2022, confidential, para. 31. A public redacted version was filed on 8 June 2022, F00818/RED.

²⁶ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. A confidential redacted version (F00777/CONF/RED), a public redacted version (F00777/RED) and a confidential lesser redacted version (F00777/CONF/RED2) were filed, respectively, on 22 April 2022, 6 May 2022 and 16 May 2022. The requested amendments are detailed at para. 11.

²⁷ See for instance KSC-BC-2020-06, IA008/F00004, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 21. A public redacted version was issued on the same day, IA008/F00004/RED.

necessary: (i) risk of flight; (ii) risk of obstruction of the proceedings; or (iii) risk of the further commission of crimes.²⁸ These grounds must be “articulable” in the sense that they must be specified in detail by reference to the relevant information or evidence.²⁹ The SPO must accordingly demonstrate the existence of either of these risks against the threshold of articulable grounds to believe.³⁰ Furthermore, a Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention.³¹ That being said, in determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person’s detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.³²

a) Risk of Flight

25. The SPO submits that, absent any change in circumstances, Mr Thaçi continues to satisfy the applicable risks.³³ According to the SPO, Mr Thaçi continues to wield influence and authority that could aid him in absconding and his knowledge of the charges increases his incentive to abscond.³⁴ Moreover, the SPO recalls the Pre-Trial Judge’s earlier finding that there exists a risk that Mr Thaçi may abscond.³⁵

²⁸ Cf. ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, Judgment, 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, Judgment, 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, Judgment, 4 July 2019, para. 155.

²⁹ Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”.

³⁰ KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 15.

³¹ KSC-BC-2020-06, IA004/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release* (“First Appeal Decision on Detention”), 30 April 2021, confidential, para. 22. A public redacted version was filed on the same day, IA004/F00005/RED.

³² First Appeal Decision on Detention, para. 22.

³³ SPO Submissions, para. 9.

³⁴ SPO Submissions, paras 9-10.

³⁵ SPO Submissions, para. 10.

26. The Defence responds by advancing several arguments in support of the premise that Mr Thaçi's knowledge of the evidence underpinning the charges against him does not give rise to a flight risk – in particular because of the strength of the defence case as detailed in the pre-trial brief³⁶ and the witnesses who are willing to testify in his favour.³⁷ The Thaçi Defence argues that no reasonable Judge could assess the case file as it now exists and continue to accept that Mr Thaçi, who surrendered to the SC, and who has cooperated fully with it, would now abscond because of the strength of the SPO case.³⁸

27. The Pre-Trial Judge found that there was a risk that Mr Thaçi would abscond on the basis of his influence and authority stemming from past and recent positions he held.³⁹ This finding was specifically qualified by the fact that Mr Thaçi had generally cooperated with the SPO and the SC.⁴⁰

28. The Panel considers that the argument that an Accused's increased knowledge of the charges may create an incentive for him or her to abscond carries limited weight in the present matter. The Panel notes that there is no indication that Mr Thaçi considered or made preparations to evade arrest. Instead, there are indications that he was cooperative with the relevant authorities at all points during his detention and transfer. Therefore, the Panel considers that, while the risk of flight can never be completely eliminated, the required concrete grounds

³⁶ Thaçi Response, paras 16-19.

³⁷ Thaçi Response, para. 20.

³⁸ Thaçi Response, para. 22.

³⁹ KSC-BC-2020-06, F00177, Pre-Trial Judge, *Decision on Hashim Thaçi's Application for Interim Release* ("First Decision on Detention"), 22 January 2021, confidential, paras 31, 33. A public redacted version was filed on 26 January 2021, F00177/RED; First Appeal Decision on Detention, para. 50; Second Decision on Detention, paras 27-30; KSC-BC-2020-06, IA010/F00008, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention* ("Second Appeal Decision on Detention"), 27 October 2021, confidential, para. 35. A public redacted version was issued on the same day, IA010/F00008/RED; Third Decision on Detention, paras 35-36; Fourth Decision on Detention, para. 37.

⁴⁰ First Decision on Detention, paras 32, 56.

have not been shown at this time to exist that would support a finding that Mr Thaçi is a flight risk.

29. The Panel therefore finds that Mr Thaçi's continued detention may not be justified at this time on the ground of the risk of flight under Article 41(6)(b)(i) of the Law.

b) Risk of Obstructing the Progress of SC Proceedings

30. The SPO submits that Mr Thaçi continues to present a risk of obstructing proceedings.⁴¹ It avers that there has been no change in any of the factors previously established by the Pre-Trial Judge.⁴² In addition, the SPO submits that the Pre-Trial Judge has held that intimidation or interference with witnesses and others cannot be effectively mitigated by protective measures alone. The SPO submits that there has been no change in these circumstances.⁴³

31. The Thaçi Defence responds that the SPO's examples of witness intimidation are now years old and there are no examples that implicate Mr Thaçi himself.⁴⁴

32. The Panel recalls that the Pre-Trial Judge found that Mr Thaçi: (i) attempted to undermine the SC and offered benefits to persons summoned by the SPO; (ii) [REDACTED]; and (iii) continues to have authority and influence in Kosovo.⁴⁵ The Pre-Trial Judge also determined that the high risk of intimidation or

⁴¹ SPO Submissions, para. 11.

⁴² SPO Submissions, para. 11, referring to KSC-BC-2020-06, F00994, Pre-Trial Judge, *Decision on Periodic Review of Detention of Hashim Thaçi* ("Fifth Decision on Detention"), 29 September 2022, confidential, para. 35. A public redacted version was filed on 6 October 2022, F00994/RED.

⁴³ SPO Submissions, para. 11.

⁴⁴ Thaçi Response, para. 24.

⁴⁵ First Decision on Detention, paras 38-42; First Appeal Decision on Detention, paras 45-77; Second Decision on Detention, paras 36-38; Second Appeal Decision on Detention, paras 34-36; Third Decision on Detention, paras 42-43; Fourth Decision on Detention, para. 45.

interference of witnesses and/or their family members cannot be effectively mitigated by relying only on protective measures.⁴⁶

33. No new circumstances have arisen since the last detention review that would justify different findings. Instead, the proximity of trial reinforces the validity of these findings. With the commencement of trial, the names and personal details of certain highly sensitive witnesses will be disclosed to the Thaçi Defence, and will therefore become known to a broader range of people, including the Accused. This, in turn, increases the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence. In this context, the release of an Accused with sensitive information in his possession would not be conducive to the effective protection of witnesses who are yet to testify.

34. Accordingly, the Panel concludes that the risk that Mr Thaçi will obstruct the progress of SC proceedings continues to exist.

c) Risk of Committing Further Crimes

35. The SPO submits that 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 Mr Thaçi to be released.⁴⁷ The SPO recalls the Pre-trial Judge's earlier findings and submits that there continues to be a risk that Mr Thaçi may commit additional crimes.⁴⁸

⁴⁶ Second Decision on Detention, para. 38; Third Decision on Detention, para. 44; Fourth Decision on Detention, para. 45.

⁴⁷ SPO Submissions, para. 12.

⁴⁸ SPO Submissions, para. 14.

36. The Thaçi Defence responds that there is no indication that Mr Thaçi has engaged his alleged networks of sympathisers in an attempt to commit further crimes.⁴⁹

37. The Pre-Trial Judge found, based on four primary considerations, that the risk that Mr Thaçi will commit further crimes existed.⁵⁰ No new circumstances have arisen since the last detention review that would justify different findings by this Panel. The Panel notes, furthermore, that the factors taken into account in relation to the risk of obstruction are also relevant to the analysis of the risk that Mr Thaçi may commit further crimes. In particular, the Panel highlights again the fact that the trial in this case is soon to begin, the identities of sensitive witnesses will soon be disclosed to the Thaçi Defence, and that any risk of interference with witnesses prior to their testimony must be imperatively avoided.

38. On this basis, the Panel considers that, taking all factors together, there continues to be a risk that Mr Thaçi will commit further crimes as set out in Article 41(6)(b)(iii) of the Law.

39. Accordingly, the Panel concludes that the risk that Mr Thaçi will commit further crimes continues to exist.

iii. Conclusion

40. The Panel concludes that at this time there is insufficient information before it justifying a finding that the risk continues that Mr Thaçi may abscond from justice. However, the Panel is satisfied, based on the relevant standard, that there is a risk that Mr Thaçi will obstruct the progress of SC proceedings or commit further crimes against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are

⁴⁹ Thaçi Response, para. 27.

⁵⁰ Fifth Decision on Detention, para. 39.

due to appear before the SC. The Panel will assess below whether these risks can be adequately addressed by any conditions for his release.

C. MEASURES ALTERNATIVE TO DETENTION

41. The SPO submits that no alternative measures sufficiently mitigate the Article 41(6)(b) risks posed by Mr Thaçi.⁵¹ The SPO recalls that the Pre-Trial Judge has previously considered and rightly rejected all reasonable, realistic alternatives to detention at the SC detention facilities.⁵² According to the SPO, since the last decision on detention review there has been no change that would merit reconsideration or favour alternative measures over detention at the SC detention facilities.⁵³

42. The Thaçi Defence responds that Mr Thaçi has repeatedly proposed reasonable and realistic alternative measures to incarceration in The Hague, and he has provided guarantees from third states willing to facilitate his provisional release and ensure his return to the SC.⁵⁴

43. When deciding on whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.⁵⁵ Article 41(12) of the Law sets out a number of options to be considered in order to ensure the accused's presence at trial, to prevent reoffending or to ensure successful conduct of proceedings. In this respect, the Panel recalls that detention should only be continued if there are no alternative, more lenient measures

⁵¹ SPO Submissions, para. 15.

⁵² SPO Submissions, para. 15, *referring to* Fifth Decision on Detention, paras 44-48.

⁵³ SPO Submissions, para. 15.

⁵⁴ Thaçi Response, para. 30.

⁵⁵ As regards the obligation to consider "alternative measures", see KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, public, para. 114. See also ECtHR, [Buzadji v. the Republic of Moldova](#), para. 87 *in fine*; ECtHR, [Idalov v. Russia](#) [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.⁵⁶ The Panel must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Thaçi Defence or the SPO.⁵⁷

44. As regards flight risk, the Panel recalls its finding above that Mr Thaçi's continued detention may not be justified on the ground of the risk of flight. The question of alternative measures that could address such a risk is therefore moot.

45. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel concurs with the Pre-Trial Judge's finding that none of the proposed conditions, nor any additional measures foreseen in Article 41(12), could sufficiently mitigate the existing risks.⁵⁸ The Panel recalls that the Pre-Trial Judge determined that the measures in place at the SC detention facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.⁵⁹ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁶⁰

46. The Panel agrees that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Thaçi's communications can be restricted in a manner that would sufficiently mitigate the

⁵⁶ SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020* ("SCCC 22 May 2020 Judgment"), 22 May 2020, para. 70. See also ECtHR, *Idalov v. Russia [GC]*, para. 140 *in fine*.

⁵⁷ KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, para.

86; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 24.

⁵⁸ Fourth Decision on Detention, paras 62-70; Second Decision on Detention, para. 55; Second Appeal Decision on Detention, para. 65; Third Appeal Decision on Detention, para. 91; Fourth Appeal Decision on Detention, paras 71, 73; Fourth Appeal Decision on Detention, paras 25-29, 38.

⁵⁹ Third Decision on Detention, para. 81; Fourth Decision on Detention, para. 72.

⁶⁰ Third Appeal Decision on Detention, para. 31.

risks of obstruction and commission of further crimes.⁶¹ In the absence of any intervening developments regarding this matter, this conclusion continues to hold true.

47. In light of the foregoing, the Panel finds that the risks of obstructing the proceedings and committing further offences can only be effectively managed at the SC's detention facilities. In these circumstances, the Panel finds that Mr Thaçi's continued detention is necessary in order to avert the risks in Article 41(6)(b)(ii) and (iii) of the Law.

D. REASONABLENESS OF DETENTION

48. The SPO submits that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.⁶² The SPO argues that, taking all factors into consideration, Mr Thaçi's detention continues to be reasonable in light of: (i) Mr Thaçi's influence and authority; (ii) his knowledge of the charges and the evidence against him, and a possibly lengthy prison sentence; (iii) the risk that Mr Thaçi would obstruct SC proceedings; (iv) the risk of committing, instigating, or assisting further crimes; (v) the fact that restrictive measures on release are not sufficient to mitigate risks; (vi) the gravity and the complexity of the charges against Mr Thaçi; and (vii) the fact that progress continues to be made towards the start of trial.⁶³

49. The Thaçi Defence argues that the SPO submits generic claims that do not distinguish Mr Thaçi's case from that of any other accused before an international court or tribunal. It argues that the fact that Mr Thaçi has been detained for two

⁶¹ Fifth Decision on Detention, para. 47. *See* Third Appeal Decision on Detention, para. 38.

⁶² SPO Submissions, para. 16, *referring to* Third Appeal Decision on Detention, para. 65.

⁶³ SPO Submissions, para. 17, *referring to* Third Appeal Decision on Detention, para. 68.

years while awaiting his trial falls far below the acceptable standards of either international or domestic prosecutions.

50. The Panel recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention – as reflected in Rule 56(2) of the Rules.⁶⁴ The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.⁶⁵ However, the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features.⁶⁶

51. The Panel notes in this regard that Mr Thaçi was arrested on 5 November 2020 and, as a result, has now been in detention for more than two years. During this time, significant steps were taken for the preparation of the case for trial. Following the 15 December 2022 transmission of the case file from the Pre-Trial Judge to the Panel, the latter promptly scheduled preparatory conferences to be held on 18 January 2023 and ordered submissions from the Parties to be filed prior to those hearings, with a view to starting the trial on 1 March 2023.⁶⁷ Finally, as the Panel noted above, with the commencement of trial now imminent, information

⁶⁴ KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

⁶⁵ See KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 69.

⁶⁶ ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 90.

⁶⁷ KSC-BC-2020-06, Transcript of Hearing, 16 December 2022, public., p. 1699, line 24 to p. 1700, line 6, and p. 1773, lines 5-6.

of increasing sensitivity will be disclosed to the Thaçi Defence, including the unredacted personal details and statements of protected witnesses.⁶⁸

52. In light of these developments, as well as the fact that there are continuing risks of obstructing the proceedings and of committing further crimes, neither of which can be sufficiently mitigated by the application of reasonable alternative measures, the Panel finds that Mr Thaçi's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

53. The Panel notes, however, that the Accused have already been in detention for a significant period of time, and the trial in this case is likely to be lengthy. This will require the Panel as well as all Parties to be particularly mindful of the need to ensure that the trial proceeds as expeditiously as possible. The Panel will continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable.

E. CLASSIFICATION

54. Noting that the SPO has filed a public version of the SPO Submissions, the Panel orders the Thaçi Defence to submit a public redacted version of the Thaçi Response or request reclassification by no later than 5 January 2023.

⁶⁸ See, *inter alia*, the Pre-Trial Judge's first through twelfth decisions on protective measures in KSC-BC-2020-06 (F00133, F00190, F00211, F00239, F00338, F00373, F00407, F00438, F00466, F00467, F00559 and F00571).

VI. DISPOSITION

55. For the above-mentioned reasons, the Panel hereby:

- a) **ORDERS** Mr Thaçi's continued detention;
- b) **ORDERS** the SPO to file submissions on the next review of Mr Thaçi's detention by no later than Monday, 30 January 2023, with the response and reply following the timeline set out in Rule 76 of the Rules;
- c) **ORDERS** the Thaçi Defence to submit a public redacted version of the Thaçi Response or request reclassification by no later than Thursday, 5 January 2023.



Charles L. Smith, III
Presiding Judge

Dated this Monday, 19 December 2022
At The Hague, the Netherlands.