



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  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 2 March 2023

**Language:** English

**Classification:** Public

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**Decision on Thaçi Defence Motion to Narrow the Charges in the Indictment**

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**TRIAL PANEL II** (“Panel”), pursuant to Article 40(6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 117(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed the initial indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (“Accused” and “First Confirmation Decision”).<sup>1</sup>
2. On 22 April 2022, the Pre-Trial Judge confirmed amendments to the confirmed initial indictment (“Second Confirmation Decision”).<sup>2</sup>
3. On 30 September 2022, pursuant to two further decisions of the Pre-Trial Judge,<sup>3</sup> the Specialist Prosecutor’s Office (“SPO”) submitted a confirmed further amended indictment (“Indictment”).<sup>4</sup>
4. On 18 January 2023, during the Trial Preparation Conference, the Panel: (i) set the deadline for any motions pursuant to Rule 117(2) to 1 February 2023 and for any responses to any such motion to 8 February 2023; and (ii) decided that no replies will be entertained.<sup>5</sup>

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<sup>1</sup> 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*. A confidential redacted version was issued on 19 November 2020, F00026/CONF/RED. A public redacted version was issued on 30 November 2020, F00026/RED.

<sup>2</sup> F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*. A public redacted version (F00777/RED) and a (lesser redacted) confidential redacted version (F00777/CONF/RED2) were issued on 6 and 16 May 2022, respectively.

<sup>3</sup> F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment*, 22 July 2022; F00993, Pre-Trial Judge, *Decision on the Prosecution Request to Amend the Indictment*, 29 September 2022, confidential. A public redacted version was issued on the same day, F00993/RED.

<sup>4</sup> F00999/A01, Specialist Prosecutor, *Amended Indictment*, 30 September 2022, confidential. A (lesser redacted) public redacted version was filed on 15 February 2023, F01296/A03.

<sup>5</sup> Transcript of Hearing, 18 January 2023, p. 1901, line 23, to p. 1903, line 5.

5. On 1 February 2023, the Defence for Hashim Thaçi (“Thaçi Defence”) filed a motion to narrow the charges in the Indictment (“Thaçi Motion”).<sup>6</sup> On the same day, the Defence for Rexhep Selimi joined the Thaçi Motion.<sup>7</sup>

6. On 8 February 2023, the SPO responded to the Thaçi Motion (“SPO Response”).<sup>8</sup>

7. On 15 February 2023, during the SPO Preparation Conference, the Panel invited the SPO to narrow the charges in the Indictment.<sup>9</sup>

## II. SUBMISSIONS

8. The Thaçi Defence requests the Panel to invite the SPO to narrow the temporal scope of the Indictment to events “on or before 20 June 1999” (“First Request”).<sup>10</sup> Should the SPO decline the Panel’s invitation, the Thaçi Defence requests the Panel to order the SPO to narrow the temporal scope as indicated above (“Second Request”).<sup>11</sup> In addition, the Thaçi Defence requests the Panel to order (further) narrowing of the temporal and geographical scope of the Indictment as deemed necessary by the Panel to protect the Accused’s right to an expeditious trial (“Third Request”).<sup>12</sup> The Thaçi Defence bases its three requests on Article 40 (in particular, paragraph 2 thereof) and Rules 116 (in particular, paragraph 1 thereof), 117(2), 118(1)(b) and 130(3).<sup>13</sup>

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<sup>6</sup> F01242, Specialist Counsel, *Thaçi Defence Motion to Narrow Charges in the Indictment Pursuant to Rules 116, 117 and 118*, 1 February 2023.

<sup>7</sup> F01244, Specialist Counsel, *Selimi Defence Joinder to Thaçi Defence Motion to Narrow Charges in the Indictment Pursuant to Rules 116, 117 and 188 (sic)*, dated 1 February 2023, 1 February 2023.

<sup>8</sup> F01266, Specialist Prosecutor, *Prosecution Response to Thaçi Motion to Narrow the Charges in the Indictment*, 8 February 2023.

<sup>9</sup> Transcript of Hearing, 15 February 2023, p. 1916, line 23, to p. 1917, line 2.

<sup>10</sup> Thaçi Motion, paras 1-2.

<sup>11</sup> Thaçi Motion, paras 2, 21.

<sup>12</sup> Thaçi Motion, paras 20-21.

<sup>13</sup> Thaçi Motion, paras 6-10. *See also* Thaçi Motion, para. 11.

9. According to the Thaçi Defence, the Accused's right to a fair and expeditious trial warrants such narrowing of the temporal scope.<sup>14</sup> It avers that the Panel already has enough information before it to conclude that the evidence offered by the SPO on the alleged existence of an armed conflict in Kosovo beyond 20 June 1999 will be insufficient to support a conviction beyond reasonable doubt, within the meaning of Rule 130(3), in respect of war crimes allegedly committed after this date.<sup>15</sup> Relying, *inter alia*, on conclusions of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, the Thaçi Defence claims that: (i) the armed conflict in Kosovo ended no later than 20 June 1999, which is the date of the signature of the 'Undertaking of Demilitarisation and Transformation' by the Kosovo Liberation Army ("KLA"),<sup>16</sup> and (ii) the SPO has offered no justification for why the Panel should reconsider such conclusions.<sup>17</sup> Furthermore, the Thaçi Defence submits that there is doubt as to the merits of the SPO's allegations concerning crimes against humanity, particularly with respect to the existence of a widespread or systematic attack by the KLA against a civilian population.<sup>18</sup>

10. The SPO requests that the Thaçi Motion be rejected for lacking any legal basis and adequate justification.<sup>19</sup> According to the SPO, the Thaçi Motion attempts to: (i) belatedly challenge the confirmation of charges and/or raise again challenges to the Pre-Trial Judge's findings on the temporal scope of the armed conflict that have already been addressed and rejected;<sup>20</sup> (ii) prematurely introduce a no case

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<sup>14</sup> Thaçi Motion, paras 1, 5, 11, 15, 19.

<sup>15</sup> Thaçi Motion, paras 1-5, 12-14, 19.

<sup>16</sup> Thaçi Motion, para. 3 (*referring to 005901-005907 and to F01050, Specialist Counsel, Pre-Trial Brief of Mr Hashim Thaçi, 21 October 2022, confidential, para. 77, and particularly fns 161-163; a public redacted version was filed on 8 November 2022, F01050/RED) and para. 13.*

<sup>17</sup> Thaçi Motion, para. 4.

<sup>18</sup> Thaçi Motion, paras 16-19.

<sup>19</sup> SPO Response, paras 1, 8, 15, 22.

<sup>20</sup> SPO Response, paras 1, 15.

to answer submission;<sup>21</sup> and (iii) circumvent the legal framework of the Specialist Chambers (“SC”).<sup>22</sup>

11. The SPO avers, in particular, that Rule 130(3) is inapplicable as it is engaged only after the completion of the SPO’s case.<sup>23</sup> Furthermore, the SPO submits that the Panel cannot assess at this stage whether or not there is sufficient evidence capable of supporting a conviction because evidence has not yet been admitted in this trial.<sup>24</sup> According to the SPO, the other provisions identified by the Thaçi Defence as a legal basis for the Thaçi Motion do not provide for the relief sought to the extent it goes beyond an invitation to the SPO to narrow the charges.<sup>25</sup> In the SPO’s view, narrowing the charges as proposed in the Thaçi Motion would lead to all crime sites and incidents after 20 June 1999 being removed from the Indictment, which would go against Rule 118(1)(c) and violate the victims’ rights to justice.<sup>26</sup> In addition, the SPO contests the relevance of the case law invoked by the Thaçi Defence, both with respect to the existence of an armed conflict in Kosovo beyond 20 June 1999 and a widespread or systematic attack against a civilian population.<sup>27</sup> Lastly, as regards the Third Request, the SPO submits that it is wholly unsubstantiated and should be summarily dismissed.<sup>28</sup>

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<sup>21</sup> SPO Response, para. 1.

<sup>22</sup> SPO Response, para. 1.

<sup>23</sup> SPO Response, paras 2-6.

<sup>24</sup> SPO Response, paras 6, 14.

<sup>25</sup> SPO Response, paras 9-12, 14-15.

<sup>26</sup> SPO Response, para. 12.

<sup>27</sup> SPO Response, paras 13, 16-20.

<sup>28</sup> SPO Response, para. 21.

### III. DISCUSSION

#### A. FIRST REQUEST

12. The Panel recalls that it has recently invited the SPO to narrow the charges in the Indictment,<sup>29</sup> in accordance with Rule 118(1)(b). Accordingly, the Panel finds the First Request to be moot.

#### B. SECOND AND THIRD REQUEST

13. The Panel observes that the SC's legal framework generally provides for four potential avenues for a Panel<sup>30</sup> to address issues regarding a reduction or narrowing of the charges: (i) at the confirmation of the indictment, as provided for in Rule 86(4)(c); (ii) through a preliminary motion pursuant to Rule 97; (iii) at the SPO Preparation Conference, pursuant to Rule 118(1)(b); and (iv) through a motion to dismiss any or all of the charges pursuant to Rule 130.

14. As regards the first and second avenues for reducing or narrowing the charges, the Panel recalls that the Pre-Trial Judge: (i) confirmed the initial indictment on 26 October 2020 and amendments to the confirmed initial indictment on 22 April 2022;<sup>31</sup> and (ii) with respect to the latter, indicated that, pursuant to Rules 90(4) and 97, the 21-day deadline for the filing of preliminary motions ran from the date of the further appearance of the Accused, *i.e.* 10 May 2022.<sup>32</sup> Accordingly, the confirmation of the indictment has already taken place and the deadline for preliminary motions pursuant to Rule 97 has long passed, also with respect to the amendments to the confirmed initial indictment. As regards the (confirmed further amended) Indictment of 30 September 2022, the Panel recalls that this Indictment was submitted by the SPO pursuant to two decisions of the Pre-Trial

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<sup>29</sup> See above, para. 7.

<sup>30</sup> The term "Panel" is used here in accordance with the definition of the term in Rule 2 and therefore includes the Pre-Trial Judge.

<sup>31</sup> See above, paras 1-2.

<sup>32</sup> Transcript of Hearing, 10 May 2022, p. 1175, lines 5-8.

Judge which addressed: (i) a preliminary motion, filed by the Thaçi Defence, alleging defects in the previous version of the indictment; and (ii) a request by the SPO to remove certain allegations from the Indictment, respectively.<sup>33</sup> Therefore, the submission of the Indictment on 30 September 2022 did not trigger a new deadline for the Defence to file preliminary motions.

15. At this stage, the Defence is thus precluded from filing further preliminary motions pursuant to Rule 97. The Panel further notes that: (i) the Defence teams have already filed various preliminary motions under the aforementioned Rule, which were decided upon by the Pre-Trial Judge;<sup>34</sup> and (ii) in some instances, the Pre-Trial Judges' decisions were reviewed and generally upheld by the Court of Appeals Panel.<sup>35</sup> In any event, preliminary motions pursuant to Rule 97 may only pertain to challenges to the SC's jurisdiction, defects in the form of the indictment or a severance of indictments. Preliminary motions alleging defects in the form of the indictment are not relevant here as they do not extend to the factual sufficiency of the findings made in the decision confirming the indictment and/or their legal qualification.<sup>36</sup>

16. As regards the third avenue for reducing or narrowing the charges, the Panel considers that, in light of the wording of Rule 118(1)(b), this provision confers

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<sup>33</sup> See above, para. 3 and fn. 3.

<sup>34</sup> See, in particular, F00412, Pre-Trial Judge, *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*, 22 July 2021; F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential (a public redacted version was issued the same day, F00413/RED); F00450, Pre-Trial Judge, *Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused*, 31 August 2021; F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment*, 22 July 2022.

<sup>35</sup> IA009-F00030, Court of Appeals Panel, *Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers"*, 23 December 2021; IA013-F00012, Court of Appeals Panel, *Decision on Defence Appeals Against Decision on Motions Challenging the Legality of the Specialist Chambers and the Specialist Prosecutor's Office and Alleging Violations of Certain Constitutional Rights of the Accused*, 20 May 2022; IA012-F00015, Court of Appeals Panel, *Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment*, 22 August 2022, confidential (a public redacted version was issued the same day, IA012/F00015/RED).

<sup>36</sup> Second Confirmation Decision, para. 45, referring to F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential, para. 49 (a public redacted version was issued the same day, F00413/RED).

upon the Panel the authority to *invite* the SPO to reduce or narrow the number of charges, but not to *order* the SPO to do so. As noted above, such an invitation was made at the SPO Preparation Conference and has no further relevance here.

17. As regards the fourth avenue for reducing or narrowing the charges, the Panel finds Rule 130 to be inapplicable at the current stage of the proceedings, as it presupposes, as explicitly stated in paragraph 1 of Rule 130, that the closing of the SPO's case has already occurred. Thus, the SPO must first have had a chance to present its evidence to the Panel before the latter can, upon being seised of a motion to dismiss any or all of the charges, assess whether or not there is evidence capable of supporting a conviction beyond reasonable doubt on a particular charge in accordance with Rule 130(3).

18. Based on the above, none of the legal bases advanced by the Defence and/or available under the Rules would be applicable here to grant the relief sought. Furthermore, the Panel recalls that in the First Confirmation Decision, the Pre-Trial Judge found, after having examined the relevant supporting material, that the SPO had established a well-grounded suspicion that the Accused committed or participated in the commission of war crimes and crimes against humanity from at least March 1998 through September 1999.<sup>37</sup> Recalling that international humanitarian law applies beyond the cessation of hostilities, until a lasting absence of armed confrontations is achieved, the Pre-Trial Judge further found that there is a well-grounded suspicion that, from at least March 1998 to approximately 16 September 1999, a non-international armed conflict existed in Kosovo within the meaning of Article 14(2) between the Serbian forces and the KLA.<sup>38</sup> The Pre-Trial Judge also found that there is a well-grounded suspicion that, from at least March 1998 through September 1999, there was a widespread or systematic attack against a

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<sup>37</sup> First Confirmation Decision, paras 39, 474, 478, 482. *See also* paras 491, 498, 505, 512.

<sup>38</sup> First Confirmation Decision, in particular, paras 136-137.



civilian population in Kosovo and northern Albania within the meaning of Article 13.<sup>39</sup> In the Second Confirmation Decision, the Pre-Trial Judge recalled these findings and dismissed the Veseli Defence's arguments concerning the existence of an armed conflict, considering that they constituted an attempt to circumvent the SC's legal framework.<sup>40</sup>

19. Even assuming that the SC's legal framework provided a procedural avenue to reconsider these matters at the current stage of the proceedings, evidence relevant to the above allegations is yet to be placed before the Panel. In this regard, the Panel stresses that: (i) the (legal) question of whether or not an armed conflict existed in Kosovo beyond 20 June 1999 (and until at least September 1999) depends on factual findings; and (ii) such findings can only be made by the Panel after having duly examined all the evidence tendered during trial.<sup>41</sup> Furthermore, the Panel observes that: (i) pursuant to Article 7, crimes committed after June 1999 still fall under the SC's temporal jurisdiction; and (ii) could, if proven, constitute crimes against humanity.

20. In light of the above, the Panel is not persuaded that the Accused's right to a fair and expeditious trial would necessitate a narrowing of the charges, or that this right would be violated if the charges are not narrowed at this stage. In this regard, the Panel recalls that once the SPO's case is closed, the Defence may, if it so wishes, file a motion to dismiss any or all of the charges in the Indictment, pursuant to Rule 130.

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<sup>39</sup> First Confirmation Decision, para. 129.

<sup>40</sup> Second Confirmation Decision, paras 41-46.

<sup>41</sup> See e.g. First Confirmation Decision, para. 89; ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-PT, Trial Chamber, [Decision on Johan Tarčulovski's Motion Challenging Jurisdiction](#), 1 June 2005, para. 11; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-AR72.1, Appeals Chamber, [Decision on Interlocutory Appeal on Jurisdiction](#), 22 July 2005, para. 13; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber, [Decision on Boškoski Defence Motion for Admission of Exhibits from the Bar Table - "Armed Conflict" and Related Requirements under Article 3 of the Statute](#), 27 February 2008, para. 6. See also e.g. ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Trial Chamber, [Decision on Several Motions Challenging Jurisdiction](#), 19 March 2007, para. 42.

21. In view of the foregoing, the Panel finds the Second and Third Request to be both premature (in respect of the Thaçi Defence's reliance on Rule 130) and otherwise without valid legal grounds (in all other respects) at this stage of the proceedings.

#### IV. DISPOSITION

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

- a) **FINDS** the First Request to be moot; and
- b) **DISMISSES** the Second Request and Third Request as being both premature (in respect of the Thaçi Defence's reliance on Rule 130) and otherwise without valid legal grounds at this stage of the proceedings.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Thursday, 2 March 2023  
At The Hague, the Netherlands.