



**In:** KSC-BC-2020-06  
**Specialist 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:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 10 May 2023

**Language:** English

**Classification:** Public

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**Request to caution Mr Dastid Pallaska, with confidential annexes 1 & 2**

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**Counsel for Kadri Veseli**

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**Counsel for Jakup Krasniqi**

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## I. INTRODUCTION

1. The Prosecution requests the Trial Panel to issue a caution to Co-Counsel<sup>1</sup> for Hashim Thaçi, Mr Dastid Pallaska, for public statements made on the RTK Prime show on 13 April 2023.<sup>2</sup>

2. As detailed below, the statements contravene both Article 13(a) of the Code of Professional Conduct for Counsel and Prosecutors before the Kosovo Specialist Chambers ('Code of Conduct')<sup>3</sup> and the Trial Panel's Order on the Conduct of Proceedings ('Order on the CoP'),<sup>4</sup> which prohibit statements that are false, knowingly misleading, or that comment on live applications before the Panel.

3. In particular, Mr Pallaska should be reminded to abide by the terms of Article 13(a) of the Code of Conduct and the directions in the Order on the CoP, and to refrain from making future statements that infringe them, as such statements have a negative impact on the integrity of the proceedings. Mr Pallaska should be further warned that any future violations of the Code of Conduct or the Order on the CoP could result in sanctions.<sup>5</sup>

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<sup>1</sup> Notification of Approval of Co-Counsel for Hashim Thaçi, KSC-BC-2020-06/F00066, 9 November 2020.

<sup>2</sup> A draft transcript is contained in confidential Annex 1. A video of the interview is available here: <https://www.youtube.com/watch?v=A-KZeEUt-3Q&t=2901s>.

<sup>3</sup> Code of Professional Conduct for Counsel and Prosecutors before the Kosovo Specialist Chambers, KSC-BD-07/Rev1/2021, 28 April 2021 ('Code of Conduct').

<sup>4</sup> Annex to the Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Order on the CoP'), paras.15-20.

<sup>5</sup> Code of Conduct, Article 43; Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'), Rules 61, 63 & 65. All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

## II. SUBMISSIONS

4. Article 13(a) of the Code of Conduct provides that Counsel and Prosecutors shall not ‘knowingly make statements on social media, to the press or public, which are false or defamatory, or disclose confidential information, including about persons involved in the proceedings.’<sup>6</sup>

5. In the Order on the CoP, referring to the above provision, the Trial Panel considered that ‘false’ or ‘defamatory’ statements include statements that are intentionally or knowingly misleading.<sup>7</sup> Moreover, the Panel underscored that Counsel are not to comment publicly on any application pending before the Panel, and that in their comments on any judicial decisions, Counsel ‘shall comply with their obligations of candour, diligence, dignity and integrity.’<sup>8</sup>

6. On 13 April 2023, Mr Pallaska appeared on the RTK Prime television show, giving an extensive interview wherein he commented on various aspects of these proceedings. The Prosecution submits that the following excerpts give rise to significant concern, as Mr Pallaska’s comments plainly infringe Article 13(a) of the Code of Conduct and the Panel’s directions in the Order on the CoP.

*Mr Pallaska made knowingly misleading statements*

7. First, with regard to the exercise of the KSC’s jurisdiction, Mr Pallaska stated:

‘More than 99% of the indictment has nothing to do with the report of Dick Marty. When we objected to this, with all these references, the pre-trial judge told us that, “Well, they are related to the report of Dick Marty, because in the introduction part of the report [...] Dick Marty said that this report is about the war in Kosovo.” [...] He said, “the war is mentioned in the introduction and the fact that the war in Kosovo is mentioned suffices for everything

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<sup>6</sup> Code of Conduct, KSC-BD-07/Rev1/2021, Article 13(a).

<sup>7</sup> Order on the CoP, KSC-BC-2020-06/F01226/A01, para.17.

<sup>8</sup> Order on the CoP, KSC-BC-2020-06/F01226/A01, paras.18-19.

to be included within that jurisdiction,” which is really, with all due respect for the Specialist Chambers, a non-serious reasoning, and, as such, we will normally follow this until the end.<sup>9</sup>

8. Arguments challenging the KSC’s jurisdiction, in particular its relationship with the Marty report, were fully canvassed before the Pre-Trial Judge, the Court of Appeals and the Constitutional Court. Three different Chambers have, in detailed reasoning, upheld the relevant nexus and jurisdiction.<sup>10</sup> Mr Pallaska’s comment that the KSC’s jurisdiction is based on ‘non-serious reasoning’ is plainly misleading and does not comply with the requirements of candour and diligence.

9. Further, Mr Pallaska went on to repeat the erroneous suggestion that the entire KLA is on trial, with a goal of declaring Kosovo as a ‘criminal state’:

‘Now, in this case, this is very important to explain, because the prosecution again for the umpteenth time, contrary to the content of the indictment, a document that they have itself drafted, says that this is not a trial of the KLA, that the whole KLA is not a member of the Joint Criminal Enterprise. With all due respect, I do not want to argue in a TV studio, but this is a big untruth. [quotes paragraph 35 of the Indictment which lists the JCE members] Because that prosecutor, Mr. Whiting, said that, “the claim that this is a trial of the KLA is false, inaccurate, not true.” If it is not true, then either this or that declaration stands - both of them cannot stand. And this, nobody can insult our intelligence and tell us that this does not say what is saying and what I read.’ [...] if the whole KLA is declared joint criminal enterprise, according to the paragraph 35, then what does the freedom of Kosovo mean? ... This is exactly the goal, to declare Kosovo a criminal state which cannot survive on its own.’<sup>11</sup>

The above passage plainly offends paragraph 19 of the Order on the CoP. As an officer of the Court, it is unacceptable to publicly accuse the Prosecution of propagating ‘untruths’, in order to label Kosovo a criminal state. This narrative was also specifically

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<sup>9</sup> Annex 1, p.5.

<sup>10</sup> Decision on Motions Challenging the Jurisdiction of the Specialist Chambers, KSC-BC-2020-06/F0412, 22 July 2021, paras.107-112; Decision on Appeals Against “Decision on Motions Challenging the Jurisdiction of the Specialist Chambers”, KSC-BC-2020-06/IA009/F00030, 23 December 2021, paras.78-84; Decision the Referral of Hashim Thaçi Concerning the Right to an Independent and Impartial Tribunal Established by Law and to a Reasoned Opinion, KSC-CC-2022-15/F00010, 13 June 2022, paras.80-85.

<sup>11</sup> Annex 1, pp.8, 10 & 17-18.

rejected by the Trial Panel, which stated that the KLA is not on trial in this case – only the four accused.<sup>12</sup> The Prosecution submits that repeating such claims contributes to a hyperpolarized climate within Kosovo, making it more difficult for witnesses to cooperate and give their testimony. Parties can offer legitimately different views on the charges, through litigation, in court, or in public, but Counsel should at all times convey such views professionally, in an informed manner, and in accordance with Article 13(a) of the Code of Conduct.

*Mr Pallaska commented on live litigation before the Panel*

10. Mr Pallaska went on to comment upon certain categories of evidence contained in the Prosecution's bar table motion of 8 February 2023,<sup>13</sup> namely books<sup>14</sup> and KLA communiques<sup>15</sup> – items which the Trial Panel has yet to issue a ruling on:

'This is exactly the other absurdity of the prosecution case. The prosecution case is based on media articles, books. I, as a professional, can tell you that tomorrow ... a murder is committed today. Two weeks later, the murderer writes a book, and in a sentence, he says, "I have committed the murder", and publishes it under his name, and then it is distributed. It cannot serve as evidence to convict that person, because before an accused gives a statement admitting a crime, he should be given constitutional warnings, one of them being the right not to incriminate oneself. Therefore, the evidence weight of a book, which admits the crime, is zero in the criminal procedure. [...] The communiques have no evidentiary value, especially if their author is not known, if they are not consistent in the sense of who issued them, in what way he issued them, and for what reason he issued them.'<sup>16</sup>

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<sup>12</sup> Transcript (Status Conference), 16 December 2022, p.1724, lines 18-22.

<sup>13</sup> Prosecution's application for admission of material through the bar table, KSC-BC-2020-06/F01268, 8 February 2023.

<sup>14</sup> See Annex 3 of the Prosecution's application for admission of material through the bar table, KSC-BC-2020-06/F01268/A03, 8 February 2023, containing the published archives of Radio Free Kosovo.

<sup>15</sup> See Annex 1 of the Prosecution's application for admission of material through the bar table, KSC-BC-2020-06/F01268/A01, 8 February 2023, containing KLA General Staff communiques.

<sup>16</sup> Annex 1, pp.13-14.

11. The above passage is a clear reference to pending litigation before the Trial Panel – conduct expressly prohibited by the Panel: ‘Counsel are not to comment publicly upon any application pending until it has been decided by the Trial Panel.’<sup>17</sup> Furthermore, commenting on the evidential *value* of such items, as Mr Pallaska did, disregards the Trial Panel’s order that parties should litigate exclusively before it any issue placed before the Panel to decide.<sup>18</sup>

12. Similarly, Mr Pallaska referred to the nature of the protective measures in these proceedings:

‘I do not understand this. I am speaking in principle, I cannot speak about specific cases. I can only say that the security measures are extremely exaggerated, but the court has decided so [...] Keeping the identity of a witness secret to the defence counsel or the public harms irreparably the credibility of the witness.’<sup>19</sup>

13. Protective measures are the subject of regular litigation before the Trial Panel.<sup>20</sup> Moreover, labelling them ‘extremely exaggerated’ is disingenuous. Protective measures are not granted in the abstract – they are substantiated through objectively identified risks to individual witnesses, in order to safeguard their well-being.<sup>21</sup>

14. Relatedly, Mr Pallaska criticised judicial decisions with regard to continued detention, stating:

‘The decisions of all Specialist Chambers decision-making bodies regarding the detention measure have been based on that generalised reasoning that “there is a fear ... a general environment of intimidation of witnesses in Kosovo.” In my opinion, each time there is a generalisation, it means that it is groundless. [...] The President of the Specialist Chambers

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<sup>17</sup> Order on the CoP, KSC-BC-2020-06/F01226/A01, para.18.

<sup>18</sup> Order on the CoP, KSC-BC-2020-06/F01226/A01, para.18.

<sup>19</sup> Annex 1, p.19.

<sup>20</sup> See e.g. Decision on Prosecution Request for Protective Measures (F01332), KSC-BC-2020-06/F01426, 5 April 2023.

<sup>21</sup> Rule 80.

changed the composition of the Court of Appeals Panel just after we had submitted our appeal. I believe this has never happened in any other court.<sup>22</sup>

15. In this comment, Mr Pallaska effectively quotes – and deprecates – prior decisions of the Trial Panel in relation to Hashim Thaçi’s continued detention. Mr Pallaska’s remarks are also a complete misrepresentation – the climate of intimidation in Kosovo has been considered as a contextual factor in fully individualised detention determinations,<sup>23</sup> these determinations have been upheld on appeal across judicial compositions,<sup>24</sup> and challenges by the Thaçi Defence against the composition of the Appeals Panel have been soundly dismissed.<sup>25</sup> Through these comments, Mr Pallaska again infringed the Trial Panel’s express directions.<sup>26</sup>

*The Trial Panel should issue a caution to Mr Pallaska*

16. The Prosecution submits that the above comments are of such a degree that the Trial Panel should issue a caution to Mr Pallaska, as these statements manifestly infringe the Order on the CoP and Article 13(a) of the Code of Conduct.

17. In terms of the legal basis for such a caution, the Panel may rely on the same legal provisions that formed the basis for the Order on the CoP, namely Article 40(2) of the Law and Rule 116(1) & (3) of the Rules, which permit the Panel to issue appropriate

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<sup>22</sup> Annex 1, pp.19-20.

<sup>23</sup> See e.g. Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F0132/RED, 17 February 2023, para.26: “[t]he Panel makes the current findings against background of information that a general climate of witness interference persists in Kosovo regarding this case [...]”

<sup>24</sup> Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Periodic Review of Detention, KSC-BC-2020-06/IA022/F00005/RED, 22 August 2022; Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022; Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA004/F00005/RED, 30 April 2021.

<sup>25</sup> Decision on Application for Reconsideration and Disqualification of a Judge from a Court of Appeals Panel, KSC-BC-2020-06/F00476, 17 September 2021; Decision on Application for the Recusal of the President, KSC-BC-2020-06/F00440, 24 August 2021.

<sup>26</sup> Order on the CoP, KSC-BC-2020-06/F01226/A01, para.19.

directions governing the fair and expeditious conduct of proceedings. Further, Rule 63 specifically provides that a Trial Panel may issue a warning to Counsel for behaviour that is 'offensive, abusive, or otherwise obstructs proceedings, or if such Counsel fails to meet the standard of professional ethics in the performance of his or her duties.'<sup>27</sup> More generally, the Prosecution submits that the Panel has the inherent jurisdiction to issue such a caution, as it is essential for a judicial body's ability to perform the judicial functions assigned to it by its constitutive instruments.<sup>28</sup>

18. Regrettably, however, the above statements do not stand alone, but form part of a concerning pattern of conduct by Mr Pallaska. On 17 March 2022, appearing on Klan TV, he put forward the following allegation regarding the disclosure of a witness statement:

'[T]here was a scandal of dimensions probably unheard of for any court, even those that work in the most undemocratic and repressive systems: it was found that the prosecution had deliberately hidden an exculpatory evidence and which it disclosed only when they realised they were caught hiding that evidence [...] an unprecedented, unforgivable scandal.'<sup>29</sup>

Asserting that the SPO deliberately withheld exculpatory evidence is a serious allegation, and patently untrue. Importantly, the Pre-Trial Judge expressly held that the timing of this particular disclosure did *not* amount to non-compliance with its obligations.<sup>30</sup> Related arguments were also dismissed as unsubstantiated and ill-

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<sup>27</sup> Rule 63(1).

<sup>28</sup> See ICC, *Prosecutor v Bemba et al.*, Public Redacted Judgement on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute", ICC-01/05-01/13-2276-Red, 8 March 2018, para.75.

<sup>29</sup> See Public Redacted Version of 'Prosecution response to THACI and KRASNIQI motions concerning Rule 103 disclosure', KSC-BC-2020-06/F00736RED, 17 March 2022, fn2: Klan TV, Opinion, available at <https://www.youtube.com/watch?v=fjtrWR13EF0>. See p.5 of confidential Annex 2, which is a draft transcript of this show.

<sup>30</sup> Public Redacted Version of Decision Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations, KSC-BC-2020-06/F00936, 26 August 2002, para.31.



founded.<sup>31</sup> Again, on 28 July 2022, Mr Pallaska appeared on another Klan TV show, stating:

'[The] practice of including people under investigations, and keeping them under investigation, endlessly, for crimes, that it is not even known ....., i.e. not specific crimes [...] What, are we going to have this court for 100 years, [saying] it's working, it's investigating. Even in the Kafka [trial], the idea is that a person becomes a subject of criminal proceedings, he does not know exactly about what, and he is not convicted, neither executed, but they keep him hanging, that is the biggest punishment, because in that way the person is controlled, and restricted, and the system is used in that way. That is the most brutal form of power that may be exercised.'<sup>32</sup>

19. This is yet a further example of what the Court of Appeals considered to be inappropriate and serious allegations made by the Thaçi Defence against the Specialist Chambers in general.<sup>33</sup> As such, this repeated misconduct and disregard for the Panel's directions warrants issuing a caution to Mr Pallaska. It is a necessary and proportionate measure in order to safeguard the integrity of the proceedings, and to ensure compliance with the Panel's directions.

20. Therefore, Mr Pallaska should be expressly cautioned and forewarned that pursuant to the terms of the Code of Conduct, the Law, and the Rules, further violations could result in sanctions.

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<sup>31</sup> Ibid.

<sup>32</sup> Internal SPO Translation. Klan Kosova, Rubikon talk show, 28 July 2022. A video of the show is available here: <https://www.youtube.com/watch?v=SLkjsxwtWruo>, with the relevant approximate time stamps at 19:58-20:25 & 31:26-31:55.

<sup>33</sup> Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, para.21.

III. CLASSIFICATION

21. This filing is classified as public as it concerns comments made publicly.

IV. RELIEF SOUGHT

22. For the foregoing reasons, the Panel should issue a caution to Mr Pallaska reminding him to:

i. Abide by Article 13(a) of the Code of Conduct and the Order on the CoP; and  
that

ii. Failure to adhere to the above will result in sanctions.

**Word count: 2,732**



**Alex Whiting**

**Acting Specialist Prosecutor**

Wednesday, 10<sup>th</sup> May 2023

At The Hague, the Netherlands.