



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

Date: 6 June 2023

Language: English

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Decision on Prosecution Request to Caution Mr Dastid Pallaska

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TRIAL PANEL II (“Panel”), pursuant to Article 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), Rules 63 and 116(1) and (3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), and Article 13(a) of the Code of Professional Conduct for Counsel and Prosecutors before the Kosovo Specialist Chambers, hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 10 May 2023, the Specialist Prosecutor’s Office (“SPO”) requested the Panel to caution Co-counsel for Mr Hashim Thaçi (“Mr Thaçi”), Mr Dastid Pallaska (“Mr Pallaska”), for public statements made on the RTK Prime show on 13 April 2023 (“Request”).¹
2. On 18 May 2023, upon an oral application by the Defence for Mr Thaçi (“Thaçi Defence”), the Panel granted an extension of word limit from 6000 to 7000 words to respond to the Request.²
3. On 22 May 2022, the Defence for Mr Hashim Thaçi (“Thaçi Defence”) responded to the Request (“Response”).³
4. On 30 May 2023, the SPO replied to the Response (“Reply”).⁴

¹ F01515, Specialist Prosecutor, *Request to Caution Mr Dastid Pallaska*, 10 May 2023, with Annexes 1-2, confidential.

² Transcript of Hearing, 18 May 2023, public, p. 4389, lines 4-11.

³ F01541, Specialist Counsel, *Thaçi Defence Response to Prosecution “Request to Caution Mr Dastid Pallaska”*, 22 May 2023, with Annex 1.

⁴ F01561, Specialist Prosecutor, *Reply to Thaçi Response to Prosecution “Request to Caution Mr Dastid Pallaska”*, 30 May 2023.

II. SUBMISSIONS

5. The SPO submits that the public statements made by Mr Pallaska on the RTK Prime show on 13 April 2023 (“RTK Statements”) contravene Article 13(a) of the Code of Professional Conduct for Counsel and Prosecutors before the Kosovo Specialist Chambers⁵ (“Code of Conduct”) and paragraphs 15-20 of the Panel’s Order on the Conduct of Proceedings,⁶ which prohibit statements that are false, knowingly misleading, or that comment on live applications before the Panel.⁷ The SPO therefore requests the Panel to remind Mr Pallaska to abide by the terms of Article 13(a) of the Code of Conduct and the directions in the Panel’s Order on the Conduct of Proceedings, and to refrain from making future statements that infringe them, as such statements have a negative impact on the integrity of the proceedings. The SPO further requests that Mr Pallaska be warned that any future violations of the Code of Conduct or the Order on the Conduct of Proceedings could result in sanctions.⁸

6. The Thaçi Defence responds that the foundation of the Request rests on the SPO’s misrepresentations of Mr Pallaska’s comments and that Mr Pallaska should not suffer public reputational harm from the SPO’s manipulation of his remarks.⁹

7. The SPO replies that: (i) none of the reasons advanced by the Thaçi Defence alter the fact that Mr Pallaska made public statements that were, by any objective standard, knowingly false and/or misleading in the circumstances; and (ii) issuing a caution is an appropriate measure for the Panel to take.¹⁰

⁵ Code of Professional Conduct for Counsel and Prosecutors before the Kosovo Specialist Chambers, KSC-BD-07-Rev1, 28 April 2021.

⁶ F01226, Panel, Order on the Conduct of Proceedings, 25 January 2023, with Annex 1 (“Order on the Conduct of Proceedings”).

⁷ Request, paras 2, 4-6, 9. *See also* Annex 1 to the Request.

⁸ Request, paras 3, 16, 20, 22.

⁹ Response, paras 1, 5, 36.

¹⁰ Reply, para. 8.

III. APPLICABLE LAW

8. Pursuant to Article 40(2), the Panel shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the Accused and due regard for the protection of victims and witnesses. Pursuant to Article 40(2) and Rule 116(3), the Panel may give directions on the conduct of proceedings as necessary to ensure a fair and expeditious trial. The Panel has made use of that possibility, which regulates the conduct of proceedings, including in respect of statements that Counsel could make to the media.¹¹

9. Pursuant to Rule 63, the Panel may issue a warning to Counsel or a Prosecutor for behaviour that is offensive, abusive or otherwise obstructs the proper conduct of the proceedings, or if such Counsel or Prosecutor fails to meet the standard of professional ethics in the performance of his or her duties.

10. 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 the public, which are false or defamatory, or disclose confidential information, including about persons involved in the proceedings.

IV. DISCUSSION

11. In relation to the RTK Statements, the SPO submits that Mr Pallaska: (i) made knowingly misleading statements;¹² and (ii) commented on live litigation before the Panel.¹³ The SPO further contends that the RTK Statements do not stand alone,

¹¹ Order on the Conduct of Proceedings, paras 15-20.

¹² Request, paras 7-9.

¹³ Request, paras 10-15.

but form part of a concerning pattern of conduct by Mr Pallaska.¹⁴ The SPO therefore argues that the Panel should caution Mr Pallaska.¹⁵

12. The Thaçi Defence responds that: (i) the SPO's claim that Mr Pallaska "publicly accuse[d] the Prosecution of propagating 'untruths', in order to label Kosovo a criminal state" misrepresents Mr Pallaska's comments;¹⁶ (ii) Mr Pallaska's comments merely repeated the well-established Defence positions on issues which form part of Mr Thaçi's defence;¹⁷ (iii) Mr Pallaska did not comment on live litigation before the Panel;¹⁸ and (iv) the SPO has failed to justify its request to curtail the fundamental rights of Mr Thaçi and his lawyers.¹⁹

13. The SPO replies that: (i) an appointed counsel with obligations of, *inter alia*, candour and diligence cannot rely on ignorance to evade responsibility for his public statements; and (ii) articulating Defence positions in public does not absolve Counsel from abiding by Article 13(a) of the Code of Conduct and the Order on the Conduct of Proceedings.²⁰

14. At the outset, the Panel observes that Mr Pallaska's role as Co-counsel for Mr Thaçi does not result in the suppression of his right to free speech, which he continues to enjoy.²¹ His involvement as counsel in these proceedings does, however, authorize the imposition of limitations upon that right insofar as they are necessary and proportionate to ensure the protection of other legitimate public interests and insofar as they are consistent with relevant legal standards applicable to this matter.

¹⁴ Request, paras 18-19. *See also* Annex 2 to the Request.

¹⁵ Request, paras 16-17, 20.

¹⁶ Response, para. 8, *citing* Request, para. 9. *See also* Response, paras 9-20.

¹⁷ Response, paras 2, 21-25.

¹⁸ Response, paras 26-33.

¹⁹ Response, paras 34-35.

²⁰ Reply, paras 1-7.

²¹ ECtHR, *Morice v. France*, Judgment [GC] ("[Morice Judgment](#)"), 23 April 2015, paras 134-135; *Mor v. France*, Judgment ("[Mor Judgment](#)"), 15 December 2011, paras 41-44; *Amihalachioaie v. Moldova*, Judgment ("[Amihalachioaie Judgment](#)"), 20 April 2004, paras 27-28.

15. The Panel notes that the work of the Specialist Chambers (“SC”) is a matter of public interest in Kosovo. The Panel also considers that lawyers bear an important role in the administration of justice as intermediaries between the public and the courts.²² Those appointed as Counsel before the SC have a special responsibility to ensure that litigation is conducted exclusively before the relevant Panel, and that satellite litigation is not conducted through the media. They are also required not to knowingly make statements on social media, to the press or the public, which are false or defamatory, or disclose confidential information, including about persons involved in the proceedings.

16. The Panel is of the view that Mr Pallaska’s comments on the SC’s jurisdiction and on the scope of the SPO’s case, while often uninformed and inaccurate,²³ amount to personal opinions addressing selected issues that have come before the SC in the past rather than misleading comments on discrete matters currently pending before the Panel. Similarly, Mr Pallaska’s statements on certain categories of evidence, on protective measures and on continued detention were made in the abstract and were not sufficiently specific to qualify as a pattern of comments on live litigation before the Panel.

17. The Panel, therefore, finds that the RTK Statements: (i) did not amount to an attempt to knowingly mislead the public or influence the Panel’s decisions; and (ii) did not disclose confidential information. The Panel accordingly holds that the SPO has failed to demonstrate that cautioning Mr Pallaska is necessary under the circumstances, and that it would constitute a proportionate interference with Mr Pallaska’s right to free speech. For these reasons, the Panel rejects the SPO’s request that Mr Pallaska be cautioned.

²² See also ECtHR, [Morice Judgment](#), paras 132-133; [Mor Judgment](#), paras 43-44; [Amihalachioaie Judgment](#), paras 27-28; *Casado Coca v. Spain*, [Judgment](#), 24 February 1994, para. 54.

²³ See below para. 18.

18. This being said, turning to Mr Pallaska's statement that the Kosovo Liberation Army ("KLA") is on trial in this case and that the SPO's goal is to declare Kosovo a criminal state,²⁴ the Panel notes that: (i) the SPO has stated that "[t]he KLA is not on trial. The liberation war waged by the KLA is not on trial";²⁵ (ii) the Panel has stated that "[the] Panel and the Parties are only concerned with events and circumstances that are relevant to these Accused";²⁶ and (iii) no part of the Indictment reasonably suggests that the KLA or Kosovo as a whole is on trial. The Panel therefore directs Lead Counsel for Mr Thaçi to bring the SPO's and the Panel's statements on the scope of the Indictment to the attention of Mr Pallaska. The Panel stresses and reiterates that the matters at issue in this case are to be litigated by Counsel for the Accused and the SPO exclusively before the Panel and not in the media. The Panel will consider any further public statement by Counsel suggesting that the KLA is on trial in this case as having been knowingly made in contradiction with judicial statements to the contrary. The Panel further stresses that it falls within the responsibilities of each Lead Counsel to remind Co-Counsel and other team members of their obligations under the Code of Conduct and the Order on the Conduct of Proceedings, and to issue warnings where appropriate without judicial intervention.

V. DISPOSITION

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

- a) **REJECTS** the Request;
- b) **DIRECTS** Lead Counsel for Mr Thaçi to bring the present decision to the attention of Mr Pallaska; and

²⁴ Annex 1 to the Request, pp. 10, 18. *See also* Response, paras 3, 8-20.

²⁵ Transcript of Hearing, 3 April 2023, public, p. 2246, lines 17-21. *See also* Transcript of Hearing, 3 April 2023, public, p. 2195, lines 9-12.

²⁶ Transcript of Hearing, 16 December 2022, public, p. 1726, lines 5-6.

- c) **DIRECTS** Lead Counsel to remind Co-Counsel and other team members of their obligations under the Code of Conduct and the Order on the Conduct of Proceedings, and to issue warnings where appropriate.



Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 6 June 2023

At The Hague, the Netherlands.