



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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**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 review of the detention of Hashim Thaçi (“Mr Thaçi”) has been set out extensively in previous decisions. Relevant events since the last periodic review (“Eighth Decision on Detention”)¹ include the following.

2. On 25 May 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the review of Mr Thaçi’s detention (“SPO Submissions”).² The Defence for Mr Thaçi did not respond.

3. The trial against Mr Thaçi and his co-accused continues to progress.

II. SUBMISSIONS

4. The SPO submits that the Pre-Trial Judge and a Court of Appeals panel have each determined that Mr Thaçi’s detention is justified on multiple occasions.³ 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.⁴ The SPO asserts that continued evidentiary disclosures associated

¹ F01459, Trial Panel, *Decision on Periodic Review of Detention of Hashim Thaçi*, 17 April 2023, confidential. A public redacted version was filed on the same date, F01459/RED.

² F01553, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Hashim Thaçi*, 25 May 2023.

³ SPO Submissions, para. 1.

⁴ SPO Submissions, para. 1.

with the trial have provided Mr Thaçi, and will continue to provide him, with sensitive witness information – enhancing the need for current protections to remain in place.⁵

III. APPLICABLE LAW

5. The law applicable to deciding the present matter is set out in Article 41 and Rules 56 and 57, and has been laid out extensively in earlier decisions.⁶ The Panel will apply these standards to the present decision.

IV. DISCUSSION

6. The purpose of the bi-monthly review of detention pursuant to Article 41(10) is for the Panel to determine whether the reasons for detention on remand still exist.⁷ A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.⁸ In the present review, the SPO asserts that no relevant change in circumstances has occurred.⁹ Nevertheless, the Panel will proceed to review the factors under Article 41(6) to satisfy itself that the circumstances underpinning Mr Thaçi's detention continue to exist.

⁵ SPO Submissions, para. 1.

⁶ See e.g. F00994, Pre-Trial Judge, *Decision on Periodic Review of Detention of Hashim Thaçi*, 29 September 2022, confidential, paras 18-21. A public redacted version was issued on 6 October 2022, F00994/RED.

⁷ IA022/F00005, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention*, 22 August 2022, confidential, para. 37. A public redacted version was issued on the same date, IA022/F00005/RED.

⁸ IA010/F00008, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 19. A public redacted version was issued on the same date, IA010/F00008/RED.

⁹ SPO Submissions, para. 1.

A. ARTICLE 41 CRITERIA

1. Grounded Suspicion

7. Regarding the threshold for continued detention, Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the Specialist Chambers (“SC”). This is a condition *sine qua non* for the validity of the detained person’s continued detention.¹⁰

8. The Panel notes that the Pre-Trial Judge determined that, pursuant to Article 39(2), there was a well-grounded 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).¹¹ Moreover, the Pre-Trial Judge also found that a well-grounded suspicion was established with regard to new charges brought by the SPO against Mr Thaçi.¹² These findings were made on the basis of a standard

¹⁰ See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹¹ 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. The Specialist Prosecutor submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the Specialist Prosecutor submitted a confidential, corrected, and lesser redacted version of the confirmed Indictment, F00647/A01.

¹² 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 on 22 April 2022, 6 May 2022 and 16 May 2022, respectively. The requested amendments are detailed at para. 11. A confirmed amended indictment was then filed by the SPO on 29 April 2022 (“Confirmed Indictment”), strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions. A further confidential amended Confirmed Indictment was filed on 30 September 2022, (F00999/A01) and public redacted version (F00999/A03).

exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).¹³

9. 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).

2. Necessity of Detention

10. With respect to the grounds for continued detention, Article 41(6)(b) sets out three alternative bases (risks) on which detention may be found to be necessary: (i) risk of flight; (ii) risk of obstruction of the proceedings; or (iii) risk of the further commission of crimes.¹⁴ Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.¹⁵ “Articulable” in this context means specified in detail by reference to the relevant information or evidence.¹⁶ In determining whether any of the grounds under Article 41(6)(b) 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.¹⁷

¹³ See e.g. 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 date, IA008/F00004/RED.

¹⁴ See 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.

¹⁵ 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. 19. A public redacted version was issued on the same date, IA004/F00005/RED.

¹⁶ 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”.

¹⁷ First Appeal Decision on Detention, para. 22.

(a) Risk of Flight

11. The SPO asserts that Mr Thaçi's knowledge and understanding of the charges and the evidence against him has increased pursuant to recent disclosures and the commencement of trial.¹⁸ The SPO alleges that these circumstances, in addition to the recent sentence of 26 years imprisonment in the *Prosecutor v. Salih Mustafa* case for similar crimes¹⁹ heightens Mr Thaçi's motivation to flee, creating a sufficiently real possibility that he will abscond.²⁰

12. The Panel has examined the arguments of the SPO in light of the current stage of the proceedings, and while the risk of flight can never be completely ruled out, it reaffirms that it does not find any additional factor sufficiently compelling to persuade the Panel to change its previous finding regarding the risk of flight.

13. As already determined, Mr Thaçi has cooperated with relevant authorities associated with his detention and transfer.²¹

14. With respect to the SPO's argument that the judgment in the *Prosecutor v. Salih Mustafa* case would increase Mr Thaçi's perception of the possibility of receiving a lengthier sentence, the Panel finds this to be speculative. The SPO has not demonstrated that this factor outweighs the other factors that the Panel considered in its previous decisions. In any event, Mr Thaçi is presumed to be innocent.

15. Regarding the SPO argument relating to the commencement of the trial, the Panel notes that the SPO's general argument that the risk of flight increases in the context of the trial commencement date is unpersuasive. The Panel considers that

¹⁸ SPO Submissions, paras 10.

¹⁹ SPO Submissions, para. 10 (citing KSC-BC-2020-05, F00494/RED, Trial Panel I, *Trial Judgment* ("Mustafa Trial Judgment"), 19 January 2023, public, para. 831. A corrected version was filed on 24 January 2023, F00494/REDCOR). A further redacted version was filed on 8 June 2023, F00494/RED3/COR.

²⁰ SPO Submissions, para. 10.

²¹ F01170, Trial Panel, *Decision on Periodic Review of Detention of Hashim Thaçi*, 19 December 2022, confidential, para. 29. A public redacted version was filed on the same date, F01170/RED.

the SPO has failed to establish its claim of a “sufficiently real possibility” that the Accused will abscond if released based on the stage of the proceedings.²²

16. The Panel therefore finds that Mr Thaçi’s continued detention is not justified at this time based on the risk of flight pursuant to Article 41(6)(b)(i).

(b) Risk of Obstructing the Progress of SC Proceedings

17. With reference to this Panel’s previous findings, the SPO submits that Mr Thaçi continues to present a risk of obstructing proceedings.²³ The SPO notes that this Panel has previously determined that a general climate of witness interference persists in Kosovo regarding this case and others before the SC,²⁴ which as held by the Court of Appeals, is a relevant contextual consideration.²⁵ The SPO further submits that Mr Thaçi has received information concerning, *inter alia*, the first 40 witnesses that the SPO intends to call, and the risk of obstruction increases as the remaining delayed disclosure witnesses have their identities lifted in the course of trial.²⁶ According to the SPO, this continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question testify.²⁷ Lastly, the SPO argues that the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.²⁸

²² See First Appeal Decision on Detention, para. 24.

²³ SPO Submission, para. 11 (*citing* Eighth Decision on Detention, para. 28).

²⁴ SPO Submission, para. 13 (*citing* Eighth Decision on Detention, paras 26-27).

²⁵ SPO Submission, para. 13 (*citing* IA017/F00011, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention* (“Third Appeal Decision on Detention”), 5 April 2022, confidential, paras 24-56. A public redacted version was issued on the same date, IA017/F00011/RED).

²⁶ SPO Submissions, para. 14.

²⁷ SPO Submissions, para. 15.

²⁸ SPO Submissions, para. 16 (*citing* KSC-BC-2020-07, F00507, Trial Panel II, *Decision on Review of Detention of Nasim Haradinaj*, 21 December 2021, public, para. 28).

18. The Panel has already determined and maintains the view that Mr Thaçi has: (i) [REDACTED]; (ii) attempted to undermine the SC and offered benefits to persons summoned by the SPO; (iii) a position of influence in Kosovo which could allow him to elicit the support of sympathisers; and (iv) given the commencement of trial, increased knowledge of the evidence underpinning the serious charges against him.²⁹

19. In light of the commencement of trial proceedings, the names and personal details of certain highly sensitive SPO witnesses have now, and will continue to be disclosed to the Thaçi Defence,³⁰ and will therefore become known to a broader range of people, including to Mr Thaçi. 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 have yet to testify.

20. Additionally, a persistent climate of intimidation of witnesses and interference with criminal proceedings against former Kosovo Liberation Army ("KLA") members continues to exist in Kosovo.³¹

21. 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

22. The SPO references the Panel's findings in its Eighth Decision on Detention, and submits that Mr Thaçi continues to present a risk of committing further crimes.³² Additionally, the SPO asserts that those circumstances relevant to assessing the risk of obstructing the progress of SC proceedings, as provided

²⁹ Eighth Decision on Detention, para. 33.

³⁰ See Eighth Decision on Detention, para. 25.

³¹ Eighth Decision on Detention, para. 26. See also *Mustafa* Trial Judgment, para. 57.

³² SPO Submissions, paras 18-19 (citing Eighth Decision on Detention, paras 24, 26).

above,³³ are equally applicable in this context, and accordingly incorporates them.³⁴

23. The Panel recalls its finding in the Eighth Decision on Detention that the risk of Mr Thaçi committing further crimes continues to exist. The Panel finds that the same factors that were taken into account in relation to the risk of obstruction are relevant to the analysis of the risk of Mr Thaçi committing further crimes.³⁵ In light of those, the Panel considers that no new circumstances have arisen since the last detention review³⁶ that would justify a different finding in respect of this matter.

24. The Panel highlights the fact that the trial in this case has started, that the identities of sensitive witnesses have been disclosed to Mr Thaçi, and that any risk of the further commission of crimes must be avoided.

25. 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).

3. Conclusion

26. The Panel concludes that at this time there continues to be insufficient information before it justifying a finding that Mr Thaçi may abscond from justice. However, the Panel is satisfied, based on the relevant standard, that there is a sufficient risk that Mr Thaçi will obstruct the progress of SC proceedings and that he will 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 due to appear before the SC. The Panel will assess below whether these risks can be adequately addressed by any conditions for his release.

³³ *Supra*, para 17.

³⁴ SPO Submissions, para 18.

³⁵ Eighth Decision on Detention, para. 24.

³⁶ SPO Submissions, paras. 7, 18.

B. MEASURES ALTERNATIVE TO DETENTION

27. Referencing this Panel's previous findings, the SPO submits that: (i) the relevant risks can only be effectively managed at the SC's detention facilities;³⁷ (ii) none of the proposed conditions, nor any additional measures foreseen in Article 41(12) could sufficiently mitigate the existing risks;³⁸ (iii) 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 risks of obstruction and commission of further crimes;³⁹ (iv) nothing has occurred since the Eighth Decision on Detention warranting a different assessment on conditions, either generally or for a discrete period of time;⁴⁰ and (v) in light of the ongoing disclosure of sensitive witness information associated with current trial proceedings, the underlying risks are higher than ever.⁴¹

28. When deciding whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks provided in Article 41(6)(b).⁴² Article 41(12) sets out a number of options to be considered in order to ensure the accused's presence at trial, to prevent reoffending and 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 reasonably available that could sufficiently mitigate the risks set out in

³⁷ SPO Submissions, para. 22.

³⁸ SPO Submissions, para. 23.

³⁹ SPO Submissions, paras 24-25.

⁴⁰ SPO Submissions, para. 26.

⁴¹ SPO Submissions, para. 26.

⁴² Regarding 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, 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*.

Article 41(6)(b).⁴³ The Panel must therefore consider all reasonable alternative measures that could be imposed, not only those raised by the Parties.⁴⁴

29. Regarding the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel finds that none of the formerly proposed conditions, nor any additional measures foreseen in Article 41(12), could sufficiently mitigate the existing risks.⁴⁵ Further, the Panel finds 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.⁴⁶ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁴⁷

30. The Panel further maintains that it is only through the communication monitoring framework provided at the SC Detention Facilities that Mr Thaçi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁴⁸

31. 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

⁴³ 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*, 22 May 2020, para. 70. See also ECtHR, [Idalov v. Russia \[GC\]](#), para. 140 *in fine*.

⁴⁴ IA003/F00005, Court of Appeals Panel, *Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential, para. 86. A public redacted version was filed on 11 February 2022, IA003/F00005/RED; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 24.

⁴⁵ Eighth Decision on Detention, para. 30.

⁴⁶ Eighth Decision on Detention, para. 30.

⁴⁷ Eighth Decision on Detention, para. 30.

⁴⁸ Eighth Decision on Detention, para. 31.

continued detention is necessary in order to avert the risks in Article 41(6)(b)(ii) and (iii).

C. REASONABLENESS OF DETENTION

32. The SPO submits that Mr Thaçi's detention remains proportional, citing this Panel's previous findings, and noting that trial progress continues to be made.⁴⁹

33. The Panel recalls that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.⁵⁰ The special features in this case include (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 the trial is now underway, demonstrating reasonable progression of proceedings.⁵¹

34. In light of the circumstances discussed above, and the fact that risks of obstructing the proceedings and of committing further crimes continue to exist – 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 under the specific circumstances of the case.

35. The Panel notes, however, that Mr Thaçi has already been in detention for a significant period of time, and the trial in this case is likely to be lengthy. As the Panel previously indicated, this will require the Panel as well as all Parties to be

⁴⁹ SPO Submissions, para. 27 (*citing* Eighth Decision on Detention, para. 30).

⁵⁰ Third Appeal Decision on Detention, para. 65.

⁵¹ Eighth Decision on Detention, para. 33.

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.

VI. DISPOSITION

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

- (a) **ORDERS** Mr Thaçi's continued detention; and
- (b) **ORDERS** the SPO to file submissions on the next review of Mr Thaçi's detention by no later than Friday, 28 July 2023, with the response and reply following the timeline set out in Rule 76.



Charles L. Smith, III
Presiding Judge

Dated this Friday, 16 June 2023
At The Hague, the Netherlands.