



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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: Specialist Prosecutor's Office

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Prosecution submission pertaining to periodic detention review of Hashim Thaçi

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of the Accused Hashim Thaçi ('Thaçi'). The Pre-Trial Judge, the Court of Appeals, and this Panel have repeatedly held that Thaçi's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chambers' ('KSC') detention facilities would be sufficient to mitigate the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of this Panel on 15 December 2023,³ there has been no change in circumstances that merits deviating from that determination. To the contrary, significant recent developments, in conjunction with the continued progression of trial, decisively confirm both the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. The relevant procedural history regarding Thaçi's detention is referenced in the Panel's most recent detention decision as having been set out extensively in previous decisions.⁴

3. On 3 April 2023, the trial commenced.⁵

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F02012, 15 December 2023 ('Twelfth Detention Decision').

⁴ Twelfth Detention Decision, KSC-BC-2020-06/F02012, paras 1-4.

⁵ Transcript (Opening Statements), 3 April 2023.

4. On 25 January 2024, testimony of the Forty-first (41st) witness concluded.⁶

III. SUBMISSIONS

5. The relevant applicable law is set out in Article 41, and Rules 56 and 57, and has been laid out extensively in earlier decisions.⁷

6. Since the most recent detention decision, there have been no developments that diminish the factors supporting the need and reasonableness of detention. Indeed, the continued progression of trial through the testimony of the forty-first (41st) witness and other developments in the case decisively confirm the necessity of detention.

A. GROUNDED SUSPICION

7. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.⁸ There remains a grounded suspicion that Thaçi has done so.⁹ The Confirmation Decision determined that there is a suspicion that Thaçi is liable for crimes against humanity and war crimes as identified in Articles 13, 14, and 16,¹⁰ to a standard that exceeds the ‘grounded suspicion’ required for detention.¹¹ The Pre-Trial Judge later also confirmed amendments to the Indictment that added further, similar charges against Thaçi.¹² Nothing has occurred since the

⁶ Transcript (Trial Proceedings), 25 January 2024, pp. 11857, 11921. While the testimony of W04489 and Dejan Jeftic did conclude on that day, the testimony of an earlier witness, W04577, has been adjourned (*see* Transcript, 18 October 2023, pp.9097-9112).

⁷ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.6.

⁸ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.9.

⁹ *See* Article 41(6)(a); Twelfth Detention Decision, KSC-BC-2020-06/F02012, paras 10-11.

¹⁰ Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020, para.521(a).

¹¹ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.10.

¹² Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777/RED, 22 April 2022, para.185; *see also* Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.10.

confirmation decisions that would detract from this determination. Indeed, it has been repeatedly confirmed that there remains a well-grounded suspicion that Thaçi has committed crimes within the KSC's jurisdiction.¹³

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

8. The Court of Appeals has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.¹⁴ The three grounds under Article 41(6)(b) justifying detention are: (i) risk of flight; (ii) potential obstruction; and (iii) risk of additional crimes.¹⁵ The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.¹⁶ The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence'.¹⁷ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.¹⁸ The Panel has noted that 'articulable' in this context means specified in detail by reference to the relevant information or evidence.¹⁹ In considering whether an accused should be detained or released, the relevant chamber must consider

¹³ See, e.g., Twelfth Detention Decision, KSC-BC-2020-06/F02012, paras 10-11.

¹⁴ See *Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49.

¹⁵ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.12.

¹⁶ Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA004/F00005, 30 April 2021 ('First Appeals Decision'), para.19.

¹⁷ First Appeals Decision, KSC-BC-2020-06/IA004/F00005, paras 14, 21.

¹⁸ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.12; First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.22; *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021 ('Haradinaj Decision'), para.28.

¹⁹ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.12 citing Article 19.1.31 of the Kosovo Criminal Procedure Code 2012, Law No. 08/L-032 defining 'articulable' as: 'the party offering the information or evidence must specify in detail the information or evidence being relied upon'.

whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.²⁰

i. Risk of Flight (Article 41(6)(b)(i))

9. Thaçi is aware of the serious confirmed charges against him, the possible lengthy prison sentence that may result therefrom, and he is constantly gaining more knowledge about the evidence in relation to those crimes.²¹ The progression of trial takes the risk of flight to an even higher level, as Thaçi now sees the evidence against him steadily entering the record. In addition, Thaçi is now aware that powerful evidence has been obtained of his attempts to obstruct proceedings and commit further crimes to such an extent that his conditions of detention have recently been modified. The combination of all of these factors elevates Thaçi's risk of flight to a 'sufficiently real possibility'.²²

ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))

10. Thaçi continues to present an extremely high risk of obstructing proceedings.

11. In recently finding that such a risk continues to exist,²³ the Panel reiterated its previous determination that Thaçi's has (i) the interest and ability to interfere with the proceedings; (ii) attempted to undermine the KSC and offered benefits to persons summoned by the SPO; (iii) a position of influence in Kosovo which could allow him to

²⁰ 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 the Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

²¹ Decision on Hashim Thaçi's Application for Interim Release, KSC-BC-2020-06/F00177, 22 January 2021, para.31.

²² See e.g. First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.24.

²³ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.25.

elicit the support of sympathisers; and (iv) given the ongoing trial, increased knowledge of the evidence underpinning the serious charges against him.²⁴

12. Further, there is a persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo,²⁵ which the Court of Appeals has agreed is a relevant 'contextual consideration'.²⁶ Similar findings were made in the *Mustafa* Trial Judgment²⁷ and the *Gucati and Haradinaj* Appeal Judgment.²⁸ The Case 7 Trial Panel considered that 'witness protection has continued to be a live and critical issue in Kosovo',²⁹ and credited the testimony of Defence Expert Robert Reid, who remarked that, in over 20 years in the field, he had never seen witness intimidation on the level that exists in Kosovo.³⁰

13. Moreover, Thaçi has received information concerning the witnesses the SPO intends to call in upcoming evidentiary blocks and will continue to receive such information every three months,³¹ and the risk of obstruction increases as the remaining delayed disclosure witnesses have their identities lifted in the course of trial.

²⁴ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.20.

²⁵ See Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.24.

²⁶ 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, paras 41-48; Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

²⁷ *Prosecutor v. Mustafa*, Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, para.57.

²⁸ *Prosecutor v. Guçati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023, para.438 (quoting KSC-BC-2020-07, Transcript, 18 May 2022, pp.3858-3859).

²⁹ *Prosecutor v. Guçati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2022-01/F00611/RED, 18 May 2022 ('Case 7 Judgment'), para.579.

³⁰ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, para.577.

³¹ Prosecution submission of list of witnesses for 15 January to 4 April 2024 with confidential Annexes 1 and 2, KSC-BC-2020-06/F02007, 14 December 2023.

14. In this regard, the Panel has previously noted that the disclosure of such highly sensitive information to the Thaçi Defence necessarily results in it becoming known to a broader range of persons, including the Accused.³² This continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence,³³ which, in the context of the release of an Accused, would not be conducive to the effective protection of witnesses who are yet to testify.³⁴

15. Indeed, this risk has already been realized, as Thaçi has violated the Trial Panel's orders by, *inter alia*, providing visitors with information elicited during the testimony of protected witnesses, and passing instructions intended for future SPO witnesses regarding the form and content of their upcoming testimony.³⁵ As a result, this Panel concluded that the standard conditions of detention were insufficient to mitigate the risk of Thaçi and other Accused engaging in conduct that could interfere with the proceedings and/or present a risk to the safety and security of witnesses.³⁶ To address these risks, the Panel ordered significant modifications to detention conditions.³⁷ More specifically, this Panel has held that such conduct reinforces the Panel's finding that the Accused's release would create a risk of obstruction with the progress of KSC proceedings.³⁸

16. All of the above demonstrates that the risk of obstruction is not only well-founded, but that Thaçi is actively engaged in unlawful conduct that is detrimental to the safety, security and well-being of witnesses, and directly prejudicial to the integrity of

³² Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.21.

³³ See Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.21.

³⁴ See Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.21.

³⁵ See Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.23.

³⁶ Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, KSC-BC-2020-06/F01977, 1 December 2023, Public ('Modification Decision'), para.41.

³⁷ See Modification Decision, KSC-BC-2020-06/F01977, paras 51-53, 55-60, 62-78, 84(b).

³⁸ See Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.23.

proceedings. Indeed, Thaçi presents an extraordinarily heightened risk of obstructing KSC proceedings to such an extent that even the standard communications restrictions and monitoring of the Detention Centre are insufficient to mitigate.

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

17. Thaçi continues to present a risk of committing further crimes. This Panel has recently concluded that the risk that Thaçi will commit further crimes continues to exist.³⁹

18. The Panel recalled its previous finding that the risk of Thaçi committing further crimes continues to exist, opined 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 committing further crimes, and concluded that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.⁴⁰

19. Moreover, the crimes against humanity and war crimes that Thaçi is charged with are extremely serious, they are alleged to have been committed in cooperation with others, and the Confirmation Decision describes Thaçi's personal participation in the commission of crimes.

20. The Panel highlighted the fact that the trial in this case has started, that the identities of sensitive witnesses have been disclosed to Thaçi, and that any risk of the further commission of crimes must be avoided.⁴¹

21. This Panel's previous conclusion that the continuing disclosure of sensitive information presented an unacceptable risk for the commission of further crimes⁴² applies

³⁹ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.29.

⁴⁰ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.27.

⁴¹ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.28.

⁴² Twelfth Detention Decision, KSC-BC-2020-06/F02012, paras 28-29.

even more forcefully given the recent relevant obstruction findings and the continued progression of trial.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

22. The relevant risks, including those regarding flight, can only be effectively managed at the KSC's detention facilities. This Panel has recently concluded that the risks of obstructing the proceedings and committing further offences can only be effectively managed at the KSC's detention facilities.⁴³

23. Regarding the risks of obstructing the progress of KSC proceedings and committing further crimes, the Panel found that none of the formerly proposed conditions, nor any additional measures foreseen in Article 41(12) could sufficiently mitigate the existing risks.⁴⁴

24. Further, the Panel found that the measures in place at the KSC 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.⁴⁵ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁴⁶

25. The Panel has concluded that it is only through the communication monitoring framework applicable at the KSC detention facilities that Thaçi's communications can be

⁴³ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.35.

⁴⁴ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.33.

⁴⁵ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.33.

⁴⁶ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.33.

restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁴⁷

26. Nothing has occurred since the previous determination warranting a different assessment on conditions, either generally or for a discrete period of time. To the contrary, Thaçi's conduct now represents such an extraordinarily heightened risk that even the standard communications restrictions and monitoring of the Detention Centre are insufficient to mitigate it, necessitating the imposition of an even more strict regime by this Panel. Therefore, especially in conjunction with the continuation of trial and attendant further disclosure, the underlying risks are higher than ever.

D. DETENTION REMAINS PROPORTIONAL

27. Detention remains proportional. At the last detention review, this Panel found that Thaçi's detention for a further two months was necessary and reasonable in the specific circumstances of the case.⁴⁸

28. In that regard, the Panel recalled that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features, which, in this case, include: (i) 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 Thaçi would obstruct KSC 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

⁴⁷ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.34.

⁴⁸ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.38.

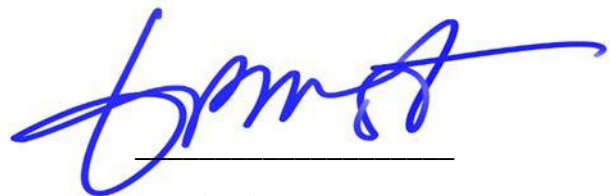
Thaçi; and (vii) the fact that the trial is underway, demonstrating reasonable progression of proceedings.⁴⁹

29. Here, taking these same, and additional, factors into consideration, Thaçi's detention continues to be reasonable, especially in light of the continuing reasonable progression of proceedings.⁵⁰

IV. CONCLUSION

30. For the foregoing reasons, the SPO respectfully submits that Thaçi should remain detained.

Word count: 2,672



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Specialist Prosecutor

Monday, 29 January 2024

At The Hague, the Netherlands.

⁴⁹ Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.37.

⁵⁰ In this regard, *see* Twelfth Detention Decision, KSC-BC-2020-06/F02012, para.38; Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F02059, 15 January 2024, para.48; Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F02060, 15 January 2024, para.34.