



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

Date: 31 January 2024

Language: English

Classification: Confidential

Prosecution response to 'Motion to Withdraw by Lead Counsel for Hashim Thaçi'

Specialist Prosecutor's Office

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Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

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Venkateswari Alagendra

1. The Motion¹ is premature² and should be dismissed, without prejudice. While the Specialist Prosecutor's Office ('SPO') does not take a position on the relief requested at this stage,³ the proper procedures should be followed to ensure that early withdrawal of Counsel appointed to represent THAÇI throughout the proceedings in this case⁴ does not have a materially adverse effect on the duration or fairness of the trial, or the proper use of court resources.⁵

2. Pursuant to Sections 16(1) and 18(6) of the Directive,⁶ THAÇI's Lead Counsel should have first requested early termination from the Registrar, who shall consider: (i) in relation to Lead Counsel, a termination request with 'due regard to the importance of continuity of representation';⁷ and (ii) in relation to Co-Counsel, whether termination 'may be accomplished without material adverse effect on the interests of the client and the duration of the proceedings'.⁸ If Counsel discharge their burden⁹ and the Registrar decides to approve termination, the Registrar then (i) seeks

¹ Motion to Withdraw by Lead Counsel for Hashim Thaçi, KSC-BC-2020-06/F02069, 19 January 2024 ('Motion').

² See Additional Registrar's Submissions Concerning the Termination of Representation by Counsel and Other Defence Team Members, KSC-BC-2020-06/F02079, 26 January 2024, Confidential ('Registry Submissions'), paras 3, 8, 10.

³ The SPO notes that an *ex parte* hearing will be held on 31 January 2024 to address the Panel's concerns. While certain aspects of this matter, which concerns representation, may be appropriately addressed *ex parte*, insofar as the Motion and Registry Submissions potentially raise concerns about the fairness and expeditiousness of the proceedings, this matter impacts the interests of all Parties and participants, as well as the public.

⁴ See, for example, Annex 1 to Notification of Approval of Co-Counsel for Hashim Thaçi, KSC-BC-2020-06/F01455/A01, p.1 (approving Co-Counsel for the duration of the proceedings in the *Thaçi et al.* case, and stating that, if termination is requested, counsel should demonstrate that termination may be accomplished without material adverse effect on the interests of the client and the duration of the proceedings).

⁵ See ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar Relating to the Withdrawal of Co-Counsel, 23 November 2006 ('*Nahimana* Decision'), para.15 (potential delay and proper use of resources are relevant factors in considering withdrawal requests).

⁶ Registry Practice Direction: Directive on Counsel, KSC-BC-04/Rev1/2021, 28 April 2021 ('Directive').

⁷ Directive, Section 16(1).

⁸ Directive, Section 18(6).

⁹ See, similarly, *Nahimana* Decision, para.11 (noting that Counsel bears the burden). See also fn.4 above.

the Panel's approval of Lead Counsel's termination and (ii) informs the Panel of Co-Counsel's termination.¹⁰

3. The established procedures – which were followed at the time of Lead Counsel's initial appointment¹¹ – are designed to avoid unnecessary delay, uncertainty, and waste of resources, and ensure that the Registrar and Panel have all necessary information.¹² As a result of the procedural irregularities in this matter, there is insufficient information to assess the potential impact of Counsel's withdrawal on continuity of representation and the fair and expeditious conduct of proceedings.¹³ In particular, while multiple Co-Counsel are currently appointed, THAÇI has not yet requested the assignment or appointment of a new lead counsel.¹⁴

4. Consistent with the Registry Submissions, this response is confidential pursuant to Rule 82(4) of the Rules.¹⁵ However, noting that the Motion is public, the SPO does not object to reclassification of this filing as public.

Word Count: 707



Kimberly P. West

Specialist Prosecutor

Wednesday, 31 January 2024

At The Hague, the Netherlands.

¹⁰ Directive, Sections 16(1), 18(6). For termination of other Defence team members, Registry and/or Panel approval is not specifically required. *See* Directive, Section 18(8).

¹¹ *See, inter alia*, Notification of Request for Withdrawal by Counsel for Hashim Thaçi, KSC-BC-2020-06/F00317, 20 May 2021; Notification of Appointment of New Counsel for Hashim Thaçi and Approval of Co-Counsel, KSC-BC-2020-06/F00324, 27 May 2021.

¹² *See, similarly*, ICTY, *Prosecutor v. Blagojević*, IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003, para.7 (considering that the competence and responsibilities of the Registrar in representation matters should be respected, and that following the established procedures may avoid extended delays to the detriment of all parties).

¹³ *See also* Registry Submissions, KSC-BC-2020-06/F02079, paras 8, 10.

¹⁴ Registry Submissions, KSC-BC-2020-06/F02079, paras 7-8.

¹⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').