



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-06/IA022

**Before:** A Panel of the Court of Appeals Chamber  
Judge Michèle Picard  
Judge Emilio Gatti  
Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

**Date:** 22 August 2022

**Original language:** English

**Classification:** Public

---

**Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision  
on Periodic Review of Detention**

---

**Specialist Prosecutor's Office:**  
Jack Smith

**Counsel for Hashim Thaçi:**  
Gregory Kehoe

**Counsel for Victims:**  
Simon Laws

**Counsel for Kadri Veseli:**  
Ben Emmerson

**Counsel for Rexhep Selimi:**  
David Young

**Counsel for Jakup Krasniqi:**  
Venkateswari Alagendra

**THE PANEL OF THE COURT OF APPEALS CHAMBER** of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively)<sup>1</sup> acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”) is seised of an appeal filed on 8 June 2022 by Mr Hashim Thaçi (“Appeal” and “Thaçi” or “Accused”, respectively),<sup>2</sup> against the “Decision on Periodic Review of Detention of Hashim Thaçi” (“Impugned Decision”).<sup>3</sup> The Specialist Prosecutor’s Office (“SPO”) responded on 20 June 2022 that the Appeal should be rejected (“Response”).<sup>4</sup> Thaçi replied on 27 June 2022 (“Reply”).<sup>5</sup>

## I. BACKGROUND

1. On 5 November 2020, Thaçi was arrested and transferred to the Detention Facilities of the Specialist Chambers (“Detention Facilities”) pursuant to an arrest warrant issued by the Pre-Trial Judge,<sup>6</sup> further to the confirmation of an indictment against him.<sup>7</sup>

---

<sup>1</sup> IA022/F00002, Decision Assigning a Court of Appeals Panel, 13 June 2022 (confidential, reclassified as public on 1 August 2022).

<sup>2</sup> IA022/F00001, Thaçi Appeal Against the Decision on Periodic Review of Detention of Hashim Thaçi, 8 June 2022 (confidential) (“Appeal”).

<sup>3</sup> F00818/RED, Public Redacted Version of Decision on Periodic Review of Detention of Hashim Thaçi, 8 June 2022 (confidential version filed on 26 May 2022) (“Impugned Decision”).

<sup>4</sup> IA022/F00003, Response to Thaçi Appeal Against Decision on Periodic Review of Detention, 20 June 2022 (confidential) (“Response”).

<sup>5</sup> IA022/F00004, Thaçi Reply to Prosecution ‘Response to Thaçi Appeal Against Decision on Periodic Review of Detention’, 27 June 2022 (confidential) (“Reply”).

<sup>6</sup> F00051, Notification of Arrest of Hashim Thaçi Pursuant to Rule 55(4), 5 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020); F00027/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, 26 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, reclassified as confidential on 25 November 2020); F00027/A01/RED, Public Redacted Version of Arrest Warrant for Hashim Thaçi, 5 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020).

<sup>7</sup> F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020); F00034/A01, Indictment, 30 October 2020 (strictly confidential and *ex parte*); F00045/A03, Further redacted Indictment, 4 November 2020 (strictly confidential and *ex parte*, reclassified as public on 5 November 2020). A corrected confirmed indictment was filed on 3 September 2021. See F00455/RED/A01, Public Redacted Version of ‘Indictment’,

2. On 22 January 2021, the Pre-Trial Judge rejected Thaçi's request for interim release ("First Detention Decision").<sup>8</sup> On 30 April 2021, the Court of Appeals Panel upheld the First Detention Decision ("First Appeal Decision").<sup>9</sup>
3. On 23 July 2021, the Pre-Trial Judge ordered Thaçi's continued detention ("Second Detention Decision").<sup>10</sup> On 27 October 2021, the Appeals Panel upheld the Second Detention Decision ("Second Appeal Decision").<sup>11</sup>
4. On 14 December 2021, the Pre-Trial Judge reviewed and extended Thaçi's detention ("Third Detention Decision").<sup>12</sup> On 5 April 2022, the Court of Appeals Panel denied Thaçi's appeal against the Third Detention Decision ("Third Appeal Decision").<sup>13</sup>
5. On 26 May 2022, the Pre-Trial Judge, after having received submissions from the Parties,<sup>14</sup> issued the Impugned Decision, ordering Thaçi's continued detention on

---

8 September 2021 (strictly confidential and *ex parte* version filed on 3 September 2021, confidential redacted version filed on 8 September 2021). A confirmed amended and operative indictment was filed on 29 April 2022. See F00789/A05, Public Redacted Version of Amended Indictment, 29 April 2022 (strictly confidential and *ex parte* version filed on 29 April 2022, confidential redacted version filed on 29 April 2022).

<sup>8</sup> F00177/RED, Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release, 26 January 2021 (confidential version filed on 22 January 2021) ("First Detention Decision").

<sup>9</sup> IA004/F00005/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) ("First Appeal Decision").

<sup>10</sup> F00417/RED, Public Redacted Version of Decision on Review of Detention of Hashim Thaçi, 23 July 2021 (confidential version filed on 23 July 2021) ("Second Detention Decision").

<sup>11</sup> IA010/F00008/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021 (confidential version issued on 27 October 2021) ("Second Appeal Decision").

<sup>12</sup> F00624/RED, Public Redacted Version of Decision on Review of Detention of Hashim Thaçi, 25 January 2022 (confidential version filed on 14 December 2021) ("Third Detention Decision").

<sup>13</sup> IA017/F00011/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 5 April 2022 (confidential version filed on 5 April 2022) ("Third Appeal Decision").

<sup>14</sup> F00769/RED, Public Redacted Version of Thaçi Defence Submissions on Third Detention Review, 2 June 2022 (confidential version filed on 19 April 2022) ("Thaçi Submissions on Detention Review"); F00786/RED, Public Redacted Version of Prosecution Response to Hashim Thaçi's Submissions on Third Detention Review, 23 May 2022 (confidential version filed on 29 April 2022); F00797/RED, Public Redacted Version of Thaçi Defence Reply to Prosecution Response to Hashim Thaçi's Submissions on Third Detention Review, 2 June 2022 (confidential version filed on 6 May 2022).

the basis that, *inter alia*, there is a grounded suspicion that he has committed crimes within the jurisdiction of the Specialist Chambers, and the risks that he will abscond, obstruct the progress of the Specialist Chambers' proceedings or commit further crimes against those perceived as being opposed to the Kosovo Liberation Army, including potential witnesses, continue to exist.<sup>15</sup>

6. In the Appeal, Thaçi develops three grounds of appeal consisting of alleged errors of law and fact or of alleged abuse of discretion committed by the Pre-Trial Judge.<sup>16</sup> Thaçi requests that the Court of Appeals Panel grant the Appeal and order his immediate provisional release, with conditions deemed to be appropriate in the circumstances.<sup>17</sup>

## II. STANDARD OF REVIEW

7. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.<sup>18</sup>

## III. PRELIMINARY MATTERS

8. The Appeals Panel notes that while the Pre-Trial Judge issued a public redacted version of the Impugned Decision, Thaçi and the SPO have not yet filed public redacted versions of their respective Appeal, Response and Reply.<sup>19</sup> Considering that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed before the Panel,<sup>20</sup> the Panel

---

<sup>15</sup> Impugned Decision, paras 32, 52, 82.

<sup>16</sup> Appeal, para. 3.

<sup>17</sup> Appeal, paras 44-45.

<sup>18</sup> KSC-BC-2020-07, IA0001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, paras 4-14. See also First Appeal Decision, paras 4-7.

<sup>19</sup> While the SPO indicated in its Response that it will file a public redacted version thereof (see Response, para. 37), it has not done so yet.

<sup>20</sup> See e.g. IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 8-9.

orders the Parties to file public redacted versions of the above-mentioned filings within ten days of receiving notification of the present Decision. The Panel once again encourages the Parties to file public redacted versions of their filings as soon as possible, without waiting for an order to do so.

#### IV. DISCUSSION

##### A. ALLEGED ERRORS REGARDING ASSESSMENT OF RISK OF FLIGHT (GROUND 1)

###### 1. Submissions of the Parties

9. Thaçi submits that the Pre-Trial Judge's finding that Thaçi not only has the ability to flee, but also has a motive to do so because of "his awareness of the charges against him and the possibility of a serious sentence, while the disclosure process increases this risk" is flawed, since the ongoing disclosure process has contained an increasing volume of exculpatory material.<sup>21</sup> Thaçi also argues that if the Pre-Trial Judge is not assessing the disclosed evidence submitted by the SPO, he has no basis to conclude that ongoing disclosure increases Thaçi's motivation to flee.<sup>22</sup> Such a conclusion conflicts, according to Thaçi, with the presumption of innocence and is so unfair and unreasonable as to constitute an abuse of discretion.<sup>23</sup>

10. The SPO responds that the Pre-Trial Judge concluded that the risk of flight is sufficiently mitigated by the proposed conditions and that Thaçi fails to explain how the alleged error regarding the assessment of the risk of flight would affect the outcome of the Pre-Trial Judge's decision that release is not merited.<sup>24</sup>

11. Thaçi replies that the SPO did not engage with the error alleged by Thaçi.<sup>25</sup> According to him, the fact that the assessment of conditions for release was based, in

---

<sup>21</sup> Appeal, paras 11-12, referring to Impugned Decision, paras 37, 41. See also Appeal, para. 10; Reply, para. 3.

<sup>22</sup> Appeal, paras 13-15.

<sup>23</sup> Appeal, paras 14-15; Reply, para. 3.

<sup>24</sup> Response, paras 10-11, referring to Impugned Decision, para. 60.

<sup>25</sup> Reply, para. 3.

part, on a risk that cannot reasonably be deemed to exist is an error which impacts the decision and an accused cannot be prevented from raising a “central error” on appeal.<sup>26</sup>

## **2. Assessment of the Court of Appeals Panel**

12. The Panel notes that under this ground of appeal, Thaçi makes arguments which address solely the risk of flight under Article 41(6)(b)(i) of the Law. As the Pre-Trial Judge’s conclusion to continue Thaçi’s detention is not based on findings regarding the risk of flight,<sup>27</sup> the Panel summarily dismisses Thaçi’s first ground of appeal.<sup>28</sup>

### **B. ALLEGED ERRORS REGARDING ASSESSMENT OF CONDITIONS OF RELEASE (GROUND 2)**

#### **1. Submissions of the Parties**

13. Thaçi submits that the Pre-Trial Judge erred in rejecting the measures proposed to mitigate the purported risks arising from [REDACTED] during house arrest, as his findings were based on a misunderstanding or misrepresentation of the Specialist Chambers’ Detention Facilities regime.<sup>29</sup> Thaçi also submits that the Pre-Trial Judge failed to give weight, or sufficient weight, to his submission that any risk from [REDACTED] is mitigated by the lack of any indication that confidential information has been passed between him and [REDACTED] in the past 17 months of unmonitored visits at the Detention Facilities,<sup>30</sup> and to explain why the [REDACTED] increases the risk of [REDACTED].<sup>31</sup> According to Thaçi, the Pre-Trial Judge should

---

<sup>26</sup> Reply, para. 4.

<sup>27</sup> See Impugned Decision, para. 60. See also Impugned Decision, paras 71-72 (wherein the Pre-Trial Judge found that the conditions proposed by Thaçi and any other conditions imposed by the Pre-Trial Judge are insufficient to mitigate the risk of Thaçi obstructing the progress of Specialist Chambers’ proceedings or committing further crimes).

<sup>28</sup> See also First Appeal Decision, para. 32; Second Appeal Decision, para. 29; Third Appeal Decision, para. 22.

<sup>29</sup> Appeal, paras 16-18, 24. See also Appeal, paras 33, 44; Reply, para. 8.

<sup>30</sup> Appeal, paras 16, 19, referring to Thaçi Submissions on Detention Review, para. 28(i). See also Appeal, para. 24; Reply, para. 9.

<sup>31</sup> Appeal, paras 20-21, 24.



have articulated the appropriate level of [REDACTED] which would mitigate the identified risks.<sup>32</sup> Thaçi further argues that the Pre-Trial Judge improperly dismissed the proposed measure of Thaçi's return to the Detention Facilities 30 days before trial as inadequate, having failed to give sufficient weight to Thaçi's proposal for a "complex framework" which also includes house arrest, monitoring and restrictions on movement, visitors and communications.<sup>33</sup>

14. In relation to the use of Detention Facilities' staff to supervise the house arrest, Thaçi submits that the Pre-Trial Judge made an explicit link between ongoing pre-trial incarceration and an unwillingness to spend Specialist Chambers resources, without providing any basis for his finding that the resources required to supervise Thaçi's house arrest in Kosovo are "significant", nor seeking any Registry submissions on the required resources.<sup>34</sup> Moreover, Thaçi submits that the Pre-Trial Judge failed to explain why the use of Specialist Chambers Detention Officers is more than a redeployment of resources.<sup>35</sup> Thaçi also argues that since under Article 3(6) of the Law the Specialist Chambers shall have a seat in Kosovo, they are required to have sufficient resources to implement their mandate at their legal seat.<sup>36</sup> In Thaçi's view, the Pre-Trial Judge's approach to pre-trial detention based on an unwillingness to allocate resources is irreconcilable with the exceptional nature of pre-trial detention which flows from the presumption of innocence.<sup>37</sup> Further, Thaçi argues that the Pre-Trial Judge failed to explain or provide any basis for finding that because of the physical remoteness of Kosovo from The Hague, the coordination with the Chief Detention Officer and the adoption of measures in response to a violation of house arrest conditions would be delayed.<sup>38</sup> Additionally, Thaçi argues that the Pre-Trial

---

<sup>32</sup> Appeal, paras 22, 24.

<sup>33</sup> Appeal, para. 23. See also Appeal, paras 3, 44.

<sup>34</sup> Appeal, paras 25-26, 33, referring to Impugned Decision, para. 62. See also Reply, para. 11.

<sup>35</sup> Appeal, paras 29-30, referring to Impugned Decision, para. 62. See also Reply, para. 11.

<sup>36</sup> Appeal, para. 26.

<sup>37</sup> Appeal, paras 27-28, 33, referring to Impugned Decision, para. 62. See also Appeal, paras 1-2, 43.

<sup>38</sup> Appeal, para. 31, referring to Impugned Decision, para. 63.

Judge failed to explain why any response to the alleged breach could not be implemented in accordance with the Detention Facilities' operational practice, or why another operational practice would not sufficiently mitigate the identified risks in view of the unproblematic coordination between the Kosovo Police, the European Union Rule of Law Mission in Kosovo ("EULEX"), the SPO and the Specialist Chambers in the past.<sup>39</sup>

15. Thaçi further argues that the Pre-Trial Judge's dismissal of the proposal for house arrest to be implemented by the European Gendarmerie Force is directly linked to his erroneous conclusions on [REDACTED], despite this being a realistic option which can address the identified risks and any budgetary concerns regarding house arrest.<sup>40</sup>

16. Finally, concerning the monitoring of pre-approved visitors, Thaçi submits that the Pre-Trial Judge abused his discretion in dismissing Thaçi's relevant arguments, by referring to "the possibility of a deliberate interference with the technical equipment" and of a "technical malfunction", without any further explanation and without seeking relevant submissions from the Registry or the Detention Facilities.<sup>41</sup> In Thaçi's view, the Pre-Trial Judge's comparison of virtual and live monitoring was not sufficiently reasoned,<sup>42</sup> and he erroneously conflated the issue of pre-approved visitors with [REDACTED] when finding that virtual monitoring and pre-approved visitors would not remedy the [REDACTED].<sup>43</sup> According to Thaçi, the Pre-Trial Judge's finding that a breach during a pre-approved visit would require [REDACTED], is unsubstantiated.<sup>44</sup>

---

<sup>39</sup> Appeal, para. 32, referring to Impugned Decision, para. 63.

<sup>40</sup> Appeal, paras 34-35, referring to Impugned Decision, para. 64.

<sup>41</sup> Appeal, paras 36-37, referring to Impugned Decision, para. 69.

<sup>42</sup> Appeal, para. 38.

<sup>43</sup> Appeal, para. 39.

<sup>44</sup> Appeal, para. 40, referring to Impugned Decision, para. 69.



17. The SPO responds that Thaçi repeatedly proposes minor extensions of conditions already rejected by the Pre-Trial Judge and the Appeals Panel as inadequate, equates unmonitored private visits at the Detention Facilities with [REDACTED], and fails to substantiate the alleged errors or abuse of discretion by the Pre-Trial Judge and how these errors would invalidate the Impugned Decision.<sup>45</sup>

18. Specifically with respect to Thaçi's proposal to limit [REDACTED] to [REDACTED], the SPO submits that it would not address the risk of [REDACTED],<sup>46</sup> and [REDACTED] is not comparable to the limited visits he receives [REDACTED] at the Detention Facilities.<sup>47</sup> The SPO also argues that the absence of evidence of [REDACTED] during unmonitored private visits in the Detention Facilities indicates that the Detention Facilities are a more suitable environment to prevent the risks identified under Article 41(6)(b) of the Law.<sup>48</sup> The SPO further submits that Thaçi's proposal to return to the Detention Facilities 30 days prior to trial would be of consequence only if any concerns about the identified risks were adequately addressed outside of that period.<sup>49</sup>

19. Regarding Thaçi's proposal to use the Detention Facilities' staff to supervise the house arrest, the SPO submits that the Pre-Trial Judge referred to the Third Appeal Decision which cited to evidence from a variety of sources to support the consideration that significant resources would be required to supervise Thaçi's house arrest.<sup>50</sup> According to the SPO, Thaçi also mischaracterises the Impugned Decision, as concerns over resources was only one of a number of factors leading to the Pre-Trial Judge's conclusion that this measure was unreasonable.<sup>51</sup> The SPO further argues that

---

<sup>45</sup> Response, paras 2, 12-15, 20, 26-27, 31-32.

<sup>46</sup> Response, para. 16, referring to Third Appeal Decision, para. 28.

<sup>47</sup> Response, para. 18, referring to Impugned Decision, para. 66 and Third Appeal Decision, para. 29.

<sup>48</sup> Response, para. 17.

<sup>49</sup> Response, para. 19, referring to Appeal, para. 23.

<sup>50</sup> Response, para. 22, referring to Impugned Decision, para. 62.

<sup>51</sup> Response, para. 23. See also Response, para. 24 (submitting that the conditions in Kosovo, especially the corruption of the justice sector and widespread witness intimidation, were what prompted the

Thaçi's references to human rights case law to justify complex and costly measures are inapplicable, as this case law concerns the treatment of prisoners in detention.<sup>52</sup>

20. With respect to Thaçi's proposal of deploying the European Gendarmerie Force to supervise the house arrest, the SPO submits that the Pre-Trial Judge found that even setting aside concerns about the required resources, it would not sufficiently minimise the identified risks,<sup>53</sup> and that "logically" its deployment within the sovereign borders of Kosovo presents identical issues to the use of Detention Facilities' staff.<sup>54</sup> Concerning the proposed measure of virtual monitoring of pre-approved visits, the SPO responds that this can only be an "additional safeguard" and does not address the core weaknesses of home detention.<sup>55</sup>

21. Thaçi replies that the SPO failed to engage with, or respond to, most of the Appeal.<sup>56</sup> He argues that, contrary to the SPO's submissions that he merely disagrees with the Pre-Trial Judge's approach and attempts to re-litigate release conditions, in fact, he identified discrete errors and proposed additional conditions which have not

---

change in venue to the Host State and would mean that any violation of the conditions of house arrest would be difficult to deal with).

<sup>52</sup> Response, para. 25, referring to Appeal, para. 27.

<sup>53</sup> Response, paras 28-29, referring to Impugned Decision, paras 64, 66.

<sup>54</sup> Response, para. 29.

<sup>55</sup> Response, para. 32.

<sup>56</sup> Reply, paras 2, 10-13, 15-16. According to Thaçi, the SPO has specifically not engaged with the following alleged errors by the Pre-Trial Judge: (i) his failure to assess the degree of risk and explain why the identified risks were not sufficiently mitigated; (ii) his failure to explain why increased contact with [REDACTED] will increase the risk of [REDACTED]; (iii) his failure to determine a sufficiently mitigating level of [REDACTED]; (iv) his failure to assess the proposed measures together, rather than isolating Thaçi's return to the Detention Facilities 30 days prior to trial; (v) his failure to appreciate that resources of the Detention Facilities could be redeployed; (vi) his finding that Thaçi's rights are fully respected in the Detention Facilities when less restrictive alternatives exist; (vii) his consideration of the physical remoteness between Kosovo and The Hague and the potential delay in case of violations; (viii) his failure to explain why alleged violations could not be implemented at the Detention Facilities; (ix) his failure to consider that Article 3(6) of the Law requires the Specialist Chambers to have sufficient resources to respect their mandate at their legal seat; (x) his erroneous and speculative reliance on a potential deliberate interference or technical malfunction and on the physical remoteness between The Hague and Kosovo to dismiss virtual monitoring; and (xi) the conflation of [REDACTED] with the issue of pre-approved visitors.

been the subject of appeal.<sup>57</sup> With respect to the use of Detention Facilities' staff, Thaçi argues that this proposed regime aims precisely to address any concerns about corruption affecting the criminal justice sector in Kosovo.<sup>58</sup> According to Thaçi, none of the sources cited by the Pre-Trial Judge to support his finding that significant resources would be required in case of house arrest concerns the issue raised on appeal.<sup>59</sup> Thaçi, finally, replies that the SPO limits its Response to isolating the proposed measures and saying that, individually, they are insufficient to mitigate the identified risks, rather than acknowledging that they were proposed as part of a larger regime.<sup>60</sup>

## 2. Assessment of the Court of Appeals Panel

22. Turning first to Thaçi's assertions concerning the Pre-Trial Judge's alleged misunderstanding or misrepresentation of the Detention Facilities' regime,<sup>61</sup> the Panel notes that the Pre-Trial Judge appears to have misinterpreted Article 24(1) of the Practice Direction on Detainees' Visits and Communications ("Practice Direction on Visits")<sup>62</sup> in considering that unmonitored private visits are *limited* to [REDACTED], whereas the provision states that [REDACTED] is the *minimum* [REDACTED].<sup>63</sup> Nevertheless, the Panel considers that what was crucial for the Pre-Trial Judge's conclusion was the distinction between the "[REDACTED]" and "the limited, yet regular, visits Mr Thaçi receives [REDACTED] at the [Detention Facilities]".<sup>64</sup> Even if Thaçi actually receives [REDACTED],<sup>65</sup> the [REDACTED] is still significantly less than

---

<sup>57</sup> Reply, para. 5, referring to Response, paras 13, 15. Thaçi specifically submits that the Appeal Panel's findings cited by the SPO were made in other contexts, as they concerned, for example, house arrest administered by the Kosovo Police and not the current proposed regime. See Reply, paras 6-7, 14.

<sup>58</sup> Reply, para. 12.

<sup>59</sup> Reply, para. 11, referring to Response, para. 22.

<sup>60</sup> Reply, para. 14, referring to Response, paras 30-32.

<sup>61</sup> See Appeal, paras 17-18, referring to Impugned Decision, para. 66.

<sup>62</sup> KSC-BD-09-Rev1, Registry Practice Direction on Detainees, Visits and Communications, 23 September 2020.

<sup>63</sup> Impugned Decision, para. 66.

<sup>64</sup> Impugned Decision, para. 66.

<sup>65</sup> See Appeal, para. 18.

the [REDACTED] that could take place under the proposed measures.<sup>66</sup> In addition, even private visits at the Detention Facilities have certain limitations with respect, for example, to [REDACTED],<sup>67</sup> and the Chief Detention Officer maintains under all circumstances the authority to take any urgent security measure.<sup>68</sup> Accordingly, the Pre-Trial Judge's misinterpretation of Article 24(1) of the Practice Direction on Visits does not invalidate his overall comparison of the [REDACTED] in detention and during house arrest. In this regard, the Panel also notes that the assessment of whether the proposed conditions would suffice is not a matter of a numerical identification of the amount of [REDACTED] which would mitigate the identified risks, as Thaçi suggests.<sup>69</sup> The issue, on which the Pre-Trial Judge correctly focused,<sup>70</sup> is the existence of limitations on unmonitored visits at the Detention Facilities, as opposed to the [REDACTED] to [REDACTED] during house arrest. In the Panel's view, this difference is significant and directly linked to the assessment of the identified risks.

23. As for Thaçi's argument that there is no indication that any confidential information has been exchanged between him and [REDACTED] thus far, the Pre-Trial Judge considered this argument and concluded that in light of other factors, including the limitations imposed on unmonitored visits, this would not change his finding that restricting the list of [REDACTED] would not adequately mitigate the identified risks.<sup>71</sup> The Panel considers that the behaviour of Thaçi's [REDACTED] in the tightly controlled environment of the Detention Facilities does not in itself render unreasonable the Pre-Trial Judge's findings regarding the mitigation of the identified risks during house arrest. Moreover, the Pre-Trial Judge's assessment of the proposed

---

<sup>66</sup> See IA015/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022 (confidential version filed on 25 March 2022), para. 37, fn. 90. See also Second Appeal Decision, fn. 134.

<sup>67</sup> See e.g. Practice Direction on Visits, Articles 13-14; KSC-BD-33, Detention Management Unit Instruction on Visiting Procedures for Family Members and Other Personal Visitors, 23 September 2020 ("DMU Instruction on Visits"), Sections 18-21.

<sup>68</sup> DMU Instruction on Visits, Section 16, referring to Practice Direction on Visits, Article 8.

<sup>69</sup> See Appeal, para. 22.

<sup>70</sup> See Impugned Decision, para. 66.

<sup>71</sup> Impugned Decision, para. 66. See also Impugned Decision, para. 54. Contra Appeal, paras 19-20.

conditions, including his considerations that the [REDACTED], are not necessarily affected by the number of persons who have access to him but rather by the possibility that such actions can occur during house arrest, as opposed to within the restricted environment of the Detention Facilities.

24. Regarding the proposed measure of the Accused's re-incarceration 30 days prior to the commencement of the trial, the Panel observes that Thaçi himself linked this measure to the existence of protective measures, namely the fact that certain protected witnesses' identities will be disclosed to the Defence 30 days prior to trial, when proposing it as a mitigating measure for any increased risk as a result of [REDACTED].<sup>72</sup> Even considering that this proposed measure was an additional safeguard to the other proposed conditions, the Panel considers that the Pre-Trial Judge's finding that this condition was inadequate was reasonable. In the Panel's view, as this measure by its nature could only address risks during the 30 days prior to the commencement of the trial, the Pre-Trial Judge would have needed to be satisfied that other conditions were adequate to address concerns prior to that period, which he was not.

25. Turning next to Thaçi's proposal to use Detention Facilities' staff to oversee Thaçi's house arrest, the Panel considers that the Pre-Trial Judge's characterisation of the required resources as "significant" is reasonably based on the estimate of the resources the Kosovo Police would require for the implementation of house arrest,<sup>73</sup> as that estimate was provided on the basis of house arrest under similar conditions and in view of Thaçi's own suggestion to replace Kosovo Police officers with Detention Officers.<sup>74</sup> Moreover, the Registry has already submitted that there are only limited Registry officers for similar tasks and their main functions are at the seat of the

---

<sup>72</sup> See Thaçi Submissions on Detention Review, para. 28(i).

<sup>73</sup> See Impugned Decision, para. 62, referring to Third Appeal Decision, para. 47, citing F00569/A01/eng, Transmission of Information from Kosovo Police, 18 November 2021 (confidential) (originally filed in Albanian on 15 November 2021), p. 3.

<sup>74</sup> See Thaçi Submissions on Detention Review, para. 28(iv). See also Reply, para. 12.

Specialist Chambers in the Host State.<sup>75</sup> Accordingly, the Panel considers that the Pre-Trial Judge did not err in deciding not to seek additional submissions from the Kosovo Police or the Registry. Further, the Panel recalls that the Specialist Chambers were established remotely due to the sensitivity of the proceedings and the nature of the allegations,<sup>76</sup> which, as the Pre-Trial Judge noted, is relevant to the consideration of the proposed conditions that could mitigate the identified risks.<sup>77</sup> As such, staff may not be redeployed simply because the Specialist Chambers also have a seat in Kosovo according to Article 3(6) of the Law.

26. The Panel also finds no error in the Pre-Trial Judge's finding that deploying Detention Facilities' staff to Kosovo for the purpose of house arrest is not a mere redeployment of funds.<sup>78</sup> While some savings would be generated in the event the Accused were placed under house arrest from those costs that relate directly to the number of detainees in the Detention Facilities,<sup>79</sup> the effect on the number of Detention Facilities' staff who would still be required for the remaining detainees at the Detention Facilities is unlikely to be significant. Indeed, a regime of house arrest under the supervision of Detention Facilities' staff outside the secure environment of the

---

<sup>75</sup> Third Appeal Decision, para. 47, referring to F00640/RED, Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 17 January 2022 (confidential and *ex parte* version filed on 8 January 2022), para. 11; F00267, Confidential Redacted Version of 'Registrar's Submissions on Veseli Defence Request for Temporary Release on Compassionate Grounds', filing F00267 dated 28 April 2021, 29 April 2021 (confidential and *ex parte* version filed on 28 April 2021), para. 17; F00385, Public Redacted Version of "Registrar's Submissions on Urgent Request for a Custodial Visit on Compassionate Grounds" (F00385), dated 7 July 2021, 15 July 2021 (confidential and *ex parte* version filed on 7 July 2021), paras 20-21.

<sup>76</sup> See Law No. 04/L-274 on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, 23 April 2014.

<sup>77</sup> See Impugned Decision, para. 67.

<sup>78</sup> See Impugned Decision, para. 62.

<sup>79</sup> See e.g. Proposed Programme Budget for 2022 of the International Criminal Court, ICC-ASP/20/10, 16 August 2021, para. 580 (referring to costs such as medical care and items specific to ensuring respect for the detained persons' religious and cultural backgrounds as part of their well-being as being among those that will increase because of the addition of one detainee, whereas there is no indication that this would result in a change of the number of detention officers).



Detention Facilities, potentially for more accused, would mean that additional Detention Officers would almost certainly be required.

27. Concerning Thaçi's assertion that his rights are not fully respected as a result of available alternative measures not being employed because of an unwillingness to allocate resources,<sup>80</sup> the Panel notes that the Pre-Trial Judge did not base his conclusion on the inadequacy of this proposed condition solely on budgetary constraints.<sup>81</sup> Nevertheless, the Panel considers that where certain conditions are not commonly ordered in the context of house arrest because they are, for example, technically challenging or entail disproportionate investment compared to the levels of investment required for regular monitoring and surveillance of house arrest, the Pre-Trial Judge cannot reasonably be expected to accept and impose such conditions.<sup>82</sup> None of the human rights case law referred to by Thaçi establishes such an obligation.<sup>83</sup> Thaçi's right to humane treatment during detention, as recognised by this jurisprudence, is, as the Pre-Trial Judge correctly noted, fully respected.<sup>84</sup>

28. Further, the Panel considers that the Pre-Trial Judge's finding that the physical remoteness of the location of the house arrest from the Host State would cause delays is reasonable and adequately explained, especially since it was considered in combination with the fact that the Detention Facilities' staff would operate outside of

---

<sup>80</sup> See Appeal, paras 27-28, referring to Impugned Decision, para. 62.

<sup>81</sup> See Impugned Decision, para. 63.

<sup>82</sup> See similarly Third Appeal Decision, para. 55 (wherein the Appeals Panel held that "there may be situations in which the Pre-Trial Judge can reasonably decline to consider *proprio motu* conditions which, for example, are not commonly ordered in the context of an interim release due *inter alia* to their complexity and requisite resources"). See also Kosovo Criminal Procedure Code, Article 183(6) (foreseeing that house detention shall be supervised either directly or through the police by, for example, verifying randomly the presence of the defendant at the location of the house detention, but not providing for a permanent police presence at the location).

<sup>83</sup> See Appeal, paras 27-28, referring to Thaçi Submissions on Detention Review, para. 30 and fn. 55, citing *inter alia* UNHRC, CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), 10 April 1992, para. 4; UNHRC, *Giri et al. v. Nepal*, CCPR/C/101/D/1761/2008, Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the ICCPR concerning Communication No. 1761/2008, 24 March 2011, para. 7.9.

<sup>84</sup> See Impugned Decision, para. 62.



the high security environment of the Detention Facilities and the operational practices at the Detention Facilities cannot apply.<sup>85</sup> In the Panel's view, when addressing a potential breach of the conditions, these circumstances could cause difficulties, for example, [REDACTED] and the Chief Detention Officer based in The Hague with the authority to take measures,<sup>86</sup> would deprive the Chief Detention Officer from attending in person to appropriately assess the situation, if needed, and [REDACTED].<sup>87</sup> The Panel also agrees with the Pre-Trial Judge's consideration of the context in which the house arrest would take place among the combination of factors taken into account, namely the climate of witness interference and the corruption affecting the justice sector in Kosovo.<sup>88</sup>

29. As for the Pre-Trial Judge's finding that the operational practices applicable at the Detention Facilities could not apply to house arrest in Kosovo,<sup>89</sup> the Panel notes that these are linked to the secure environment of the Detention Facilities and to the Host State. What the Pre-Trial Judge actually considered was that these specific operational practices would not apply in Kosovo and therefore, the Panel considers that whether new operational practices could be developed is irrelevant. As such, the Panel is of the view that the Pre-Trial Judge's finding is reasonable. The fact that cooperation with the Kosovo Police and EULEX has been unproblematic in the context of short fully-custodial visits does not compare with long-term house arrest in terms of exposure to the identified risks and the consequently increased risk for potential

---

<sup>85</sup> Impugned Decision, para. 63.

<sup>86</sup> Third Appeal Decision, para. 35, referring to F00536/RED, Public Redacted Version of Registry Submissions Pursuant to the Order to provide Information on the Detention Regime (F00522), filing F00536 of 20 October 2021, 29 November 2021 (confidential version filed on 20 October 2021) ("Registry Submissions"), paras 15-16, 19, 26, 35-36, 40-41, 45.

<sup>87</sup> See Impugned Decision, para. 69 (wherein the Pre-Trial Judge explained that any request from the Registry regarding remedial actions would have to be transmitted to EULEX or the Kosovo Police).

<sup>88</sup> Impugned Decision, para. 63.

<sup>89</sup> Impugned Decision, para. 63.

violations. In any event, the Pre-Trial Judge concluded that the dispatch of Detention Facilities' staff would not adequately address the identified risks.<sup>90</sup>

30. Regarding the proposal to use the European Gendarmerie Force, the Panel notes that the Pre-Trial Judge found that the same reasons for dismissing the use of the Detention Facilities' staff during house arrest apply to this measure as well.<sup>91</sup> Contrary to Thaçi's assertion,<sup>92</sup> this finding is independent of the Pre-Trial Judge's concerns over the practical feasibility of this condition. The Panel recalls that it found that the Pre-Trial Judge's conclusions on [REDACTED] were not erroneous<sup>93</sup> and that previous successful cooperation with institutions based in Kosovo on specific short-term issues is not comparable to monitoring house arrest.<sup>94</sup> Accordingly, the Panel finds no error in the Pre-Trial Judge's conclusion that the use of the European Gendarmerie Force to supervise the house arrest would not adequately address the identified risks outside of the secure environment of the Detention Facilities.<sup>95</sup>

31. Regarding the Pre-Trial Judge's assessment of the proposed measure of virtual monitoring of pre-approved visitors, the Panel notes that the assessment of whether the proposed conditions would mitigate the identified risks necessarily entails an assessment of reasonably anticipated problems,<sup>96</sup> which is influenced by the general context in which the house arrest would take place.<sup>97</sup> In addition, the Pre-Trial Judge's obligation to seek and enquire into more lenient measures is, as noted above, not limitless.<sup>98</sup> Monitoring by a Registry official of all communication [REDACTED] is

---

<sup>90</sup> Impugned Decision, para. 63.

<sup>91</sup> Impugned Decision, para. 64.

<sup>92</sup> See Appeal, para. 34.

<sup>93</sup> See above, paras 22-23.

<sup>94</sup> See above, para. 29.

<sup>95</sup> See Impugned Decision, para. 64.

<sup>96</sup> See Impugned Decision, para. 33 (wherein the Pre-Trial Judge recalled the correct legal standard to be applied to the risk assessment in the context of detention review, which requires less than certainty, but more than a mere possibility of a risk materialising).

<sup>97</sup> See above, para. 28.

<sup>98</sup> See above, para. 27.

even less feasible given the resources involved and the limited number of Registry officers.<sup>99</sup>

32. In the Panel's view, it is clear that [REDACTED] is more limited in terms of, *inter alia*, [REDACTED].<sup>100</sup> The Panel recalls that the Pre-Trial Judge correctly found that the identified risks cannot be adequately addressed in the circumstances of the Accused having [REDACTED],<sup>101</sup> and that addressing any potential violations of the conditions would require [REDACTED].<sup>102</sup> The Pre-Trial Judge did not link the sufficiency of virtual monitoring of pre-approved visitors and [REDACTED], as Thaçi suggests.<sup>103</sup> Rather, he found, correctly in light of the above, that virtual monitoring of pre-approved visitors would be inadequate to remedy the fact that the communications between the Accused and [REDACTED].<sup>104</sup>

33. The Court of Appeals Panel, accordingly, dismisses Thaçi's second ground of appeal.

C. ALLEGED ERRORS REGARDING THE PRE-TRIAL JUDGE'S OVERALL APPROACH TO THE ASSESSMENT OF RELEASE CONDITIONS (GROUND 3)

**1. Submissions of the Parties**

34. Thaçi submits that the Pre-Trial Judge's reasoning in the Impugned Decision repeatedly indicates that provisional release is no longer an option.<sup>105</sup> According to Thaçi, such reasoning renders the detention review process pointless, undermines the

---

<sup>99</sup> See similarly, Third Appeal Decision, para. 47.

<sup>100</sup> See Third Appeal Decision, para. 29.

<sup>101</sup> See above, para. 22, referring to Impugned Decision, para. 66. See also Third Appeal Decision, para. 31, referring to Registry Submissions, paras 31-34, 37-39.

<sup>102</sup> See above, para. 28, referring to Impugned Decision, paras 63, 69.

<sup>103</sup> See Appeal, para. 39.

<sup>104</sup> Impugned Decision, para. 69.

<sup>105</sup> Appeal, para. 41, referring to Impugned Decision, paras 63, 67, 72. See also Reply, para. 17.

statutory framework of the Specialist Chambers and serves to pre-judge all future requests for release.<sup>106</sup>

35. The SPO responds that Thaçi: (i) re-litigates issues previously decided, since the Pre-Trial Judge's finding that no conditions can mitigate the identified risks has already been upheld by the Appeals Panel,<sup>107</sup> and (ii) mischaracterises the Pre-Trial Judge's reasoning and the Specialist Chambers' legal framework for detention review, as the Pre-Trial Judge is required to examine whether the reasons for detention still exist at the time of each review and his "careful analysis" demonstrates that detention was not a foregone conclusion.<sup>108</sup>

36. Thaçi replies that the SPO "cannot have it both ways", as either each detention review is decided on its merits by the Pre-Trial Judge or the Appeals Panel has already decided the question of measures.<sup>109</sup> According to Thaçi, the Pre-Trial Judge's reasoning demonstrates the latter, which is an error.<sup>110</sup>

## **2. Assessment of the Court of Appeals Panel**

37. The Panel recalls that for the purpose of the bi-monthly review of detention pursuant to Article 41(10) of the Law, the Pre-Trial Judge shall examine whether the reasons for detention on remand still exist at the time of each review.<sup>111</sup> In addition, the Pre-Trial Judge should also consider alternative measures of ensuring the person's appearance at trial when deciding whether a person should be released or detained.<sup>112</sup>

---

<sup>106</sup> Appeal, para. 42.

<sup>107</sup> Response, paras 34, 36, referring to Third Appeal Decision, para. 55 and Impugned Decision, para. 67.

<sup>108</sup> Response, para. 35.

<sup>109</sup> Reply, paras 18-19, referring to Response, paras 34-35.

<sup>110</sup> Reply, para. 19.

<sup>111</sup> See also Impugned Decision, para. 28.

<sup>112</sup> KSC-CC-PR-2017-01, F00004, 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, 26 April 2017, para. 114, cited in Impugned Decision, para. 33.

38. The Panel notes that Thaçi takes the Pre-Trial Judge's finding that "there are no conditions that can adequately mitigate the existing risks"<sup>113</sup> out of context. Considering the Pre-Trial Judge's reasoning as a whole, it is evident that this finding is made solely in the context of the Impugned Decision and based on the specific circumstances at the time the review took place.<sup>114</sup> The Panel observes in this regard that the Pre-Trial Judge has engaged, in accordance with the legal framework of the Specialist Chambers, in a lengthy and careful assessment of the risks necessitating detention and of whether the existing risks can be adequately mitigated by any of the proposed conditions.<sup>115</sup> In the Panel's view, recalling previous findings regarding the assessment of the same proposed conditions made by the Pre-Trial Judge himself or by the Appeals Panel is reasonable to the extent that the Pre-Trial Judge has already found that the same risks continue to exist and that no relevant developments have occurred since the previous review. This does not prevent the Pre-Trial Judge from assessing the same conditions differently in the future, if his assessment of the existing risks changes or other considerations that warrant the Accused's release become applicable.

39. The Court of Appeals Panel, accordingly, dismisses Thaçi's third ground of appeal.

## V. DISPOSITION

40. For these reasons, the Court of Appeals Panel:

**DENIES** the Appeal;

---

<sup>113</sup> See Appeal, para. 41; Reply, para. 17, both referring to Impugned Decision, para. 67.

<sup>114</sup> See e.g. Impugned Decision, paras 65 ("In the absence of any intervening developments, the Pre-Trial Judge finds that this finding continues to hold true *at present*." (emphasis added), 71 ("the Pre-Trial Judge considers that, *on the basis of the available information*, no additional measures, which could be reasonably considered, could sufficiently mitigate the identified risks") (emphasis added), 73 ("the Pre-Trial Judge [...] *noting the absence of any intervening developments* [...], finds that the aforementioned conclusion continues to hold true *for the purposes of the present decision*") (emphasis added).

<sup>115</sup> See Impugned Decision, paras 33-52, 60-73.

**ORDERS** Thaçi to file public redacted versions of his Appeal and Reply within ten days of receiving notification of the present Decision; and

**ORDERS** the SPO to file a public redacted version of its Response within ten days of receiving notification of the present Decision.



---

**Judge Michèle Picard,  
Presiding Judge**

Dated this Monday, 22 August 2022

At The Hague, the Netherlands