

ANNEX 1 to
Submission of public redacted version of Confirmed Indictment

Public



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

In: KSC-BC-2023-12
Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public redacted Confirmed Indictment

Specialist Prosecutor's Office
Kimberly P. West

Counsel for the Accused

Registrar
Fidelma Donlon

The Specialist Prosecutor, pursuant to her authority under Articles 35(2)(i) and 38(4) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), charges:

Hashim THAÇI

Bashkim SMAKAJ

Isni KILAJ

Fadil FAZLIU

Hajredin KUÇI

with **Criminal Offences Against the Administration of Justice and Public Administration** and **Criminal Offences Against Public Order** punishable under Chapters II, XXXI, and XXXII of the Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC') and Articles 15(2) and 16(3) of the Law, as set forth below:

I. THE ACCUSED

1. **Hashim THAÇI**, aka Gjarpëri /Snake/, son of Haxhi, was born on 24 April 1968 (personal number [REDACTED]). During the Indictment timeframe, **Hashim THAÇI** was detained in the course of his trial on charges of war crimes and crimes against humanity in the case of *Specialist Prosecutor v. Hashim Thaçi et al.* ('*Thaçi et al.* case'). **Hashim THAÇI** was a former KLA leader and founding member of the Party for the Democratic Progress of Kosovo, which was renamed the Democratic Party of Kosovo (Partia Demokratike e Kosovës, 'PDK') in 2000. He has also served as Prime Minister and President of Kosovo.

2. **Bashkim SMAKAJ**, son of Tahir, was born on 1 July 1976 (personal number [REDACTED]). **Bashkim SMAKAJ** was a former director of the Kosovo Intelligence Service and was employed by then-President **Hashim THAÇI** from 2017 to 2020.

3. **Isni KILAJ**, son of Bajram, was born on 19 December 1963 (personal number [REDACTED]). **Isni KILAJ** was a founding member of the KLA in Malishevë/Mališevo, and former commander of the Lumi unit. His deputy was Vllaznim KRYEZIU. **Isni KILAJ** has also served as the Chairman of **THAÇI**'s PDK party in the Malishevë/Mališevo municipality.

4. **Fadil FAZLIU**, son of Rrahman, was born on 15 July 1960 (personal number [REDACTED]). **Fadil FAZLIU** is a KLA veteran, who was active in the Llap Operational Zone, under the command of Rrustem MUSTAFA, the Llap Operational Zone Commander.

5. **Hajredin KUÇI**, son of Nezir, was born on 2 January 1971 (personal number [REDACTED]). **Hajredin KUÇI** has previously served in then-President **THAÇI**'s cabinet as Deputy Prime Minister of Kosovo and Minister of Justice. At all times relevant to the Indictment, he was a member of the Defence Team of Kadri VESELI (another accused in the *Thaçi et al.* case).

II. STATEMENT OF FACTS

A. CHARGED OFFENCES

6. All crimes charged in this Indictment relate to official proceedings of the Kosovo Specialist Chambers ('KSC'), including investigations of the Specialist Prosecutor's Office ('SPO').

7. As set out below, between at least 12 April 2023 and 2 November 2023, **Hashim THAÇI** revealed secret information disclosed to him in his trial, in

violation of court orders, and, together with **Fadil FAZLIU**, **Bashkim SMAKAJ**, **Isni KILAJ**, and **Hajredin KUÇI**, coordinated to unlawfully influence the testimony of and/or contact SPO witnesses in the *Thaçi et al.* case.

8. The Accused's actions, as detailed below, were part of a broader pattern of conduct intended to obstruct the *Thaçi et al.* case.

(a) 2 July 2023 Detention Centre Visit

9. On 2 July 2023, **Fadil FAZLIU** visited **Hashim THAÇI** at the KSC Detention Centre ('Detention Centre'). During the visit, **Hashim THAÇI** provided confidential information about SPO witnesses in the *Thaçi et al.* case and provided detailed instructions that **Fadil FAZLIU** was to convey to SPO witness [REDACTED] ([REDACTED], or 'Witness 1'), about how Witness 1 should testify. At the time of the visit, Witness 1 [REDACTED].

10. **Hashim THAÇI** and **Fadil FAZLIU** also discussed the means by which **THAÇI's** instructions should be given, agreeing that **Fadil FAZLIU's** son **Fahri FAZLIU** would contact Witness 1 to set up a meeting. **Fadil FAZLIU** and **Fahri FAZLIU** had previously met with Witness 1 on 29 June 2023 following an exchange of text messages on 26 June 2023. On 3 July 2023, **Fahri FAZLIU** exchanged messages with Witness 1 to arrange a meeting between **Fahri FAZLIU**, **Fadil FAZLIU**, and Witness 1 for later that day, consistent with **Hashim THAÇI's** instructions to **Fadil FAZLIU**.

11. At the time of this Detention Centre visit and the message exchanges, Witness 1 was not publicly confirmed by the KSC or SPO as a witness in the *Thaçi et al.* case. Witness 1's SPO interviews were classified as confidential, and he had only been referred to publicly by the KSC or SPO either: (i) in a manner which did not reveal his status as an SPO witness; or (ii) by his witness code in the proceedings.

12. Witness 1 began testifying in the *Thaçi et al.* case on [REDACTED], [REDACTED] the Detention Centre visit between **Hashim THAÇI** and **Fadil FAZLIU**.

(b) 3 September 2023 Detention Centre Visit

13. On 3 September 2023, **Hajredin KUÇI** visited **Hashim THAÇI** at the Detention Centre. During the visit, **Hashim THAÇI** provided detailed instructions for **Hajredin KUÇI** to convey to SPO witnesses [REDACTED] ([REDACTED], or 'Witness 5'), [REDACTED] ([REDACTED], or 'Witness 2'), and [REDACTED] ([REDACTED], or 'Witness 6') regarding how each witness should testify.

14. **Hajredin KUÇI** repeatedly confirmed and/or agreed to **Hashim THAÇI**'s instructions regarding witness interference and provided suggestions on the instructions to be given to Witness 5 and Witness 6. **Hajredin KUÇI** also confirmed that he had met with Witness 5 to discuss Witness 5's testimony on at least one prior occasion.

15. [REDACTED].

(c) 9 September 2023 Detention Centre Visit

16. On 9 September 2023, **Bashkim SMAKAJ**, **Blerim SHALA**, **Artan BEHRAMI**, and others visited **Hashim THAÇI** at the Detention Centre. During the visit, **Hashim THAÇI** provided confidential information about SPO witnesses in the *Thaçi et al.* case and repeatedly directed one or more of his visitors to provide instructions to Witness 2 on how to testify in the *Thaçi et al.* case. **Hashim THAÇI** characterised Witness 2's evidence as decisive, and gave detailed instructions on what Witness 2 should say during his testimony. **Hashim THAÇI** urged his visitors to return to see him again at the Detention Centre in a month.

17. **Bashkim SMAKAJ** and Artan BEHRAMI met with **Hashim THAÇI** again on 7 October 2023, where **Hashim THAÇI** gave further instructions on how Witness 2 should testify.

18. During a 30 October 2023 search of **Bashkim SMAKAJ**'s car, the SPO recovered a document covering the subject matter of Witness 2's anticipated testimony and containing a narrative consistent with the instructions **Hashim THAÇI** provided during the 9 September and 7 October 2023 Detention Centre visits.

19. Throughout these events, Witness 2 was not publicly confirmed by the KSC or SPO as a witness in the *Thaçi et al.* case. His SPO interviews were classified as confidential, and he had only been referred to publicly by the KSC or SPO either: (i) in a manner which did not reveal his status as an SPO witness; or (ii) by his witness code in the proceedings.

(d) 6 October 2023 Detention Centre Visit

20. On 6 October 2023, **Isni KILAJ** and Vllaznim KRYEZIU visited **Hashim THAÇI** at the Detention Centre. This meeting was planned the month before in a Detention Centre call between **Hashim THAÇI** and **Isni KILAJ**.

21. During the visit, **Hashim THAÇI** provided **Isni KILAJ** and Vllaznim KRYEZIU with confidential information about SPO witnesses in the *Thaçi et al.* case. **Hashim THAÇI** gave instructions to be conveyed to [REDACTED] ([REDACTED], or 'Witness 4'), a protected witness, about how to testify. As part of his instructions, **Hashim THAÇI** referenced and provided portions of Witness 4's confidential prior statements. **Hashim THAÇI** also discussed the confidential evidence of SPO witness [REDACTED] ([REDACTED], or 'Witness 3').

22. During a 2 November 2023 search of **Isni KILAJ**'s residence, the SPO recovered materials containing confidential information about KSC proceedings and the identifying information of protected witnesses, including witness names. Specifically, the SPO recovered from **KILAJ**'s trash torn pages of Witness 4's prior statements, including a portion that **Hashim THAÇI** referenced during the 6 October 2023 visit. The SPO also recovered notebook pages containing, *inter alia*, summaries of the anticipated testimony of current and former SPO witnesses, along with their witness codes. Notes recovered from **KILAJ**'s residence contain information matching that found in confidential summaries disclosed to **THAÇI** in the *Thaçi et al.* case.

1. Obstructing official persons in performing official duties

23. **Hashim THAÇI** individually and by common action in groups he belonged to – including with **Fadil FAZLIU** and Fahri FAZLIU ('Fazliu Group'), **Bashkim SMAKAJ**, Blerim SHALA, and Artan BEHRAMI ('Smakaj Group'), and **Isni KILAJ** and Vllaznim KRYEZIU ('Kilaj Group') – has engaged in a pattern of conduct to obstruct official persons, that is, a judge, a prosecutor, an official of a court, prosecution officer or a person authorised by the court and prosecution office, in performing official duties. **Hashim THAÇI** has led and engaged in these efforts through his non-privileged visits at the Detention Centre while he was detained in the context of his ongoing trial for war crimes and crimes against humanity.

24. The Accused members of the Fazliu Group, Smakaj Group, and Kilaj Group each intentionally coordinated to influence SPO witnesses during the non-privileged visits on 2 July 2023, 9 September 2023, and 6 October 2023, respectively, as described above in paragraphs 9-12, and 16-22.

25. Through their actions, **Hashim THAÇI, Fadil FAZLIU, Bashkim SMAKAJ, Isni KILAJ**, and others attempted to compromise the KSC/SPO's ability to effectively investigate and prosecute crimes, including the KSC/SPO's ability to obtain and secure relevant witness evidence.

26. **Hashim THAÇI** was the leader or organiser of the groups. He provided the confidential information disclosed to him in his trial which allowed for the (attempted) obstruction of official persons to occur. He also instructed **Fadil FAZLIU, Bashkim SMAKAJ, Isni KILAJ**, and others on how to unlawfully influence SPO witnesses.

27. **Hashim THAÇI, Bashkim SMAKAJ, Isni KILAJ, and Fadil FAZLIU** had the requisite intent and knowledge for the crime of participating in a group of persons which by common action attempted to obstruct an official person in performing official duties.

2. Violating the secrecy of proceedings

28. Between at least 12 April 2023 and 2 November 2023, **Hashim THAÇI** engaged in a course of conduct to violate the secrecy of the *Thaçi et al.* proceedings.

29. Specifically, as set forth in paragraphs 9-12, and 16-22 (which are fully incorporated here by reference):

- i. **Hashim THAÇI** revealed the identities of SPO witnesses while their identities and the substance of their anticipated evidence remained confidentially classified by the KSC/SPO;
- ii. **Hashim THAÇI** revealed confidential information about Witness 4 in the *Thaçi et al.* case on 6 October 2023, including by providing Witness 4's statements.

30. This information was not to be revealed according to law or had been declared to be secret by a decision of the court or a competent authority. Its revelation was not authorised.

31. As set out in paragraphs 9-12 and 16-22 above, **Hashim THAÇI** had the requisite intent and knowledge for the crime of violating the secrecy of proceedings through the unauthorised revelation of secret information. **Hashim THAÇI** additionally had the requisite intent and knowledge for the crime of revealing the identity and personal data of a protected witness.

3. Contempt of court

32. By virtue of his conduct set out across paragraphs 9 to 22 above (which are fully incorporated here by reference), **Hashim THAÇI** failed to obey court orders set forth in *Thaçi et al.* decision KSC-BC-2020-06/F00854 (as upheld in KSC-BC-2020-06/IA024/F00019 and incorporated into KSC-BC-2020-06/F01226/A01), which: (i) permit the provision of confidential information to third parties only when strictly necessary and subject to strict conditions; (ii) prohibit the revelation to third parties that any protected witness is involved with the activities of the KSC/SPO or the nature of such involvement; and (iii) prohibit **Hashim THAÇI** and **Hajredin KUÇI** from contacting SPO witnesses outside the framework of that decision. **Bashkim SMAKAJ**, **Isni KILAJ**, and **Fadil FAZLIU** assisted **Hashim THAÇI** to commit these crimes, and **Hajredin KUÇI** agreed with **Hashim THAÇI** to contact SPO witnesses in a manner proscribed by the decision and undertook substantial acts towards the implementation of that agreement.

33. **Hajredin KUÇI** also failed to obey the order of the Pre-Trial Judge to comply with the prohibition on contact with SPO witnesses outside the terms of the applicable contact protocol in the *Thaçi et al.* case, as set forth in KSC-

BC-2020-06/F00854, by sending Witness 1 a text message on or about 12 April 2023.

34. **Hashim THAÇI** further failed to abide by the protective measures ordered for Witness 4 in decision [REDACTED].

B. MODES OF LIABILITY

35. By their acts described above, **Hashim THAÇI, Bashkim SMAKAJ, Isni KILAJ, Fadil FAZLIU, and Hajredin KUÇI** are responsible for the crimes charged in this Indictment through the following modes of liability. They had the requisite knowledge and intent for each mode of liability and crime.

1. Commission and attempt

36. **Hashim THAÇI, Bashkim SMAKAJ, Isni KILAJ, and Fadil FAZLIU** committed the crime of attempted obstruction of official persons pursuant to KCC Article 401(2), read with KCC Article 17(1).

37. **Hashim THAÇI** further committed the crime of violating the secrecy of proceedings through the revelation of secret information pursuant to KCC Article 392(1).

38. **Hashim THAÇI and Hajredin KUÇI** further committed the crime of contempt of court by violating court orders pursuant to KCC Article 393, read with KCC Article 17(1).

39. **Hashim THAÇI** further committed the crime of violating the secrecy of proceedings through the revelation of the identity and personal data of a protected witness pursuant to KCC Article 392(2), read with KCC Article 17(1).

2. Agreement to commit the criminal offences

40. Through one or more of the acts described in paragraphs 9-12 and 16-22, the members of the Fazliu Group, Smakaj Group, and Kilaj Group, pursuant to KCC Article 35, each agreed to commit the crime of attempted obstruction of official persons, and one or more of the persons who were party to those agreements undertook substantial acts towards the commission of the crimes.

41. By virtue of their conduct described in paragraphs 13-15 above, **Hashim THAÇI** and **Hajredin KUÇI**, pursuant to KCC Article 35, agreed to commit and undertook substantial acts towards the commission of the crime of contempt of court.

3. Incitement

42. Through one or more of the acts described in paragraphs 9-12 and 16-22, **Hashim THAÇI** incited the other members of the Fazliu Group, Smakaj Group, and Kilaj Group to commit the crime of attempted obstruction of official persons pursuant to KCC Article 32(1).

4. Assistance

43. Finally, through one or more of the acts described at paragraphs 9-12 and 16-22 above, **Bashkim SMAKAJ**, **Isni KILAJ**, and **Fadil FAZLIU** provided assistance within and among their respective groups and to **Hashim THAÇI** in the commission of the crimes of attempted obstruction of official persons and contempt of court, pursuant to KCC Article 33.

III. STATEMENT OF CRIMES

44. Through the acts described above, **Hashim THAÇI, Bashkim SMAKAJ, Isni KILAJ, Fadil FAZLIU, and Hajredin KUÇI** are responsible for the crimes charged in this Indictment.

45. **Hashim THAÇI** is individually criminally responsible for:

- **Count 1: ATTEMPTED OBSTRUCTION OF OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 26 June and 18 July 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 32(1), 35, and 401(2)-(3) and (5), and Articles 15(2) and 16(3) of the Law.
- **Count 2: ATTEMPTED OBSTRUCTION OF OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 9 September and 30 October 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 32(1), 35 and 401(2)-(3) and (5), and Articles 15(2) and 16(3) of the Law.
- **Count 3: ATTEMPTED OBSTRUCTION OF OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 6 October and 2 November 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 32(1), 35 and 401(2)-(3) and (5), and Articles 15(2) and 16(3) of the Law.
- **Count 4: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of secret information, between at least 26 June and 18 July 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21 and 392(1), and Articles 15(2) and 16(3) of the Law.
- **Count 5: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of secret information, between at least 9 September and 30 October 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21 and 392(1), and Articles 15(2) and 16(3) of the Law.

- **Count 6: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of secret information, between at least 6 October and 2 November 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21 and 392(1), and Articles 15(2) and 16(3) of the Law.
- **Count 7: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of the identity and personal data of a protected witness, between at least 6 October and 2 November 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21, and 392(2), and Articles 15(2) and 16(3) of the Law.
- **Count 8: CONTEMPT OF COURT**, between at least 26 June and 18 July 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21, and 393, and Articles 15(2) and 16(3) of the Law.
- **Count 9: CONTEMPT OF COURT** between at least 1 and 13 September 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 21, 35, and 393, and Articles 15(2) and 16(3) of the Law.
- **Count 10: CONTEMPT OF COURT**, between at least 9 September and 30 October 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21, and 393, and Articles 15(2) and 16(3) of the Law.
- **Count 11: CONTEMPT OF COURT**, between at least 6 October and 2 November 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21, and 393, and Articles 15(2) and 16(3) of the Law.

46. **Bashkim SMAKAJ** is individually criminally responsible for:

- **Count 12: ATTEMPTED OBSTRUCTION OF OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 9 September and 30 October 2023, a CRIMINAL OFFENCE AGAINST PUBLIC

ORDER, punishable under KCC Articles 17, 21, 33, 35 and 401(2) and (5), and Articles 15(2) and 16(3) of the Law.

- **Count 13: CONTEMPT OF COURT**, between at least 9 September and 30 October 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 21, 33, and 393, and Articles 15(2) and 16(3) of the Law.

47. **Isni KILAJ** is individually criminally responsible for:

- **Count 14: ATTEMPTED OBSTRUCTION OF OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 6 October and 2 November 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 33, 35 and 401(2) and (5), and Articles 15(2) and 16(3) of the Law.
- **Count 15: CONTEMPT OF COURT**, between at least 6 October and 2 November 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 21, 33, and 393, and Articles 15(2) and 16(3) of the Law.

48. **Fadil FAZLIU** is individually criminally responsible for:

- **Count 16: ATTEMPTED OBSTRUCTION OF OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 26 June and 18 July 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 33, 35 and 401(2) and (5), and Articles 15(2) and 16(3) of the Law.
- **Count 17: CONTEMPT OF COURT**, between at least 26 June and 18 July 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 21, 33, and 393, and Articles 15(2) and 16(3) of the Law.

49. **Hajredin KUÇI** is individually criminally responsible for:

- **Count 18: CONTEMPT OF COURT**, between at least 1 and 13 September 2023, a CRIMINAL OFFENCE AGAINST THE

ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 21, 35 and 393, and Articles 15(2) and 16(3) of the Law.

- **Count 19 CONTEMPT OF COURT**, on or about 12 April 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21 and 393, and Articles 15(2) and 16(3) of the Law.

50. All sections of this Indictment should be read in conjunction with one another.



Kimberly P. West
Specialist Prosecutor

Monday, 2 December 2024

At The Hague, the Netherlands.