



In: KSC-BC-2023-12

The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Fidelma Donlon

Date: 10 December 2024

Language: English

Classification: Public

Order Setting the Date for the First Status Conference and for Submissions

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules") hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 29 November 2024, the Pre-Trial Judge partly confirmed the Indictment against Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi ("Mr Thaçi", "Mr Smakaj", "Mr Kilaj", "Mr Fazliu", "Mr Kuçi", and altogether "Accused").² On the same day, the Pre-Trial Judge also issued arrest warrants for Messrs Thaçi, Smakaj, Kilaj and Fazliu and a summons for Mr Kuçi.³

2. On 2 December 2024, as ordered by the Pre-Trial Judge,⁴ the Specialist Prosecutor's Office ("SPO") filed a confirmed Indictment ("Confirmed Indictment").⁵

3. On 5 and 6 December 2024: (i) Messrs Smakaj, Kilaj and Fazliu were arrested by the SPO in Kosovo⁶ and transferred to the Detention Facilities of the

¹ KSC-BC-2023-12, F00015, President, *Decision Assigning a Pre-Trial Judge*, 6 June 2024, confidential.

² KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* ("Confirmation Decision"), 29 November 2024, strictly confidential and *ex parte*.

³ KSC-BC-2023-12, F00037, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Related Matters* ("Decision on Arrest and Summons"), 29 November 2024, confidential, with Annexes 1-8, strictly confidential and *ex parte*.

⁴ Confirmation Decision, para. 313(g).

⁵ KSC-BC-2023-12, F00040, Specialist Prosecutor, *Submission of Confirmed Indictment*, 2 December 2024, strictly confidential, with Annex 1, strictly confidential, containing the Confirmed Indictment. A public redacted version was filed on 6 December 2024, [F00055/A01](#).

⁶ KSC-BC-2023-12, F00042, Registrar, *Notification of Arrest of Bashkim Smakaj Pursuant to Rule 55(4)*, 5 December 2023, confidential; F00043, Registrar, *Notification of Arrest of Isni Kilaj Pursuant to Rule 55(4)*, 5 December 2023, confidential; F00045, Registrar, *Notification of Arrest of Fadil Fazliu Pursuant to Rule 55(4)*, 5 December 2023, confidential.

Specialist Chambers (“SC”), in The Hague, the Netherlands;⁷ (ii) Mr Kuçi was served with the summons;⁸ and (iii) Mr Thaçi was served with the arrest warrant at the SC Detention Facilities.⁹

4. On 8 and 9 December 2024, the hearings on the initial appearances (“Initial Appearances”) of the Accused took place¹⁰ and the Parties indicated to be available for the first status conference on 17 December 2024, at 14:00 hours.¹¹

⁷ KSC-BC-2023-12, F00056, Registrar, *Notification of the Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers*, 6 December 2024, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*; F00057, Registrar, *Notification of the Reception of Fadil Fazliu in the Detention Facilities of the Specialist Chambers*, 6 December 2024, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*; F00058, Registrar, *Notification of the Reception of Bashkim Smakaj in the Detention Facilities of the Specialist Chambers*, 6 December 2024, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*; F00065, Registrar, *Report on the Arrest and Transfer of Fadil Fazliu to the Detention Facilities*, 7 December 2024, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*; F00066, Registrar, *Report on the Arrest and Transfer of Bashkim Smakaj to the Detention Facilities*, strictly confidential and *ex parte*, 7 December 2024, with Annexes 1-3, strictly confidential and *ex parte*; F00067, Registrar, *Report on the Arrest and Transfer of Isni Kilaj to the Detention Facilities*, 8 December 2024, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

⁸ KSC-BC-2023-12, F00046, Registrar, *Notification of Service of Summons to Appear on Hajredin Kuçi*, 5 December 2024, confidential; F00068, Registrar, *Report on the Service of Summons to Appear on Hajredin Kuçi*, 8 December 2024, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

⁹ KSC-BC-2023-12, F00048, Registrar, *Notification of Service of Arrest Warrant on Hashim Thaçi Pursuant to Rule 55(4)*, 5 December 2024, confidential; F00064, Registrar, *Report on the Service of the Arrest Warrant on Hashim Thaçi*, 7 December 2024, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

¹⁰ KSC-BC-2023-12, F00059, Pre-Trial Judge, *Decision Setting the Date for Initial Appearances and Related Matters*, 6 December 2024, public; F00063, Pre-Trial Judge, *Decision Rescheduling Initial Appearance of Isni Kilaj*, 7 December 2024, public.

¹¹ The Pre-Trial Judge recalls that, at Mr Thaçi’s Initial Appearance, Counsel Tavakoli stated that she would not be available to attend the status conference on Tuesday, 17 December 2024, but that Mr Thaçi could be represented by counsel Luka Mišetić, who, upon appointment, would be able to attend via video-conference (see KSC-BC-2023-12, Transcript of Initial Appearance, 8 December 2024, page 14, lines 7-15). During Mr Kuçi’s Initial Appearance, Counsel Admiraal stated that he would be able to attend the status conference on 17 December 2024 via video-conference (see KSC-BC-2023-12, Transcript of Initial Appearance, 9 December 2024, page 81, lines 5-8).

II. APPLICABLE LAW

A. STATUS CONFERENCE

5. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the accused in order to, *inter alia*: (i) organise exchanges between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial; and (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion.

B. DISCLOSURE

6. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

7. Pursuant to Rule 102(1)(a) of the Rules, and subject to Rules 105, 107, and 108 of the Rules, the SPO shall make available to the Defence and, where applicable, Victims' Counsel, as soon as possible and at least within 30 days of the initial appearance, the supporting material to the Confirmed Indictment as well as any statement obtained from the accused.

8. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the accused understand and speak; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO

intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

9. Pursuant to Rule 102(2) and (4) of the Rules, any statements of additional SPO witnesses, which have not been disclosed within the 30-day time limit prior to the opening of the Specialist Prosecutor's case and whom the SPO intends to call to testify at trial, shall be made available to the Defence as soon as possible, in a language the accused understand and speak, and shall be accompanied by reasons for the late disclosure. Such disclosure shall be finalised during the pre-trial stage.

10. Pursuant to Rule 102(3) of the Rules, the SPO shall provide detailed notice to the Defence of any material and evidence in its possession. The SPO shall disclose to the Defence, upon request and without delay, any statements, documents, and photographs and allow inspection of other tangible objects in the custody or control of the SPO, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the accused.

11. Pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 of the Rules, the SPO shall immediately disclose to the Defence any information as soon as it is in its custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility or reliability of the SPO's evidence.

C. PROTECTED MATERIAL AND REDACTIONS

12. Pursuant to Article 58 of the Law and Rule 107(1)-(2) of the Rules, the SPO shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of its obligation under Rules 102 and 103 of the Rules to disclose initial material if the information, of which it has custody or control, has been provided on a confidential basis and solely for the purpose of generating new evidence and for which it has not received the information provider's consent to disclose.

13. Pursuant to Article 23(1) of the Law and Rule 80(1) of the Rules, a Panel may order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

14. Pursuant to Rule 80(4)(a)(i)-(iii) and (d) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the accused and/or the public, where necessary, of the identity and/or whereabouts of a witness, a victim participating in the proceedings or of a person related to or associated with them.

15. Pursuant to Rule 108(1) of the Rules, the SPO may apply confidentially and *ex parte* to the Panel to withhold information in whole or in part where the disclosure of such information may, *inter alia*, prejudice ongoing or future investigations, or cause grave risk to the security of a witness, victim participating in the proceedings or members of their family. Pursuant to Rule 108(6) of the Rules, the same applies *mutatis mutandis* to the Defence.

D. ADMISSION OF GUILT

16. Pursuant to Rule 92(2)(c) of the Rules, at the initial appearance, the Pre-Trial Judge shall inform the accused that, within thirty (30) days of the initial appearance, he or she will be called upon to admit guilt or plead not guilty on each charge, or, if the Accused wishes to do so, that he or she may immediately admit guilt or plead not guilty.

III. DISCUSSION

17. Following the Accused's respective Initial Appearance, the process of disclosure of evidence and material by the SPO to the Defence is expected to

start promptly, in accordance with the above-mentioned legal framework and in a manner and time frame to be regulated by the Pre-Trial Judge. Mindful of the scope of the charges, including the underlying allegations, the Pre-Trial Judge is minded to adopt an expeditious pace in order to conclude the pre-trial phase in due time. In order to facilitate this disclosure process for the benefit of the Parties, and in particular the Defence, the Pre-Trial Judge shall convene a status conference, as prescribed by Rule 96(1) of the Rules, in order to receive submissions regarding, *inter alia*, disclosure, the redaction regime to be adopted in the present proceedings, and any other related relevant topic, as deemed necessary by the Parties. Having considered the Parties' availability as indicated during the Initial Appearances,¹² the Pre-Trial Judge decides to hold a status conference on **Tuesday, 17 December 2024, at 14:00 hours.**

18. The Pre-Trial Judge directs the Parties and the Registry to make submissions in writing on the items listed in the agenda for the status conference, annexed to this order ("Annex"), and any other related relevant topics they deem necessary. Where information cannot be shared with the other Parties for confidentiality and protection purposes, submissions may be made in writing *ex parte*. The information provided will assist the Pre-Trial Judge when formulating the forthcoming framework decision on disclosure of evidence and related matters, including time limits for disclosure.

19. Relatedly, with a view to expediting the proceedings, the Pre-Trial Judge considers it necessary to receive submissions from the Parties in order to establish an efficient, predictable, and sustainable redaction regime.¹³ To this end, as specified under point 7 in the Annex, the Pre-Trial Judge requests the Parties to make submissions, in writing, regarding the regime of redacting

¹² See *supra*, para. 4.

¹³ See, similarly, KSC-BC-2023-10, F00076/RED, Pre-Trial Judge, *Public Redacted Version of Framework Decision on Disclosure of Evidence and Related Matters* ("Case 10 Disclosure Framework Decision"), 24 October 2023, public, para. 97.

information and evidence to be applied in this case, along the lines set out in the “Framework Decision on Disclosure of Evidence and Related Matters” in case KSC-BC-2023-10, which has been consistently applied in the different proceedings before this court.¹⁴ These observations will inform the Pre-Trial Judge when adopting a redaction regime that will ensure efficiency of the disclosure process by striking a balance between the duty to protect the interests of victims and witnesses while upholding the rights of the Accused under Article 21 of the Law.

20. Taking into account that the Accused are charged with three different offences, involving several modes of liability, under Articles 15(2) and 16(3) of the Law, the Pre-Trial Judge also considers that the disclosure of evidence shall proceed in an organised and efficient manner, making full use of the designated electronic system for disclosure available.¹⁵ An organised disclosure process will allow the Defence to prepare properly and expeditiously for the upcoming proceedings, increase the productivity and efficiency of the proceedings and, ultimately, enable the Trial Panel to receive the evidence in an orderly fashion. This is particularly applicable in the present case, where pre-trial proceedings should be concluded in a timely fashion. To this end, the Pre-Trial Judge considers it necessary to receive observations from the Parties on the adoption of

¹⁴ Case 10 Disclosure Framework Decision, paras 92-110; *see also*, KSC-BC-2020-04, F00033, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 30 April 2021, public, paras 75-91; KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, public, paras 68-84; KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public, paras 82-98; KSC-BC-2020-05, F00034, *Framework Decision on Disclosure of Evidence and Related Matters*, 9 October 2020, public, paras 73-89.

¹⁵ *See* Rule 109(a) of the Rules; Court Management Unit, *Kosovo Specialist Chambers Legal Workflow User Guide*, 15 April 2021, *limité*, available at <<https://kosmos.scp-ks.org/JSD/CMU/Documents/20210415-KSCLW-UserGuide-v1.1-LIMITE.pdf>>.

a case-specific sub-categorisation in Legal Workflow,¹⁶ as laid out under point 8 in the Annex.

21. It is recalled that, while the Accused have the right to be present in person, pursuant to Rule 96(2) of the Rules, considering the technical nature of the topics to be discussed, the status conference: (i) may be attended by the Accused with Counsel participating via video-conference; (ii) may be attended by Counsel, with the Accused participating via video-conference; or (iii) may take place in the Accused's absence, with Counsel present or participating via video-conference. These arrangements, however, necessitate the written consent of the Accused, after having received advice from their respective Counsel, in accordance with Rule 96(2) of the Rules.

22. Should Messrs Thaçi, Smakaj, Fazliu and Kilaj, who are detained, wish to attend any of the upcoming status conferences in this case via video-conference, they shall comply with the requirements of Rule 96(2) of the Rules and the Registrar's Practice Direction on Video Links (KSC-BD-23/COR), sufficiently in advance for the Registrar to take the appropriate steps, including to inform the Pre-Trial Judge. To that end, written notice shall be provided on record at least two (2) working days in advance of the relevant hearing.¹⁷

23. Mr Kuçi, who is not detained but remains at liberty in Kosovo, is under the obligation to attend any hearing, as scheduled by the Pre-Trial Judge.¹⁸ That being said, for the purpose of status conferences, the Pre-Trial Judge clarifies that

¹⁶ See, similarly, KSC-BC-2020-06, F00218, Pre-Trial Judge, *Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters*, 12 March 2021, public, paras 19-20; KSC-BC-2020-04, F00024, *Order Setting the Date for the First Status Conference and for Submissions*, 20 April 2023, public, para. 21.

¹⁷ For Monday court proceedings, this would mean notification on Thursday morning. For Tuesday court proceedings, this would mean notification on Friday morning. This allows sufficient time for the Detention Management Unit to notify the relevant authorities in the Host State regarding transport.

¹⁸ Should Mr Kuçi fail to attend any hearing, without authorisation by the SC and showing of good cause, the Pre-Trial Judge will issue an arrest warrant and order Mr Kuçi's detention, as provided in Rule 68(3) of the Rules. See also *Decision on Arrest and Summons*, para. 101.

the options laid down in paragraph 21 above are also available to Mr Kuçi. If Mr Kuçi wishes to attend any of the upcoming status conferences via video-conference from Kosovo, he shall equally comply with the requirements of Rule 96(2) of the Rules and the Registrar's Practice Direction on Video Links (KSC-BD-23/COR). To this end, he shall submit a written notice on record at least five (5) working days in advance of any such status conference so that the Registrar can take the appropriate steps, including to inform the Pre-Trial Judge.

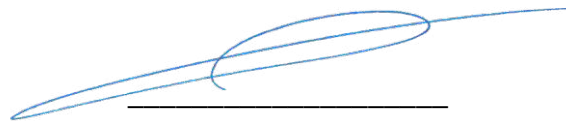
24. Counsel of any of the Accused who wish to participate in any of the upcoming status conferences remotely shall notify the Registry within two (2) working days so that the Registrar can take the appropriate steps, including to inform the Pre-Trial Judge.

25. Lastly, noting that Messrs Thaçi and Smakaj have not entered a plea during their Initial Appearances, pursuant to Rule 92(2)(c) of the Rules, they are invited to admit guilt or plead not guilty on each charge against them in the Confirmed Indictment during the forthcoming status conference on 17 December 2024, if they so wish. Should Messrs Thaçi and Smakaj decide not to enter a plea of (not) guilty at that point in time, the Pre-Trial Judge intends to invite the Accused to place their plea, if any, on record by 7 January 2025. If Messrs Thaçi and Smakaj decide not to avail themselves of this right, the Pre-Trial Judge will enter a plea of not guilty on their behalf and proceed pursuant to Rule 95 of the Rules.

IV. DISPOSITION

26. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- (a) **DECIDES** to convene a status conference in the presence of the SPO, the Defence and the Registry, on **Tuesday, 17 December 2024, at 14:00 hours**;
- (b) **ORDERS** Mr Kuçi to appear at the status conference on 17 December 2024 and any other upcoming status conferences, unless he avails himself of the options set forth in paragraph 23 of the present order;
- (c) **DIRECTS** the Parties and the Registry to provide written submissions on the items listed in the Annex, as applicable, or any other related relevant topics they deem necessary, as set forth in paragraphs 18-20 of the present order, by (i) **Thursday, 12 December 2024, at 12:00 hours**, for the SPO and the Registry, and (ii) **Friday, 13 December 2024, at 12:00 hours**, for the Defence; and
- (d) **INVITES** Messrs Thaçi and Smakaj to admit guilt or plead not guilty on each charge against them in the Confirmed Indictment (KSC-BC-2023-12, F00040/A01) at the forthcoming status conference, as set forth in paragraph 25 of the present order.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Tuesday, 10 December 2024

At The Hague, the Netherlands.