



**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

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**Public Redacted Version of  
Decision on the Confirmation of the Indictment**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(2) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 86 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 15 December 2023, the Specialist Prosecutor's Office ("SPO") filed before the Pre-Trial Judge (i) the "Submission of Indictment for confirmation and related request"; (ii) the indictment against Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj ("Mr Smakaj"), Isni Kilaj ("Mr Kilaj") and Fadil Fazliu ("Mr Fazliu") ("Indictment"); and (iii) the outline of the evidence in support of the Indictment.<sup>2</sup>
2. On 22 February 2024, the Pre-Trial Judge requested the SPO to (i) present additional supporting material and further clarification with respect to some of the charges; and (ii) review the Indictment with the aim of ensuring legal accuracy or greater clarity in the presentation of the charges.<sup>3</sup>
3. On 11 March 2024, the SPO filed the "Submission of revised Indictment for confirmation", the revised Indictment ("Revised Indictment") and related outline.<sup>4</sup>
4. On 19 April 2024, the SPO filed a notice informing the Pre-Trial Judge of its intent to file an amended indictment following the discovery of additional relevant

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

<sup>2</sup> KSC-BC-2023-12, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Request*, 15 December 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>3</sup> KSC-BC-2023-12, F00004, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 22 February 2024, strictly confidential and *ex parte*. See also F00006, Pre-Trial Judge, *Decision on Extension of Time*, 23 February 2023, strictly confidential and *ex parte*.

<sup>4</sup> KSC-BC-2023-12, F0007, Specialist Prosecutor, *Submission of Revised Indictment for Confirmation*, 11 March 2024, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*.

evidence (“Notice of Amendment”).<sup>5</sup> The SPO further submitted that the Revised Indictment should not be considered further.<sup>6</sup>

5. On 24 April 2024, the Pre-Trial Judge ordered the SPO to, *inter alia*, file further submissions on the Notice of Amendment by no later than 1 May 2024.<sup>7</sup>

6. On 2 May 2024, having been granted a short extension of time,<sup>8</sup> the SPO filed a request seeking (i) leave to present additional material in support of the charges in the Revised Indictment, and (ii) suspension of the Pre-Trial Judge’s assessment of the Revised Indictment until the filing of the additional supporting material and amended indictment (“SPO Request for Leave to Present Additional Material and Suspension”).<sup>9</sup>

7. On 20 June 2024, the Pre-Trial Judge rejected the SPO Request for Leave to Present Additional Material and Suspension.<sup>10</sup> The Pre-Trial Judge held, *inter alia*, that the Revised Indictment remains operative and the timeline for its assessment pursuant to Rule 85(5) of the Rules shall proceed until such time as the SPO either withdraws the Revised Indictment or files an amended indictment, as the case may be.<sup>11</sup>

8. On 27 June 2024, the SPO filed before the Pre-Trial Judge (i) the “Submission of Amended Indictment for confirmation”; (ii) the amended indictment against

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<sup>5</sup> KSC-BC-2023-12, F00010, Specialist Prosecutor, *Prosecution Notice*, 19 April 2024, strictly confidential and *ex parte*.

<sup>6</sup> Notice of Amendment, para. 1.

<sup>7</sup> KSC-BC-2023-12, F00011, Pre-Trial Judge, *Order for Submissions*, 24 April 2024, strictly confidential and *ex parte*, paras 10(b)-(c), 12(a).

<sup>8</sup> KSC-BC-2023-12, F00013, Pre-Trial Judge, *Decision on Extension of Time*, 1 May 2024, strictly confidential and *ex parte*.

<sup>9</sup> KSC-BC-2023-12, F00014, Specialist Prosecutor, *Prosecution Submissions Pursuant to Order F00011*, 2 May 2024, strictly confidential and *ex parte*.

<sup>10</sup> KSC-BC-2023-12, F00016, Pre-Trial Judge, *Decision on Prosecution Requests for Leave to Present Additional Material and for Suspension of Examination of the Indictment* (“Decision on SPO Request for Leave to Present Additional Material and Suspension”), 20 June 2024, strictly confidential and *ex parte*.

<sup>11</sup> Decision on SPO Request for Leave to Present Additional Material and Suspension, para 16.

Messrs Thaçi, Smakaj, Kilaj, Fazliu and Hajredin Kuçi (“Mr Kuçi”, collectively “Suspects”) (“Amended Indictment”); and (iii) the outline of the evidence in support of the Amended Indictment.<sup>12</sup>

9. On 17 October 2024, pursuant to an order by the Pre-Trial Judge,<sup>13</sup> the SPO provided further supporting material in relation to the Amended Indictment.<sup>14</sup>

10. On 12 November 2024, pursuant to an order by the Pre-Trial Judge,<sup>15</sup> the SPO filed before the Pre-Trial Judge (i) the “Submission of Further Amended Indictment for confirmation” (“SPO Further Submissions”); (ii) the further amended indictment against Messrs Thaçi, Smakaj, Kilaj, Fazliu, and Kuçi (“Further Amended Indictment”); and (iii) the outline of the evidence in support of the Further Amended Indictment (“Further Amended Rule 86 Outline”).<sup>16</sup>

11. On 13 November 2024, the Pre-Trial Judge set the target date for the issuance of the present decision to 29 November 2024.<sup>17</sup>

## II. SUBMISSIONS

### A. STATEMENT OF FACTS

12. In its Further Amended Indictment, the SPO avers that, between at least 12 April 2023 and 2 November 2023, Mr Thaçi, together with Mr Fazliu, Mr Smakaj,

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<sup>12</sup> KSC-BC-2023-12, F00017, Specialist Prosecutor, *Submission of Amended Indictment for Confirmation*, 27 June 2024, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>13</sup> KSC-BC-2023-12, F00022, Pre-Trial Judge, *Order for Submissions*, 8 October 2024, strictly confidential and *ex parte*.

<sup>14</sup> KSC-BC-2023-12, F00023, Specialist Prosecutor, *Prosecution Submissions Pursuant to F00022* (“SPO Submissions”), 17 October 2024, strictly confidential and *ex parte*, with Annexes 1-5, strictly confidential and *ex parte*.

<sup>15</sup> KSC-BC-2023-12, F00025, Pre-Trial Judge, *Order Pursuant to Rule 86(4)(b) of the Rules Relating to Counts 2 and 19 of the Amended Indictment*, 6 November 2024, strictly confidential and *ex parte*.

<sup>16</sup> KSC-BC-2023-12, F00028, Specialist Prosecutor, *Submission of Further Amended Indictment for Confirmation*, 12 November 2024, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*.

<sup>17</sup> KSC-BC-2023-12, F00030, Pre-Trial Judge, *Order Setting a Target Date for a Decision Pursuant to Article 39(2) of the Law*, 13 November 2024, strictly confidential and *ex parte*.

Mr Kilaj and Mr Kuçi, coordinated to unlawfully influence the testimony of several SPO witnesses in the ongoing trial of *The Specialist Prosecutor v. Hashim Thaçi et al.* (“Thaçi et al. trial” or “Case 06”) and reveal secret information disclosed to Mr Thaçi in said proceedings, in violation of court orders.<sup>18</sup> According to the SPO, Mr Thaçi, Mr Fazliu, Mr Smakaj, Mr Kilaj and Mr Kuçi engaged in these efforts through Mr Thaçi’s non-privileged visits at the Specialist Chambers’ (“SC”) Detention Facilities, as detailed below.<sup>19</sup>

### 1. The 2 July 2023 SC Detention Facilities Visit

13. The SPO contends that, on 2 July 2023, Mr Fazliu visited Mr Thaçi at the SC Detention Facilities (“2 July 2023 Visit”).<sup>20</sup> The SPO claims that, during the 2 July 2023 Visit, Mr Thaçi provided confidential information about SPO witnesses in the Thaçi et al. trial, and gave detailed instructions for Mr Fazliu to convey to SPO witness W04746, namely Rrustem Mustafa, also known as Remi, on how the witness should testify, who was scheduled to, and began testifying in Case 06 on 11 July 2023.<sup>21</sup> The SPO avers that Messrs Thaçi and Fazliu also discussed the means by which these instructions should be given, and agreed that Mr Fazliu’s son, Fahri Fazliu (“Mr F. Fazliu”), would contact W04746 to set up a meeting.<sup>22</sup> The SPO further claims that Messrs Fazliu and F. Fazliu had previously met with W04746 on 29 June 2023, following an exchange of messages on 26 June 2023.<sup>23</sup> The SPO asserts that, on 3 July 2023, Mr F. Fazliu exchanged messages with W04746, to arrange a meeting between Mr F. Fazliu, Mr Fazliu and W04746, as per the instructions provided by Mr Thaçi.<sup>24</sup> According to the SPO, at the time of the 2 July 2023 Visit

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<sup>18</sup> Further Amended Indictment, para. 7 et seq.

<sup>19</sup> Further Amended Indictment, paras 9-36.

<sup>20</sup> Further Amended Indictment, para. 10.

<sup>21</sup> Further Amended Indictment, paras 10, 13.

<sup>22</sup> Further Amended Indictment, para. 11.

<sup>23</sup> Further Amended Indictment, para. 11.

<sup>24</sup> Further Amended Indictment, para. 11.

and message exchanges, W04746 was not publicly confirmed by the SC or the SPO as a witness in the *Thaçi et al.* trial.<sup>25</sup> The SPO claims that W04746's interviews were classified as confidential, and that he had only been referred to publicly by the SC or the SPO in a manner which did not reveal his status as an SPO witness, or by his witness code in the proceedings.<sup>26</sup>

## 2. The 3 September 2023 SC Detention Facilities Visit

14. The SPO also avers that, on 3 September 2023, Mr Kuçi visited Mr Thaçi at the SC Detention Facilities ("3 September 2023 Visit").<sup>27</sup> According to the SPO, during the 3 September 2023 Visit, Mr Thaçi provided detailed instructions for Mr Kuçi to convey to [REDACTED], W04752 and [REDACTED], namely [REDACTED], Bislim Zyrapri and [REDACTED], respectively, regarding how each witness should testify.<sup>28</sup> The SPO maintains that Mr Kuçi confirmed and/or agreed to Mr Thaçi's instructions regarding witness interference and provided suggestions on the instructions to be given to [REDACTED].<sup>29</sup> The SPO further contends that Mr Kuçi confirmed that he had met with [REDACTED] to discuss the latter's testimony in Case 06 on at least one prior occasion.<sup>30</sup> Furthermore, the SPO avers that, during the 3 September 2023 Visit, Mr Thaçi and Mr Kuçi also agreed to involve other persons in their plan to influence SPO witnesses.<sup>31</sup> The SPO also submits that, at the time of the 3 September 2023 Visit, [REDACTED] was scheduled to testify during the week of [REDACTED], a fact notified to the accused in Case 06 [REDACTED].<sup>32</sup>

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<sup>25</sup> Further Amended Indictment, para. 12.

<sup>26</sup> Further Amended Indictment, para. 12.

<sup>27</sup> Further Amended Indictment, para. 14.

<sup>28</sup> Further Amended Indictment, para. 14.

<sup>29</sup> Further Amended Indictment, para. 15.

<sup>30</sup> Further Amended Indictment, para. 15.

<sup>31</sup> Further Amended Indictment, para. 16.

<sup>32</sup> Further Amended Indictment, para. 17.



### 3. The 9 September 2023 SC Detention Facilities Visit

15. The SPO further contends that, on 9 September 2023, during a visit to the SC Detention Facilities by Messrs Smakaj, Blerim Shala (“Mr Shala”), Artan Behrami (“Mr Behrami”), and others (“9 September 2023 Visit”), Mr Thaçi provided confidential information about SPO witnesses in the *Thaçi et al.* trial and, in particular, repeatedly directed one or more of his visitors to provide instructions to W04752 on how to testify in Case 06.<sup>33</sup> The SPO alleges that Mr Thaçi characterised W04752’s evidence as decisive, and gave his visitors detailed instructions regarding the substance of W04752’s testimony in Case 06.<sup>34</sup> According to the SPO, Mr Thaçi urged the visitors to return to see him again in a month, and Messrs Smakaj and Behrami visited Mr Thaçi again at the SC Detention Facilities on 7 October 2023 (“7 October 2023 Visit”), on which occasion Mr Thaçi allegedly gave additional instructions on how W04752 should testify.<sup>35</sup> The SPO contends that during a 30 October 2023 search, a document that covered the subject matter of W04752’s testimony and contained a narrative consistent with Mr Thaçi’s instructions on how W04752 should testify, was recovered from Mr Smakaj’s car.<sup>36</sup> According to the SPO, throughout these events, W04752 was not publicly confirmed by the SC or the SPO as a witness in the *Thaçi et al.* trial.<sup>37</sup> The SPO claims that the interviews of W04752 were classified as confidential, and that he had only been referred to publicly by the SC or the SPO in a manner which did not reveal his status as an SPO witness, or by his witness code in the proceedings.<sup>38</sup>

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<sup>33</sup> Further Amended Indictment, para. 18.

<sup>34</sup> Further Amended Indictment, para. 18.

<sup>35</sup> Further Amended Indictment, paras 18-19.

<sup>36</sup> Further Amended Indictment, para. 20.

<sup>37</sup> Further Amended Indictment, para. 21.

<sup>38</sup> Further Amended Indictment, para. 21.

#### 4. The 6 October 2023 SC Detention Facilities Visit

16. The SPO likewise submits that, on 6 October 2023, Messrs Kilaj and Vllaznim Kryeziu (“Mr Kryeziu”) visited Mr Thaçi at the SC Detention Facilities (“6 October 2023 Visit”).<sup>39</sup> The SPO avers that the visit had been planned the month before, in an SC Detention Facilities call between Mr Thaçi and Mr Kilaj.<sup>40</sup> According to the SPO, during the 6 October 2023 Visit, Mr Thaçi provided confidential information about SPO witnesses in Case 06 to Messrs Kilaj and Kryeziu.<sup>41</sup> In particular, the SPO contends that Mr Thaçi gave instructions to be conveyed to [REDACTED], a protected witness in Case 06, about how to testify and that, as part of his instructions, Mr Thaçi also referenced and provided portions of [REDACTED]’s confidential prior statements.<sup>42</sup> The SPO further claims that Mr Thaçi also discussed the confidential evidence of SPO witness [REDACTED].<sup>43</sup> The SPO adds that, during a 2 November 2023 search of Mr Kilaj’s residence, it recovered material containing confidential information about SC proceedings, and the identifying information of protected witnesses, including witness names.<sup>44</sup> Specifically, the SPO claims that it recovered torn pages of [REDACTED]’s prior statements from the trash inside Mr Kilaj’s residence, including a portion that Mr Thaçi referenced during the 6 October 2023 Visit, as well as notebook pages containing, *inter alia*, summaries of the anticipated testimony of current and former SPO witnesses, together with their witness codes.<sup>45</sup> The SPO further alleges that the notes recovered from Mr Kilaj’s residence contain information matching that contained in confidential summaries disclosed to Mr Thaçi in Case 06.<sup>46</sup>

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<sup>39</sup> Further Amended Indictment, para. 22.

<sup>40</sup> Further Amended Indictment, para. 22.

<sup>41</sup> Further Amended Indictment, para. 23.

<sup>42</sup> Further Amended Indictment, para. 23.

<sup>43</sup> Further Amended Indictment, para. 23.

<sup>44</sup> Further Amended Indictment, para. 24.

<sup>45</sup> Further Amended Indictment, para. 24.

<sup>46</sup> Further Amended Indictment, para. 24.

## B. CHARGED OFFENCES

### 1. Obstruction of Proceedings

17. In the Further Amended Indictment, the SPO submits, based on the supporting material, that there is a well-grounded suspicion that, between at least 26 June and 2 November 2023, Mr Thaçi, by the common action of groups he belonged to, as well as in agreement with Mr Kuçi, obstructed or attempted to obstruct an official person, namely a judge, a prosecutor, an official of a court, a prosecution officer, or a person authorised by the court and prosecution office, in performing official duties.<sup>47</sup> The SPO also avers that Mr Thaçi, currently detained at the SC Detention Facilities in the context of his trial on charges of war crimes and crimes against humanity in the *Thaçi et al.* trial, was the leader or organizer of three groups, which included: (i) Mr Fazliu and Mr F. Fazliu; (ii) Mr Smakaj, Mr Shala, and Mr Behrami; as well as (iii) Mr Kilaj and Mr Kryeziu, and who coordinated to influence SPO witnesses in Case 06.<sup>48</sup> The SPO further submits that Messrs Thaçi and Kuçi agreed to interfere with the testimony of several SPO witnesses in the *Thaçi et al.* trial, including by agreeing to involve one or more persons in their plan to influence SPO witnesses.<sup>49</sup> According to the SPO, the Suspects' actions were part of a broader pattern of efforts intended to obstruct official persons in performing official duties in the context of the *Thaçi et al.* trial.<sup>50</sup> The SPO alleges that Mr Thaçi led and was engaged in these efforts through his non-privileged visits at the SC Detention Facilities.<sup>51</sup>

18. More specifically, the SPO contends that, between at least 26 June and 2 November 2023, during the 2 July 2023 Visit, the 9 September 2023 Visit, the

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<sup>47</sup> Further Amended Indictment, paras 9, 26, 50-54.

<sup>48</sup> Further Amended Indictment, paras 9, 25-26, 28, 50.

<sup>49</sup> Further Amended Indictment, paras 9, 25-26, 50, 54.

<sup>50</sup> Further Amended Indictment, para. 8.

<sup>51</sup> Further Amended Indictment, para. 9.

6 October 2023 Visit, and the 7 October 2023 Visit, Messrs Fazliu, Smakaj and Kilaj, respectively, by the common action of the three groups they respectively participated in, together with Mr Thaçi, as the leader or organiser of the groups, obstructed or attempted to obstruct an official person in performing official duties.<sup>52</sup> The SPO claims that Mr Thaçi provided Messrs Smakaj, Kilaj, Fazliu and others with confidential information disclosed to him in the *Thaçi et al.* trial, which allowed the obstruction or attempted obstruction of official persons to occur, and instructed them how to unlawfully influence SPO witnesses.<sup>53</sup> The SPO likewise submits that, during the 3 September 2023 Visit, Messrs Thaçi and Kuçi agreed to influence SPO witnesses, including by agreeing to involve one or more persons in their plan to obstruct or attempt to obstruct an official person in performing official duties.<sup>54</sup> According to the SPO, the Suspects, as well as others, attempted to compromise the SC's/SPO's ability to effectively investigate and prosecute crimes, including by obtaining and securing relevant witness evidence.<sup>55</sup> The SPO adds that the impact on the SC's/SPO's time and resources included: (i) the involvement of multiple SC/SPO staff in otherwise unnecessary additional efforts to ensure that the affected SPO witnesses could testify without undue influence in Case 06; (ii) the expenditure of SC/SPO resources to investigate and address the events recounted in the Further Amended Indictment; and (iii) repercussions on the conduct of proceedings in the *Thaçi et al.* trial.<sup>56</sup>

## 2. Violation of Secrecy of Proceedings

19. The SPO further claims that, between at least 12 April and 2 November 2023, Mr Thaçi revealed, without authorisation, information disclosed in an official

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<sup>52</sup> Further Amended Indictment, paras 9, 50-53.

<sup>53</sup> Further Amended Indictment, para. 28.

<sup>54</sup> Further Amended Indictment, paras 9, 25-26

<sup>55</sup> Further Amended Indictment, para. 27.

<sup>56</sup> Further Amended Indictment, para. 27.

proceeding which was not to be revealed according to law, or had been declared to be a secret by a decision of the court or a competent authority, thereby violating the secrecy of the *Thaçi et al.* trial.<sup>57</sup> Notably, the SPO avers that Mr Thaçi revealed, without authorisation, the identities of SPO witnesses while their identity, as well as the substance of their anticipated evidence remained classified as confidential by the SC and the SPO.<sup>58</sup> Furthermore, the SPO avers that, on 6 October 2023, Mr Thaçi violated the secrecy of the Case 06 proceedings by revealing, without authorisation, information on the identity or personal data of a protected SPO witness.<sup>59</sup>

### 3. Contempt of Court

20. The SPO also alleges that, between at least 12 April and 2 November 2023, and by virtue of the same conduct as set out above, the Suspects failed to obey court orders set forth in decision KSC-BC-2020-06/F00854 (as upheld in KSC-BC-2020-06/IA024/F00019 and incorporated in 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 (a) of the identity of a witness, unless such disclosure is directly and specifically necessary for the preparation and presentation of their case, or (b) that any protected witness is involved with SC/SPO activities or the nature of such involvement; and (iii) prohibit Messrs Thaçi and Kuçi from contacting SPO witnesses outside the terms of that decision.<sup>60</sup> The SPO also contends that Mr Kuçi failed to obey the court order prohibiting contact with SPO witnesses outside the framework of KSC-BC-2020-06/F00854, by sending W04746 a text message on or about 12 April 2023.<sup>61</sup> According to the SPO, Messrs Thaçi and Kilaj also failed to

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<sup>57</sup> Further Amended Indictment, paras 30, 32.

<sup>58</sup> Further Amended Indictment, paras 30-31(i), 32, 50.

<sup>59</sup> Further Amended Indictment, paras 30-31(ii), 32, 50.

<sup>60</sup> Further Amended Indictment, paras 34, 50-54. *See also* Further Amended Rule 86 Outline, p. 38.

<sup>61</sup> Further Amended Indictment, paras 35, 54.

obey decision [REDACTED], which granted protective measures to [REDACTED] in Case 06.<sup>62</sup>

### C. MODES OF LIABILITY

21. The SPO avers that, based on the supporting material, there is a well-grounded suspicion that, through the actions described above, between at least 26 June and 2 November 2023, Mr Thaçi is individually criminally responsible for having, intentionally: (i) committed, agreed to commit, incited the commission of, and/or assisted in the commission of the offence of obstructing official persons in performing official duties by participating in the common action of a group pursuant to Articles 17, 32, 33, 35, and 401(2)-(3) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 (“KCC”), and Articles 15(2) and 16(3) of the Law (Counts 1, 3, 4);<sup>63</sup> (ii) agreed to commit the offence of obstructing official persons by participating in the common action of a group pursuant to Articles 35 and 401(2)-(3) and (5) of the KCC, and Articles 15(2) and 16(3) of the Law (Count 2);<sup>64</sup> (iii) committed the offence of violating the secrecy of proceedings pursuant to Articles 17 and 392(1) of the KCC, and Articles 15(2) and 16(3) of the Law (Counts 5, 6, 7);<sup>65</sup> (iv) committed and/or attempted to commit the offence of violating the secrecy of proceedings pursuant to Articles 17, 28, and 392(2) of the KCC and Articles 15(2) and 16(3) of the Law (Count 8);<sup>66</sup> (v) committed, individually or in co-perpetration, agreed to commit, incited the commission of, and/or assisted in the commission of the offence of contempt of court pursuant to Articles 17, 31, 32(1)-(2), 33, 35, and 393 of the KCC, and Articles 15(2) and 16(3) of the Law (Counts 9,

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<sup>62</sup> Further Amended Indictment, paras 36, 50, 52.

<sup>63</sup> Further Amended Indictment, paras 2629, 37-38, 43, 45-48, 50.

<sup>64</sup> Further Amended Indictment, paras 2629, 37, 44, 50.

<sup>65</sup> Further Amended Indictment, paras 33, 37, 39, 50.

<sup>66</sup> Further Amended Indictment, paras 33, 37, 41, 50.

11, 12),<sup>67</sup> and (vi) agreed to commit the offence of contempt of court pursuant to Articles 35 and 393 of the KCC and Articles 15(2) and 16(3) of the Law (Count 10).<sup>68</sup>

22. Based on the supporting material, the SPO further contends that there is a well-grounded suspicion that, through the actions described above, between at least 9 September and 30 October 2023, Mr Smakaj is individually criminally responsible for having intentionally: (i) committed, agreed to commit, and/or assisted in the commission of the offence of obstructing official persons in performing official duties by participating in the common action of a group under Articles 17, 33, 35, and 401(2) and (5) of KCC, and Articles 15(2) and 16(3) of the Law (Count 13);<sup>69</sup> and (ii) committed in co-perpetration, agreed to commit, and/or assisted in the commission of the offence of contempt of court pursuant to Articles 31, 33, 35, and 393 of the KCC, and Articles 15(2) and 16(3) of the Law (Count 14).<sup>70</sup>

23. The SPO also submits that, based on the supporting material, there is a well-grounded suspicion that, through the acts described above, between at least 6 October and 2 November 2023, Mr Kilaj is individually criminally responsible for having intentionally: (i) committed, agreed to commit, and/or assisted in the commission of the offence of obstructing official persons in performing official duties by participating in the common action of a group pursuant to Articles 17, 33, 35, and 401(2) and (5) of KCC, and Articles 15(2) and 16(3) of the Law (Count 15);<sup>71</sup> and (ii) committed in co-perpetration, agreed to commit, and/or assisted in the commission of the offence of contempt of court pursuant to Articles 31, 33, 35, and 393 of the KCC, and Articles 15(2) and 16(3) of the Law (Count 16).<sup>72</sup>

24. The SPO likewise asserts that, based on the supporting material, there is a well-grounded suspicion that, through the actions described above, between at least

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<sup>67</sup> Further Amended Indictment, paras 37, 40, 43, 45-46, 48, 50.

<sup>68</sup> Further Amended Indictment, paras 37, 44, 50.

<sup>69</sup> Further Amended Indictment, paras 26, 29, 37-38, 43, 48, 51.

<sup>70</sup> Further Amended Indictment, paras 37, 42, 43, 48, 51.

<sup>71</sup> Further Amended Indictment, paras 26, 29, 37-38, 43, 48, 52.

<sup>72</sup> Further Amended Indictment, paras 37, 42, 43, 48, 52.

26 June and 18 July 2023, Mr Fazliu is individually criminally responsible for having intentionally: (i) committed, agreed to commit, and/or assisted in the commission of the offence of obstructing official persons in performing official duties by participating in the common action of a group under Articles 17, 33, 35, and 401(2) and (5) of KCC, and Articles 15(2) and 16(3) of the Law (Count 17);<sup>73</sup> and (ii) committed in co-perpetration, agreed to commit, and/or assisted in the commission of the offence of contempt of court pursuant to Articles 31, 33, 35, and 393 of the KCC, and Articles 15(2) and 16(3) of the Law (Count 18).<sup>74</sup>

25. The SPO further avers that, based on the supporting material, there is a well-grounded suspicion that, through the actions described above, between at least 12 April and 13 September 2023, Mr Kuçi is individually criminally responsible for having intentionally: (i) agreed to the commission of the offence of obstructing official persons in performing official duties by participating in the common action of a group pursuant to Articles 35 and 401(2)-(3) and (5) of the KCC, and Articles 15(2) and 16(3) of the Law (Count 19);<sup>75</sup> (ii) agreed to commit the offence of contempt of court pursuant to Articles 35 and 393 of the KCC and Articles 15(2) and 16(3) of the Law (Count 20);<sup>76</sup> and (iii) committed the offence of contempt of court pursuant to Articles 17 and 393 of the KCC and Articles 15(2) and 16(3) of the Law (Count 21).<sup>77</sup>

#### D. REQUESTS

26. Accordingly, the SPO requests the Pre-Trial Judge to confirm the Further Amended Indictment.<sup>78</sup> In addition, the SPO requests the Pre-Trial Judge to order

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<sup>73</sup> Further Amended Indictment, paras 26, 29, 37-38, 43, 48, 53.

<sup>74</sup> Further Amended Indictment, paras 37, 42, 43, 48, 53.

<sup>75</sup> Further Amended Indictment, paras 26, 29, 37, 44, 54.

<sup>76</sup> Further Amended Indictment, paras 37, 44, 54.

<sup>77</sup> Further Amended Indictment, paras 37, 40, 54.

<sup>78</sup> SPO Submission of Further Amended Indictment, para. 11.



the temporary non-disclosure of the Further Amended Indictment, and related documents and information, to the Suspects and the public, until further order.<sup>79</sup> In this regard, the SPO submits that there is a real risk of further obstruction of the proceedings and the requested non-disclosure is necessary to ensure their integrity and the protection of individuals, including those named in seized materials.<sup>80</sup>

### III. APPLICABLE LAW

#### A. REVIEW OF INDICTMENT

27. Pursuant to Article 39(1) and (2) of the Law and Rule 86(4) of the Rules, the Pre-Trial Judge shall have the power to review an indictment. Pursuant to Article 39(2) of the Law and Rule 86(4) and (5) of the Rules, if satisfied that a well-grounded suspicion has been established by the SPO, the Pre-Trial Judge shall confirm the indictment. If the Pre-Trial Judge is not so satisfied, the indictment or charges therein shall be dismissed. Rule 86(5) of the Rules provides that the Pre-Trial Judge must render a reasoned decision.

28. Pursuant to Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged. Pursuant to that rule, the indictment shall be filed together with supporting material, i.e. evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

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<sup>79</sup> SPO Submission of Further Amended Indictment, para. 11.

<sup>80</sup> SPO Submission of Further Amended Indictment, para. 9, with reference to KSC-BC-2023-12, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Request*, 15 December 2023, strictly confidential and *ex parte*, para. 6, with Annexes 1-3, strictly confidential and *ex parte*.

29. Pursuant to Rule 86(6) of the Rules, upon confirmation of any charge(s) of the indictment, the suspect shall have the status of an accused and the Pre-Trial Judge may issue any other decisions or orders provided for in Article 39(3) of the Law.

30. Pursuant to Rule 86(8) and (10) of the Rules, the Registrar shall retain and prepare certified copies of the confirmed indictment bearing the seal of the SC, and notify the President of the confirmed indictment.

#### B. OFFENCES UNDER ARTICLE 15(2) OF THE LAW AND MODES OF LIABILITY

31. As provided in Article 3(2) of the Law, the SC adjudicate in accordance with, *inter alia*, the Constitution of Kosovo, the Law, provisions of Kosovo law expressly incorporated in the Law, and international human rights law.

32. Pursuant to Articles 6(2) and 15(2) of the Law, the SC has jurisdiction over specific offences against the administration of justice, as set out in the KCC, when they relate to the official proceedings and officials of the SC and the SPO.<sup>81</sup>

33. For offences set out in Article 15(2) of the Law, Article 16(3) of the Law provides that, for the purpose of individual criminal responsibility, Articles 8-10, 17, 21-24, 27-37 of the 2019 KCC shall apply.

#### C. MAINTAINING CONFIDENTIALITY

34. Pursuant to Article 39(11) of the Law, the Pre-Trial Judge may, where necessary, provide for the protection of victims and witnesses.

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<sup>81</sup> It is recalled that when the specific provisions of the 2012 Kosovo Criminal Code, Law No. 04/L-082 ("2012 KCC"), set forth in Articles 15 and 16 of the Law, are replaced, the Law must be interpreted, by virtue of Article 64 of the Law, as relating to the analogous provisions of the successor legislation. In the present instance, the provisions listed in Articles 6(2) and 15(2) of the Law were renumbered, *see also* KSC-BC-2020-07, F00147/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Preliminary Motions* ("Case 07 Preliminary Motion Decision"), 8 March 2021, public, para. 30; F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* ("Case 07 Confirmation Decision") 11 December 2020, public, para. 13; F00057, Single Judge, *Decision on Defence Challenges* ("Case 07 Defence Challenges Decision"), 27 October 2020, public, para. 24.

35. Pursuant to Rule 85(4) of the Rules, all documents and information submitted by the SPO to the Pre-Trial Judge during investigation shall remain at the least confidential and *ex parte*, subject to Rule 102 of the Rules.

36. Pursuant to Rule 88 of the Rules, the indictment shall be made public upon confirmation by the Pre-Trial Judge. However, in exceptional circumstances, upon showing of good cause by the SPO before the confirmation of the indictment, the Pre-Trial Judge may order the temporary non-disclosure of the indictment, related documents or information to the public until further order. The indictment shall in any case be made public, with redactions, where necessary, no later than the initial appearance of the accused. The SPO may disclose an indictment or part thereof to the authorities of a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

37. Pursuant to Rule 102(1)(a) of the Rules, the SPO shall make available to the accused, as soon as possible, but at least within thirty (30) days of the initial appearance of the accused, the supporting material to the indictment submitted for confirmation, as well as all statements obtained from the accused.

38. Pursuant to Rule 105(1) of the Rules, the SPO may apply to the Panel for interim non-disclosure of the identity of a witness or victim participating in the proceedings, until appropriate protective measures have been ordered.

#### IV. JURISDICTION

39. Based on the information provided by the SPO, and without prejudice to subsequent determinations on this matter, the Pre-Trial Judge finds that, pursuant to Articles 6(2) and 15(2) of the Law, the SC have jurisdiction over the offences of obstructing official persons in performing official duties, violating the secrecy of proceedings, and contempt of court, with respective reference to Articles 401, 392,

and 393 of the KCC, as they relate to SC official proceedings and officials.<sup>82</sup> Notably, the offences under Counts 1-21 of the Further Amended Indictment relate to events which allegedly occurred between at least 12 April and 2 November 2023 and, thereby, fall within the temporal jurisdiction of the SC, which extends beyond the scope of Article 7 of the Law insofar as offences under Articles 6(2) and 15(2) of the Law are concerned.<sup>83</sup>

## V. LEGAL REQUIREMENTS

### A. NATURE AND SCOPE OF THE REVIEW

#### 1. Nature of the Review

40. The Pre-Trial Judge recalls the interpretation of the nature of the indictment review process, as developed in previous decisions.<sup>84</sup>

41. Notably, the Pre-Trial Judge recalls that the confirmation of the indictment is an *ex parte* process without the involvement of the Defence, which is meant to ensure that only those charges are considered at trial for which sufficient evidence has been presented and that the accused is provided with sufficient information to understand clearly and fully the nature and cause of the charges against him or her.<sup>85</sup>

42. To this end, during the review process, the Pre-Trial Judge determines whether the indictment meets the requirements under Rule 86(3) of the Rules and

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<sup>82</sup> See *supra* para. 32. See also Case 07 Defence Challenges Decision, paras 23-26; Case 07 Confirmation Decision, para. 22; Case 07 Preliminary Motion Decision, paras 28-34.

<sup>83</sup> See also Case 07 Defence Challenges Decision, para. 25.

<sup>84</sup> Case 07 Confirmation Decision, paras 26-28. See also KSC-BC-2023-11, F00005/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* (“Case 11 Confirmation Decision”), 4 December 2023, public, para. 23; KSC-BC-2023-10, F00008/RED/COR, Pre-Trial Judge, *Corrected Version of Public Redacted Version of the Decision on the Confirmation of the Indictment* (“Case 10 Confirmation Decision”), 2 October 2023, public, para. 23.

<sup>85</sup> Case 07 Confirmation Decision, para. 26.

may revert to the SPO under Rule 86(4) of the Rules, if need be. Subsequently, pursuant to Article 39(2) of the Law and the chapeau of Rule 86(4) of the Rules, the Pre-Trial Judge examines the supporting material in relation to each charge in the indictment, to determine whether the SPO has established a well-grounded suspicion that the suspect committed or participated in the commission of an offence within the jurisdiction of the SC.<sup>86</sup>

43. Regarding the evidentiary threshold applicable at this stage, the Pre-Trial Judge recalls that, while falling short of the certainty of a proven fact, determining the existence of well-grounded suspicion<sup>87</sup> nevertheless requires a conviction on the part of the Pre-Trial Judge, beyond mere theory or suspicion, that: (i) the offences have indeed occurred; and (ii) the suspect committed or participated in the commission of the offence(s) through the alleged mode(s) of liability. The Pre-Trial Judge bases such findings on concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment. In so doing, the Pre-Trial Judge evaluates the supporting material holistically, without scrutinising each item of evidentiary material in isolation.<sup>88</sup>

## 2. Scope of the Review

44. The Pre-Trial Judge recalls the interpretation of the scope of the indictment review process as set out in the previous decisions.<sup>89</sup>

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<sup>86</sup> Case 07 Confirmation Decision, para. 27.

<sup>87</sup> According to Article 19.1.12 of the 2022 Kosovo Criminal Procedure Code, No. 08/L-032, well-grounded suspicion is reached when the evidence “would satisfy an objective observer that a criminal offense has occurred and the defendant has committed the offense”.

<sup>88</sup> *Similarly*, Case 07 Confirmation Decision, para. 30 with further references to case law; Case 10 Confirmation Decision, para. 24; Case 11 Confirmation Decision, para. 24.

<sup>89</sup> Case 07 Confirmation Decision, paras 31-32. *See also* KSC-BC-2020-05, F00008/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Salih Mustafa* (“Case 05 Confirmation Decision”), 5 October 2020, public, paras 38-39, with further references to case law; Case 10 Confirmation Decision, para. 25; Case 11 Confirmation Decision, para. 25.

45. Pursuant to Rule 86(4) of the Rules, to determine whether a well-grounded suspicion exists, the Pre-Trial Judge examines the indictment, the detailed outline and the supporting material only, without regard to any extraneous information or material, albeit publicly available. Accordingly, the Pre-Trial Judge may confirm or dismiss the indictment based solely on the information and evidentiary material submitted by the SPO.<sup>90</sup>

46. As part of the review process, the Pre-Trial Judge conducts a preliminary assessment of the supporting material, without encroaching on the prerogatives of the Trial Panel in determining the admissibility and weight of the evidence, as set out in Rules 137-139 of the Rules.<sup>91</sup> That being said, the Pre-Trial Judge shall not rely on material that is manifestly (i) non-authentic, or (ii) obtained by means of a violation of the Law, the Rules, or standards of international human rights law, or under torture or any other inhumane or degrading treatment, as provided in Rule 138(2)-(3) of the Rules.<sup>92</sup>

## B. ELEMENTS OF OFFENCES

### 1. Obstructing Official Persons in Performing Official Duties

47. The SPO charges Mr Thaçi under Article 401(2)-(3) and (5) of the KCC (Counts 1, 2, 3, 4), and Messrs Smakaj, Kilaj, Fazliu and Kuçi under Article 401(2) and (5) of the KCC (Counts 13, 15, 17, 19).

48. Article 401(2) of the KCC sets forth that “[w]hoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her

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<sup>90</sup> Case 07 Confirmation Decision, para. 31; Case 05 Confirmation Decision, para. 38.

<sup>91</sup> Case 07 Confirmation Decision, para. 32; Case 05 Confirmation Decision, para. 39.

<sup>92</sup> Case 07 Confirmation Decision, para. 32; Case 05 Confirmation Decision, para. 39.

to perform official duties shall be punished by a fine or by imprisonment of up to three (3) years”.<sup>93</sup>

49. Article 401(3) of the KCC provides that “[t]he leader or organizer of the group which commits the offence [in Article 401(2)] shall be punished by imprisonment of one (1) to five (5) years”.<sup>94</sup>

50. Article 401(5) of the KCC stipulates that “[w]hen the offense [in Article 401(2)] is committed against a judge, a prosecutor, an official of a court, prosecution officer or a person authorized by the court and prosecution office, a police officer, a military officer, a customs officer or a correctional officer during the exercise of their official functions the perpetrator shall be punished by imprisonment of one (1) to five (5) years”.<sup>95</sup>

(a) Material elements

51. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(2) of the KCC, is committed through participation in a group of persons which, by common action, obstructs or attempts to obstruct an official person in performing official duties.<sup>96</sup> The wording of Article 401(2) of the KCC (“obstructs or attempts to obstruct”) indicates that the offence can be committed either when the obstruction has occurred, or when it has only been

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<sup>93</sup> See Case 07 Confirmation Decision, paras 74-76, 78-80; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment* (“Case 07 Trial Judgment”), 18 May 2022, public, paras 156, 158, 161-164, 172, 175-178; Case 10 Confirmation Decision, paras 47, 48-53; Case 11 Confirmation Decision, paras 47, 48-53.

<sup>94</sup> See Case 07 Confirmation Decision, para. 77; Case 07 Trial Judgment, paras 157, 171-172, 175-178.

<sup>95</sup> See, *mutatis mutandis*, Case 07 Confirmation Decision, para. 69; Case 07 Trial Judgment, paras 140, 149-150, 152-155.

<sup>96</sup> *Similarly*, Case 07 Confirmation Decision, para. 74; Case 07 Trial Judgment, para. 158; Case 10 Confirmation Decision, para. 48; Case 11 Confirmation Decision, para. 48.

attempted.<sup>97</sup> For the fulfilment of the *actus reus* of the offence, it suffices that a person carries out either of the two alternatives provided in Article 401(2) of the KCC.

52. Article 113(12) of the KCC clarifies that a “group” consists of three or more persons.<sup>98</sup> As to the group’s common action, Article 401(2) of the KCC does not delimit its contours. Accordingly, common action may include any activity jointly undertaken by the group members.<sup>99</sup> Crucially, Article 401(2) of the KCC penalises any conduct of the perpetrator, who partakes in the group, that contributes to or enables in some other form the common action; it does not require that the actions of *each* participant in the group contribute directly to the obstructive purpose.<sup>100</sup>

53. Article 113(2) of the KCC defines an “official person” as, *inter alia*, any person who is entrusted with the actual performance of certain official duties or works. Within the SC legal framework, such an “official person” would be any person authorised to act on behalf of the SC or SPO, including a judge, a prosecutor, an investigator or any other SC or SPO official (“SC/SPO Official”).<sup>101</sup> By virtue of Article 401(5) of the KCC, the offence is committed in an aggravated form where it is directed against, *inter alia*, a judge, a prosecutor, an official of a court, prosecution officer or a person authorised by the court and prosecution office. Accordingly, where the offence under Article 401(2) of the KCC is committed against an SC/SPO

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<sup>97</sup> Similarly, Case 07 Trial Judgment, paras 158, 774. See also *Salihu et al.*, Article 409 of the 2012 KCC, paragraph 2, mn. 5, p. 1168. The Pre-Trial Judge takes note of the *Salihu et al.* commentary of the 2012 KCC as an informative, but not necessarily persuasive, source of interpretation in all relevant aspects.

<sup>98</sup> Similarly, Case 07 Confirmation Decision, para. 75; Case 07 Trial Judgment, para. 161; Case 10 Confirmation Decision, para. 49; Case 11 Confirmation Decision, para. 49.

<sup>99</sup> Similarly, Case 07 Confirmation Decision, para. 75; Case 07 Trial Judgment, para. 162; Case 10 Confirmation Decision, para. 49; Case 11 Confirmation Decision, para. 49.

<sup>100</sup> Similarly, Case 07 Trial Judgment, para. 163; Case 10 Confirmation Decision, para. 49; Case 11 Confirmation Decision, para. 49. See also KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment* (“Case 07 Appeal Judgment”), 2 February 2023, public, para. 307.

<sup>101</sup> Similarly, Case 07 Confirmation Decision, paras 69, 76; Case 07 Trial Judgment, paras 146, 164; Case 10 Confirmation Decision, paras 41, 50; Case 11 Confirmation Decision, paras 41, 50.



Official, the requirements of the aggravated form are met.<sup>102</sup> For the purposes of Article 401(2) of the KCC and within the SC legal framework, the “official duties” of an SC/SPO Official relate to any responsibility or work within the context of official proceedings of the SC, including SPO investigations (“SC Proceedings”).<sup>103</sup>

54. The term “obstruct” means to prevent, impede, hinder, or delay the motion, passage, or progress of something.<sup>104</sup> In the context of SC Proceedings, obstruction would entail impeding, hindering or delaying the work of SC/SPO Officials.<sup>105</sup>

55. Article 401(3) of the KCC provides for a more severe punishment when the perpetrator is the leader or organiser of the group. The aggravated form does not limit such a role to official positions, but can apply to *de facto* leaders or organisers as well.<sup>106</sup>

(b) Mental element

56. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>107</sup> The aggravated forms of the offence under Article 401(3) and (5) likewise require either direct or eventual intent.<sup>108</sup> Within the group, one perpetrator may act with direct intent, while another perpetrator may participate with eventual intent. Article 401(2) of the KCC does not require that all persons in the group participate with the same form of intent.<sup>109</sup>

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<sup>102</sup> *Similarly*, Case 07 Confirmation Decision, paras 69, 76; Case 07 Trial Judgment, paras 149, 164; Case 10 Confirmation Decision, paras 41, 50; Case 11 Confirmation Decision, paras 41, 50.

<sup>103</sup> *Similarly*, Case 07 Confirmation Decision, paras 69, 76; Case 07 Trial Judgment, paras 147, 164; Case 10 Confirmation Decision, paras 41, 50; Case 11 Confirmation Decision, paras 41, 50.

<sup>104</sup> *Similarly*, Case 07 Confirmation Decision, para. 70; Case 07 Trial Judgment, para. 145; Case 10 Confirmation Decision, para. 42; Case 11 Confirmation Decision, para. 42.

<sup>105</sup> *Similarly*, Case 07 Confirmation Decision, para. 70; Case 07 Trial Judgment, paras 146-148; Case 10 Confirmation Decision, para. 42; Case 11 Confirmation Decision, para. 42.

<sup>106</sup> *Similarly*, Case 07 Confirmation Decision, para. 77; Case 07 Trial Judgment, para. 171.

<sup>107</sup> *Similarly*, Case 07 Confirmation Decision, para. 78; Case 07 Trial Judgment, para. 175; Case 10 Confirmation Decision, para. 51; Case 11 Confirmation Decision, para. 51.

<sup>108</sup> *Similarly*, Case 07 Trial Judgment, paras 152, 175.

<sup>109</sup> *Similarly*, Case 07 Trial Judgment, para. 178; Case 10 Confirmation Decision, para. 51; Case 11 Confirmation Decision, para. 51.

57. For direct intent, the perpetrator must have acted with awareness of, and desire for, participating in a group in order to obstruct by common action an official person in performing official duties.<sup>110</sup>

58. For eventual intent, the perpetrator must have acted with the awareness that, as a result of participation in a group, the official person might be obstructed by common action in the performance of official duties, and the perpetrator acceded to the occurrence of that result.<sup>111</sup>

## 2. Violating the Secrecy of Proceedings

59. The SPO charges Mr Thaçi under Article 392(1) of the KCC (Counts 5, 6, 7), and under Article 392(2) of the KCC (Count 8).

### (a) Unauthorised revelation of protected information

60. Article 392(1) of the KCC stipulates that “[w]hoever, without authorization, reveals information disclosed in any official proceeding which must not be revealed according to law or has been declared to be a secret by a decision of the court or a competent authority shall be punished by a fine or by imprisonment of up to one (1) year”.<sup>112</sup>

### (i) Material elements

61. The offence of violating the secrecy of proceedings, within the meaning of Article 392(1) of the KCC, is committed through the unauthorised revelation of information disclosed in any official proceeding, which must not be revealed

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<sup>110</sup> *Similarly*, Case 07 Confirmation Decision, para. 79; Case 07 Trial Judgment, para. 176; Case 10 Confirmation Decision, para. 52; Case 11 Confirmation Decision, para. 52.

<sup>111</sup> *Similarly*, Case 07 Confirmation Decision, para. 80; Case 07 Trial Judgment, para. 177; Case 10 Confirmation Decision, para. 53; Case 11 Confirmation Decision, para. 53.

<sup>112</sup> *See* Case 07 Confirmation Decision, paras 34-40; Case 07 Trial Judgment, paras 68-69, 72-79, 81, 84-86.

according to the law or has been declared to be a secret by a decision of the court or a competent authority.<sup>113</sup>

62. Article 392(1) of the KCC does not limit the manner in which information is revealed. Revelation may include displaying, publicising, broadcasting, publicly disseminating or distributing material, in original or copied/recorded form, citing, describing or referring to the content of the material, as well as making the material available to others so as to allow them to read, copy or record the material or its content.<sup>114</sup> The revelation of information is “without authorisation” if not permitted by law or the decision of a court or a competent authority.<sup>115</sup>

63. In accordance with the KCC and the Kosovo Criminal Procedure Code, Code No. 08/L-032 (“KCPC”), prosecutorial investigations are included within the scope of “criminal proceedings”, which are in turn included in the definition of “official proceedings”.<sup>116</sup> Accordingly, SPO investigations qualify as “official proceedings” for the purposes of Article 392(1) of the KCC.<sup>117</sup> The term can likewise refer to other types of official communication of information during pre-trial, trial or appellate proceedings, such as the testimony of witnesses, evidentiary material presented by the Parties, or the content of filings made before a competent Panel.<sup>118</sup>

64. Article 392(1) of the KCC refers to two types of information disclosed in any official proceeding: (i) information “which must not be revealed according to law”;

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<sup>113</sup> *Similarly*, Case 07 Confirmation Decision, para. 34; Case 07 Trial Judgment, para. 69.

<sup>114</sup> *Similarly*, Case 07 Confirmation Decision, para. 35; Case 07 Trial Judgment, para. 72.

<sup>115</sup> *Similarly*, Case 07 Confirmation Decision, para. 35; Case 07 Trial Judgment, para. 73; Case 07 Appeal Judgment, para. 121.

<sup>116</sup> Article 376 of the KCC defines “official proceedings” as including any criminal proceedings as defined in the KCPC. Article 6(2) of the KCPC provides that “[c]riminal proceedings shall only be initiated upon the decision of a state prosecutor when reasonable suspicion exists that a criminal offense has been committed or when a direct indictment has been filed under the provisions of [the KCPC]”. In this regard, Article 99 of the KCPC regulates the “Initiation of Criminal Proceedings by Formal Investigative Stage or Filing of Indictment”.

<sup>117</sup> *Similarly*, Case 07 Confirmation Decision, para. 36; Case 07 Trial Judgment, para. 74.

<sup>118</sup> *Similarly*, Case 07 Trial Judgment, para. 74.

and (ii) information which “has been declared to be a secret by a decision of the court or a competent authority” (“Protected Information”).<sup>119</sup>

65. The first type covers information in regard to which there is a law or provision in the law that either (i) expressly prohibits the disclosure of that information; or (ii) categorises, classifies, or describes the information that implicitly prevents its disclosure.<sup>120</sup> Within the SC framework, Article 62(1) of the Law provides that, given security and privacy considerations, the documents, papers, records and archives of the SC, including the Registry, and of the SPO, “shall not be considered public documents in Kosovo” and that “[t]here shall be no general right of access” thereto.<sup>121</sup> Accordingly, the provision sets out a general restriction of access to SC and SPO records, which results in a prohibition of their disclosure.<sup>122</sup>

66. The second type covers information that a court or competent authority has declared to be secret. Article 392(1) of the KCC does not qualify the notions of “court” or “competent authority”. Accordingly, these refer to any judicial or other authority that has been granted competence by law to declare information secret, which necessarily includes criminal courts and prosecutorial authorities.<sup>123</sup> The term “secret” is used in Article 392(1) of the KCC in its generic sense, meaning that the information cannot be disclosed to unauthorised persons.<sup>124</sup> As such, it should not be understood differently from the term “confidential”, as employed within the context of the SC framework.<sup>125</sup> The phrase “declared [...] by a decision” refers to any positive act of a competent authority through which information is announced, stated, described, marked or treated in that authority’s performance of functions, as

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<sup>119</sup> *Similarly*, Case 07 Trial Judgment, para. 76.

<sup>120</sup> *Similarly*, Case 07 Trial Judgment, para. 77.

<sup>121</sup> *Similarly*, Case 07 Confirmation Decision, para. 37(a); Case 07 Trial Judgment, para. 77.

<sup>122</sup> *See, similarly*, Case 07 Trial Judgment, para. 77.

<sup>123</sup> *Similarly*, Case 07 Trial Judgment, para. 78. *See also* Case 07 Appeal Judgment, para. 151.

<sup>124</sup> *Similarly*, Case 07 Trial Judgment, para. 78; Case 07 Appeal Judgment, para. 149.

<sup>125</sup> *See* Case 07 Appeal Judgment, para. 149.

secret.<sup>126</sup> Within the framework of the SC, a competent Panel can order measures of protection of information pursuant to, *inter alia*, Articles 23, 39(11), 40(6)(d), 54(8), 58, 62(2) of the Law, and Rules 82, 105, 108 of the Rules, or any other applicable law.<sup>127</sup> The Law and the Rules likewise permit the SPO to adopt, on its own motion, measures of protection pursuant to, *inter alia*, Articles 35(2)(f) and 54(8) of the Law, and Rules 30(2)(a), 82, 106, 107(1) of the Rules, or any other applicable law.<sup>128</sup> The competence of the SC and SPO to order or adopt measures of protection is further confirmed by Article 61(3)-(4) of the Law, which provides that documentation or information that has been given protected confidential status by the SC or SPO, can only be released upon order of a Panel or with the consent of the Specialist Prosecutor.<sup>129</sup>

67. Proof that certain information cannot be revealed according to law, or that it has been declared secret by a decision of a court or competent authority, typically lies in the act itself, which can take the form of, *inter alia*, a law or other legislative document, judicial order or official document of a competent authority.<sup>130</sup>

(ii) Mental element

68. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>131</sup>

69. For direct intent, the perpetrator must have acted with awareness of, and desire for, revealing without authorisation Protected Information disclosed in any official proceeding.<sup>132</sup>

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<sup>126</sup> *Similarly*, Case 07 Trial Judgment, para. 78.

<sup>127</sup> *Similarly*, Case 07 Confirmation Decision, para. 37(b); Case 07 Trial Judgment, para. 78.

<sup>128</sup> *Similarly*, Case 07 Confirmation Decision, para. 37(c); Case 07 Trial Judgment, para. 78. *See also* Case 07 Appeal Judgment, para. 151.

<sup>129</sup> *Similarly*, Case 07 Trial Judgment, para. 79.

<sup>130</sup> *Similarly*, Case 07 Trial Judgment, para. 79. *See also* Case 07 Appeal Judgment, para. 151.

<sup>131</sup> *See* Case 07 Confirmation Decision, para. 38; Case 07 Trial Judgment, paras 81, 84.

<sup>132</sup> *See* Case 07 Confirmation Decision, para. 39; Case 07 Trial Judgment, para. 85.

70. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, Protected Information disclosed in official proceedings might be revealed without authorisation, and the perpetrator acceded to the occurrence of that result.<sup>133</sup>

(b) Unauthorised revelation of the identity or personal data of protected persons

71. Article 392(2) of the KCC sets forth that “[w]hoever without authorization reveals information on the identity or personal data of a person under protection in the criminal proceedings or in a special program of protection shall be punished by imprisonment of up to three (3) years”.<sup>134</sup>

(i) Material elements

72. The offence of violating the secrecy of proceedings, within the meaning of Article 392(2) of the KCC, is committed through the unauthorised revelation of the identity or personal data of a person under protection in the criminal proceedings or in a special program of protection.<sup>135</sup>

73. This offence is a form of unauthorised revelation of Protected Information under Article 392(1) of the KCC and is punishable by a more severe sentence.<sup>136</sup>

74. As regards the act of unauthorised revelation, the scope of the term “criminal proceedings”, and the question of the person to whom the specific Protected Information is disclosed, reference is made to the above findings.<sup>137</sup>

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<sup>133</sup> See Case 07 Confirmation Decision, para. 40; Case 07 Trial Judgment, para. 86.

<sup>134</sup> See Case 07 Confirmation Decision, paras 41-50; Case 07 Trial Judgment, paras 87, 89, 92-99, 101, 104-106.

<sup>135</sup> Similarly, Case 07 Confirmation Decision, para. 41; Case 07 Trial Judgment, para. 89.

<sup>136</sup> Similarly, Case 07 Confirmation Decision, para. 42; Case 07 Trial Judgment, para. 92.

<sup>137</sup> See *supra* paras 62-67. See also Case 07 Confirmation Decision, para. 43; Case 07 Trial Judgment, paras 92-93.

75. Article 392(2) of the KCC refers to two types of protected persons: (i) those “under protection in the criminal proceedings”; and (ii) those “in a special program of protection” (“Protected Person”).<sup>138</sup>

76. The first type covers persons who the law regards as protected, as well as those for whom a measure of protection has been adopted in criminal proceedings. The requirement of being under protection in criminal proceedings does not necessarily require a judicial order, but may also refer to a protected status provided by law (e.g. for underage or other vulnerable witnesses) or to measures implemented by prosecutorial authorities during their investigations.<sup>139</sup> Within the framework of the SC, this requirement can refer to an order for protective measures rendered by a competent Panel pursuant to, *inter alia*, Articles 23, 39(11), 40(6)(f) and 58 of the Law, and Rules 80, 81, 105, 108 of the Rules, or any other applicable law.<sup>140</sup> The requirement can also entail measures of protection adopted by the SPO during its investigations pursuant to, *inter alia*, Article 35(2)(f) of the Law, and Rule 30(2)(a) of the Rules, or any other applicable law.<sup>141</sup> By the same token and in line with Article 62 of the Law, a person “under protection in the criminal proceedings” can also be a person whose identity or personal data appears in SC or SPO documents or records, the disclosure of which has not been authorised.<sup>142</sup>

77. The second type covers persons who are enrolled by the police or a court in programs of protection. Within the SC framework, any person subject to SC or SPO protection programs falls into this category.<sup>143</sup>

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<sup>138</sup> *Similarly*, Case 07 Trial Judgment, para. 94.

<sup>139</sup> *Similarly*, Case 07 Trial Judgment, para. 95.

<sup>140</sup> *Similarly*, Case 07 Confirmation Decision, para. 44(a); Case 07 Trial Judgment, para. 95.

<sup>141</sup> *Similarly*, Case 07 Confirmation Decision, para. 44(b); Case 07 Trial Judgment, para. 95. *See also* Case 07 Appeal Judgment, paras 183-184.

<sup>142</sup> *Similarly*, Case 07 Confirmation Decision, para. 44(c); Case 07 Trial Judgment, para. 95.

<sup>143</sup> *Similarly*, Case 07 Trial Judgment, para. 96.

78. The proof of protected status under Article 392(2) of the KCC, including the indication of the authority to order such a status or the duration of the measure, if limited, lies in the act (law, court order, competent authority document) itself.<sup>144</sup>

79. Article 392(2) of the KCC seeks to protect not the “identity” of the Protected Persons *as such*, but their “identity” as witnesses, victims, persons of interest, or other participants in the criminal proceedings.<sup>145</sup> Therefore, the fact that the identity of a person is publicly known cannot be equated to the revelation of his or her identity as a *person under protection in criminal proceedings*.<sup>146</sup> “Identity” includes information such as: family name(s), including maiden or previous name(s), first name(s), as well as any prior or current pseudonyms.<sup>147</sup> “Personal data” includes information such as: personal identification number; date and place of birth; prior or current address or residence; nature, location, time and/or duration of previous or current employment; identities of family members; description or location of significant possessions (*e.g.* house, car); and any other detail that may lead to the identification of the person.<sup>148</sup>

80. The basic form of this offence, as provided in Article 392(2) of the KCC, does not require that the unauthorised revelation result in any harm or other prohibited consequence.<sup>149</sup>

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<sup>144</sup> *Similarly*, Case 07 Trial Judgment, para. 97. *See also* Case 07 Appeal Judgment, para. 151. *See also* Case 07 Appeal Judgment, paras 183-184.

<sup>145</sup> *Similarly*, Case 07 Trial Judgment, para. 98. *See also* Case 07 Appeal Judgment, para. 186.

<sup>146</sup> *Similarly*, Case 07 Trial Judgment, para. 98. *See also* Case 07 Appeal Judgment, para. 186.

<sup>147</sup> *Similarly*, Case 07 Confirmation Decision, para. 45; Case 07 Trial Judgment, para. 98.

<sup>148</sup> *Similarly*, Case 07 Confirmation Decision, para. 45; Case 07 Trial Judgment, para. 98.

<sup>149</sup> *Similarly*, Case 07 Confirmation Decision, para. 46; Case 07 Trial Judgment, para. 99. *Conversely*, Article 392(3) of the KCC penalises an aggravated form of this offence punishable by imprisonment of six (6) months to five (5) years” where the offence stipulated in Article 392(2) of the KCC “results in serious consequences for the person under protection or the criminal proceedings are made impossible or severely hindered”.



(ii) Mental element

81. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>150</sup>

82. For direct intent, the perpetrator must have acted with awareness of, and desire for, revealing without authorisation the identity or personal data of Protected Persons.<sup>151</sup>

83. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, the identity or personal data of Protected Persons might be revealed without authorisation, and the perpetrator acceded to the occurrence of that result.<sup>152</sup>

### 3. Contempt of Court

84. The SPO charges Messrs Thaçi, Smakaj, Kilaj, Fazliu and Kuçi under Article 393 of the KCC (Counts 9- 12, 14, 16, 18, 20-21).

85. Article 393 of the KCC provides that “[w]hoever fails to obey any final order, ruling, decision or judgment of any Court in the Republic of Kosovo or who refuses or obstructs the publication of any final decision or, judgment of such court shall be punished by a fine or imprisonment up to six (6) months”.

(a) Material elements

86. The offence of contempt of court, within the meaning of Article 393 of the KCC, is committed through: (i) failure to obey any final order, ruling, decision or judgment of any court in Kosovo; or (ii) refusal to publish or obstruction of the publication of any final decision or, judgment of such court. For the fulfilment of the *actus reus* of the offence, it suffices that a person carries out either of the two

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<sup>150</sup> See Case 07 Confirmation Decision, para. 47; Case 07 Trial Judgment, paras 101, 104.

<sup>151</sup> See Case 07 Confirmation Decision, para. 48; Case 07 Trial Judgment, para. 105.

<sup>152</sup> See Case 07 Confirmation Decision, para. 49; Case 07 Trial Judgment, para. 106.

alternatives provided in Article 393 of the KCC. In the present case, it is only the first limb of the offence that is relevant.

87. “Failure to obey” means non-compliance with something due or required.<sup>153</sup> Article 393 of the KCC does not delimit what constitutes a “final order, ruling, decision or judgment”. Yet, Article 485(1) of the KCPC provides that, “[a] judgment shall become final when it may no longer be contested by an appeal or when no appeal is permitted”. This definition also applies to other acts, such as orders, rulings, and decisions. Within the SC framework, an order or decision shall become final when it may no longer be challenged on appeal.<sup>154</sup> By the same token, a judgment shall become final when it may no longer be contested by second instance or third instance appellate proceedings.<sup>155</sup>

88. Article 393 of the KCC covers orders, rulings, decisions or judgments issued by *any* Kosovo court, in *any* type of proceedings: criminal, civil, administrative, financial, or enforcement proceedings.<sup>156</sup> Within the SC legal framework, and pursuant to Article 162 of the Constitution of Kosovo, and Articles 3(1) and (6) of the Law, this concerns any orders, decisions, and judgments by any SC Panel, at the level of the Basic Court of Prishtinë/Priština, the Court of Appeals, the Supreme Court and the Constitutional Court.

(b) Mental element

89. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.

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<sup>153</sup> See *Cambridge Dictionary Online* (Cambridge University Press, 2024) <<https://dictionary.cambridge.org/dictionary/english/failure>>; <<https://dictionary.cambridge.org/dictionary/english/obey>>; <<https://dictionary.cambridge.org/dictionary/english/non-compliance>>, accessed 29 November 2024. See also *Salihu et al.*, Article 401 of the 2012 KCC, mn. 2, p. 1145.

<sup>154</sup> See Article 45 of the Law; Rules 77, 170 of the Rules.

<sup>155</sup> See Articles 46-47; Rules 173, 176, 186.

<sup>156</sup> See, *similarly*, *Salihu et al.*, Article 401 of the 2012 KCC, mn. 2, p. 1145.

90. For direct intent, the perpetrator must have acted with awareness of, and desire for, disobeying any final order, ruling, decision or judgment of any court in Kosovo, including the SC Panels.

91. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, he or she would fail to obey any final order, ruling, decision or judgment of any court in Kosovo, including the SC Panels, and the perpetrator acceded to the occurrence of that result.

### C. MODES OF LIABILITY

92. In accordance with Article 16(3) of the Law and Articles 17, 21, 28, 31, 32, 33 and 35 of the KCC, the Specialist Prosecutor pleads the following modes of liability: commission, attempt, co-perpetration, agreement to commit a criminal offence, incitement, and assistance.<sup>157</sup>

93. The objective elements of these modes of liability are set out below. As regards their respective subjective element, these modes of liability require direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>158</sup>

#### 1. Commission

94. Commission, within the meaning of Article 17(1) of the KCC, requires that the perpetrator physically carries out the objective elements of an offence, or omits to act when required to do so under the law.<sup>159</sup>

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<sup>157</sup> Further Amended Indictment, paras 37-48, 50-54

<sup>158</sup> *Similarly*, Case 07 Confirmation Decision, para. 82; Case 07 Trial Judgment, paras 181, 187, 192, 196, 199, 202; Case 10 Confirmation Decision, para. 56; Case 11 Confirmation Decision, para. 56.

<sup>159</sup> *Similarly*, Case 07 Confirmation Decision, para. 83; Case 07 Trial Judgment, para. 180; Case 10 Confirmation Decision, para. 57; Case 11 Confirmation Decision, para. 57.

## 2. Co-Perpetration

95. Co-perpetration, within the meaning of Article 31 of the KCC, requires that two or more persons jointly participate in or substantially contribute in any other way to the commission of an offence.<sup>160</sup>

96. Joint commission does not require a previous agreement on the commission of the offence.<sup>161</sup> To infer the existence of an agreement, it suffices that the actions of the co-perpetrators are concerted in the course of committing the offence.<sup>162</sup>

97. Article 31 of the KCC does not delimit what constitutes participation in, or substantial contribution to, the commission of the offence. In any event, each person participating in or substantially contributing to the offence must fulfil one or more of the required material elements of that offence.<sup>163</sup>

## 3. Incitement

98. Incitement, within the meaning of Article 32 of the KCC, requires that the perpetrator exerts psychological influence on another person with a view to creating or strengthening the decision of that other person to commit a criminal offence. Such influence may take the form of, *inter alia*, encouraging, urging or

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<sup>160</sup> *Similarly*, Case 07 Confirmation Decision, para. 84; Case 07 Trial Judgment, para. 185; Case 10 Confirmation Decision, para. 58; Case 11 Confirmation Decision, para. 58.

<sup>161</sup> *Similarly*, Case 07 Confirmation Decision, para. 85; Case 07 Trial Judgment, para. 186; Case 10 Confirmation Decision, para. 59; Case 11 Confirmation Decision, para. 59. *See also* Kosovo, Supreme Court, *S.H.*, PAII-KZII-2/2016, [Judgment](#), 20 September 2016, para. 58.

<sup>162</sup> *Similarly*, Case 07 Confirmation Decision, para. 85; Case 07 Trial Judgment, para. 186; Case 10 Confirmation Decision, para. 59; Case 11 Confirmation Decision, para. 59. *See also* Kosovo, Court of Appeals, *S.G. et al.*, PAKR 966/2012, [Judgment](#), 11 September 2013, para. 74.

<sup>163</sup> *Similarly*, Case 07 Confirmation Decision, para. 86; Case 10 Confirmation Decision, para. 60; Case 11 Confirmation Decision, para. 60. *See also* Kosovo, Supreme Court, *S.H.*, PAII-KZII-2/2016, [Judgment](#) (“*S. H. Judgment*”), 20 September 2016, para. 58.

pressuring the person to commit the offence, as well as guiding or instructing him or her in the commission thereof.<sup>164</sup>

99. Pursuant to Article 32(1) of the KCC, incitement requires that the perpetrator incites another person to commit a criminal offence and penalises the inciter if the criminal offence is committed.<sup>165</sup>

100. Pursuant to Article 32(2) of the KCC, the inciter also incurs responsibility if the criminal offence is attempted, but not committed.<sup>166</sup>

101. Pursuant to Article 32(3) of the KCC, the inciter also incurs responsibility for inciting an offence punishable by imprisonment of at least five (5) years, even if this offence is not attempted.<sup>167</sup>

#### **4. Assistance**

102. Assistance, within the meaning of Article 33(1) of the KCC, requires that the person assists the perpetrator in the commission of a criminal offence.<sup>168</sup>

103. Pursuant to Article 33(2) of the KCC, such assistance includes, but is not limited to: giving advice or instruction on how to commit a criminal offence; making available the means to commit a criminal offence; creating conditions or removing the impediments to the commission of a criminal offence; or promising in advance to conceal evidence of the commission of a criminal offence, the perpetrator or identity of the perpetrator, the means used for the commission of a criminal offence, or the profits or gains which result from the commission of a criminal offence.

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<sup>164</sup> *Similarly*, Case 07 Confirmation Decision, para. 88; Case 07 Trial Judgment, para. 191. *See also* [S. H. Judgment](#), pp. 16-17; *Salihu et al.*, Article 32 of the 2012 KCC, mn. 10, p. 160.

<sup>165</sup> *Similarly*, Case 07 Confirmation Decision, para. 89; Case 07 Trial Judgment, para. 193.

<sup>166</sup> *Similarly*, Case 07 Confirmation Decision, para. 89; Case 07 Trial Judgment, para. 193.

<sup>167</sup> *Similarly*, Case 07 Confirmation Decision, para. 89; Case 07 Trial Judgment, para. 193.

<sup>168</sup> *Similarly*, Case 07 Confirmation Decision, para. 91; Case 07 Trial Judgment, para. 195; Case 10 Confirmation Decision, para. 62; Case 11 Confirmation Decision, para. 61.

## 5. Agreement to Commit a Criminal Offence

104. An agreement to commit a criminal offence, within the meaning of Article 35 of the KCC, requires that (i) the perpetrator agrees with one or more other persons to commit a criminal offence, and (ii) one or more of these persons undertakes any substantial act towards the commission of the criminal offence.<sup>169</sup>

105. Pursuant to Article 35(2) of the KCC, a “substantial act towards the commission of a crime” need not be a criminal act, but must amount to a substantial preparatory step towards the commission of the criminal offence which the persons have agreed to commit.<sup>170</sup>

## 6. Attempt

106. Attempt, within the meaning of Article 28 of the KCC, requires that the perpetrator takes action towards the commission of an offence, but the action is not completed or the elements of the intended offence are not fulfilled.<sup>171</sup>

107. Article 28 of the KCC does not further delimit what constitutes taking action towards the commission of the offence. In any case, such action must amount to more than preparatory acts, which are separately provided for in Article 27 of the KCC. Accordingly, a perpetrator attempts the commission of an offence when he or she has intentionally begun to execute the offence by fulfilling one or more of the material elements of the offence.<sup>172</sup>

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<sup>169</sup> *Similarly*, Case 07 Confirmation Decision, para. 93; Case 07 Trial Judgment, para. 198; Case 10 Confirmation Decision, para. 64; Case 11 Confirmation Decision, para. 63.

<sup>170</sup> *Similarly*, Case 07 Confirmation Decision, para. 94; Case 10 Confirmation Decision, para. 65; Case 11 Confirmation Decision, para. 64.

<sup>171</sup> *Similarly*, Case 07 Confirmation Decision, para. 95; Case 07 Trial Judgment, para. 201; Case 10 Confirmation Decision, para. 66; Case 11 Confirmation Decision, para. 65.

<sup>172</sup> *Similarly*, Case 07 Trial Judgment, para. 201.

108. Pursuant to Article 28(2) of the KCC, an attempt to commit a criminal offence is penalised only if (i) the punishment for the committed offence is three (3) or more years, or (ii) it is expressly provided so by law.

## VI. CHARGES

109. Before examining the supporting material in relation to each charge and determining whether a well-grounded suspicion has been established against the Suspects, the Pre-Trial Judge notes that the SPO has complied with the requirements under Rule 86(3) of the Rules by submitting: (i) the Further Amended Indictment; (ii) evidentiary material supporting the facts underpinning the charges, including additional supporting material and submissions ordered by the Pre-Trial Judge; and (iii) a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

### A. THE OFFENCES CHARGED

#### 1. **Obstructing Official Persons in Performing Official Duties (Article 401(2)-(3) and (5) KCC) (Counts 1, 2, 3, 4, 13, 15, 17, 19)**

110. In the Further Amended Indictment, the SPO alleges that, between at least 26 June and 2 November 2023, in the context of the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit, Messrs Thaçi, Fazliu, Smakaj, Kilaj, and others, by the common action of three groups of persons, in which they participated respectively, obstructed or attempted to obstruct official persons in performing official duties in the framework of proceedings before the SC.<sup>173</sup>

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<sup>173</sup> Further Amended Indictment, paras 6-13, 18-29.

111. The SPO further alleges that, between at least 1 and 13 September 2023, in the context of the 3 September 2023 Visit, Messrs Thaçi and Kuçi both agreed to obstruct official persons in performing official duties through the common action of a group which included one or more other persons.<sup>174</sup>

(a) Material elements

(i) Participates in a group of persons which by common action

112. In the following, the Pre-Trial Judge will set forth the analysis of the facts underpinning the charge of obstruction as they unfolded in chronological order. After introducing the obstructive conduct, specifying the witness(es) to be interfered with and the scheduled timing of the testimony concerned, the analysis extends to, as the case may be: (i) the content of the (then) impending testimony; (ii) the manner in which the witness(es) should testify; (iii) information about the contacts with witness(es) concerned; (iv) the impact of the instructions on the witnesses' testimony; and (v) significant circumstantial factors of the visits.

a. 2 July 2023 Visit

113. The supporting material shows that, on 2 July 2023, during an approximately two-hour non-privileged visit to Mr Thaçi at the SC Detention Facilities by Mr Fazliu,<sup>175</sup> Mr Thaçi shared information about SPO witnesses in the *Thaçi et al.* trial<sup>176</sup> and provided precise instructions that Mr Fazliu was to convey to a particular witness before his testimony in Case 06.<sup>177</sup> The supporting material

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<sup>174</sup> Further Amended Indictment, paras 6-9, 14-17, 25-29.

<sup>175</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, pp. 1-159; SC Detention Facilities Visit Log, 117793-117796, p. 117793 (13h55-16h00).

<sup>176</sup> See *infra* para. 114 and supporting material referenced therein. See also English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 53, lines 12-14; Declaration of the SPO Witness Security Officer, 119396-119410, p. 119396, para. 2, p. 119397, para. 7, pp. 119406-119407, paras 1-9, pp. 119408-119410, paras 1-12; Case 06 Transcript of Hearing, 2020-06 20230711 ENG pp 5468-5507, p. 5484, lines 11-17; Case 06 SPO Filing, KSC-BC-2020-06 - F01594 - A02, pp. 482-486).

<sup>177</sup> See *infra* paras 114-125 and supporting material referenced therein.



demonstrates that Mr Thaçi's instructions covered both the content of the (then) impending testimony of the witness as well as the manner of testifying.<sup>178</sup>

114. In particular, the English transcript of the audio-recording of the 2 July 2023 Visit ("2 July 2023 Visit Transcript") shows that, during said visit, Mr Thaçi discussed, among others, about an individual named "Remi".<sup>179</sup> The Pre-Trial Judge finds that, based on the supporting material available – i.e. 2 July 2023 Visit Transcript, the declaration of the SPO Witness Security Officer, together with the transcripts of hearings in Case 06 – the aforesaid name refers to Rrustem Mustafa, an SPO witness with the allocated witness code W04746 ("Witness 1") who is not subject to protective measures,<sup>180</sup> and who was slated at the time to testify in July 2023 in the *Thaçi et al.* trial.<sup>181</sup> The declaration of the SPO Witness Security Officer also shows that, by 30 January 2023 at the latest, Witness 1 had been identified as an SPO witness in the *Thaçi et al.* trial, in disclosures to the defence teams in

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<sup>178</sup> See *infra* paras 114-123 and supporting material referenced therein.

<sup>179</sup> See English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 32, line 25 to p. 33, line 7; p. 38, line 25 to p. 42, line 24; p. 43, line 17 to p. 44, line 13, p. 45, line 25 to p. 57, line 2, p. 119, lines 12-13.

<sup>180</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, pp. 1-159; Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4, p. 118244, para. 7; Case 06 Transcript of Hearing, 2020-06 20230711 ENG pp 5468-5507, p. 5471, lines 7-11.

<sup>181</sup> Declaration of the SPO Witness Security Officer, 118207-118208, pp. 1-2. The Pre-Trial Judge notes that the supporting material refers to witness code W04647 (the same witness code appears in a filing that refers to that same supporting material see KSC-BC-2020-06, F001634, Defence, *Urgent Thaçi Defence Request for a Definitive Order of Appearance of the SPO reserve witnesses*, 3 July 2023, public, para. 5). The Pre-Trial Judge considers that this is a typo, given that no witness with that allocated code testified in July 2023 in the *Thaçi et al.* trial. Rather, the Pre-Trial Judge observes that [REDACTED] W04746, took the stand in July 2023 in the *Thaçi et al.* trial. The Pre-Trial Judge notes, in particular, that W04746 testified from 11 to 18 July 2023 (see Case 06 Transcripts of Hearings, KSC-BC-2020-06 20230711 ENG pp 5468-5507, KSC-BC-2020-06 20230712 ENG, KSC-BC-2020-06 20230713 ENG pp 5610-5674, KSC-BC-2020-06 20230714 ENG pp 5692-5804, KSC-BC-2020-06 20230717 ENG, and KSC-BC-2020-06 20230718 ENG pp 5929-5968). See English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 39, line 2 to p. 40, line 2, where Messrs Thaçi and Fazliu are seemingly discussing Witness 1's travel to The Hague for the latter's forthcoming testimony in the *Thaçi et al.* trial. See also English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 45, lines 24-25.

Case 06.<sup>182</sup> Lastly, according to the transcripts of hearings in Case 06, Witness 1 testified on 11-14 and 17-18 July 2023 in said trial.<sup>183</sup>

115. As to the content of the (then) impending testimony in Case 06, the 2 July 2023 Visit Transcript reveals that Mr Thaçi, who characterised Witness 1's evidence as "decisive" for his case,<sup>184</sup> conveyed the instruction that Witness 1 is to minimise his [REDACTED] the *Ushtria Çlirimtare e Kosovës*, known in English as the Kosovo Liberation Army ("KLA"),<sup>185</sup> and focus on [REDACTED].<sup>186</sup> In particular, Mr Thaçi instructed to say that Witness 1 was "[...] [REDACTED]".<sup>187</sup> Mr Thaçi also told Mr Fazliu to tell Witness 1 [REDACTED]<sup>188</sup> and that Witness 1 was "[REDACTED]".<sup>189</sup> The Pre-Trial Judge considered the aforementioned extracts of the 2 July 2023 Visit Transcript in conjunction with Witness 1's previous interview with the SPO, in which Witness 1 indicated that he [REDACTED].<sup>190</sup>

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<sup>182</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

<sup>183</sup> Case 06 Transcripts of Hearings, KSC-BC-2020-06 20230711 ENG pp 5468-5507, KSC-BC-2020-06 20230712 ENG, KSC-BC-2020-06 20230713 ENG pp 5610-5674, KSC-BC-2020-06 20230714 ENG pp 5692-5804, KSC-BC-2020-06 20230717 ENG, and KSC-BC-2020-06 20230718 ENG pp 5929-5968. See also Annex 1 to SPO Submissions, p. 2.

<sup>184</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 39, line 12, p. 49, lines 17-25.

<sup>185</sup> See KSC-BC-2020-06, F01323, Specialist Prosecutor, *Annex 1 to Prosecution Further Submissions Pursuant to Decision F01229*, 27 February 2023, public, para. 2.

<sup>186</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 40, line 3 to p. 41, line 1, p. 47, lines 10-22, p. 48, lines 13-25, p. 51, lines 22-23, p. 52, lines 4-5. The Pre-Trial Judge notes the SPO's submission that words placed between slashes in the transcripts of audio-recordings produced as supporting material denote information added by the SPO interpreter when necessary to make sentences comprehensible (see Further Amended Rule 86(3)(b) Outline, footnote 1). The Pre-Trial Judge clarifies that she has refrained to draw any conclusions on the sole basis of these additions.

<sup>187</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 40, line 3 to p. 41, line 1.

<sup>188</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 52, lines 4-5.

<sup>189</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 47, lines 10-22.

<sup>190</sup> English Transcript of 2019 SPO Interview of Witness 1, 82894-TR-ET, 082894-TR-ET Part 1, p. 7, lines 21-25, p. 1, line 13 to p. 3, line 2. See also Declaration of the SPO Witness Security Officer, 119396-119410, p. 119408, para. 4.

116. The 2 July 2023 Visit Transcript also shows that Mr Thaçi instructed that Witness 1 is to [REDACTED],<sup>191</sup> [REDACTED]<sup>192</sup> [REDACTED].<sup>193</sup>

117. The 2 July 2023 Visit Transcript further demonstrates that Mr Thaçi instructed that Witness 1 is to deny certain facts related to [REDACTED].<sup>194</sup> In particular, Witness 1 is to say that “[REDACTED]” and that “[REDACTED]” and that Witness 1 is not to “[REDACTED]”.<sup>195</sup>

118. Moreover, the 2 July 2023 Visit Transcript indicates that Mr Thaçi instructed that Witness 1 is to [REDACTED].<sup>196</sup>

119. The 2 July 2023 Visit Transcript likewise indicates that Mr Thaçi instructed that, as regards [REDACTED],<sup>197</sup> [REDACTED], and that, if asked by the SPO, Witness 1 can respond that: “[...] [w]hat [he] ha[s] said is the truth. [He] [doesn’t know about that rest [and] [REDACTED]”.<sup>198</sup>

120. According to the 2 July 2023 Visit Transcript, Mr Thaçi also gave Mr Fazliu information as to: (i) the length of Witness 1’s direct examination;<sup>199</sup> (ii) whether Witness 1 would testify publicly;<sup>200</sup> (iii) the use of a specific associated exhibit in

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<sup>191</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 40, line 25 to p. 41, line 2, p. 47, line 23 to p. 48, line 8.

<sup>192</sup> See Scan of Document Seized from Bashkim SMAKAJ on 30 October 2023, SPOE00344952-SPOE00344961-ET, p. 3. See also KSC-BC-2020-06, F01050, Defence for Mr Thaçi, *Public Redacted Version of Pre-Trial Brief of Mr Hashim Thaçi*, 21 October 2022, public, para. 55.

<sup>193</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 47, line 23 to p. 48, line 8.

<sup>194</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 47, lines 7-12.

<sup>195</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 48, line 20 to p. 49, line 15.

<sup>196</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 49, lines 4-5.

<sup>197</sup> English Transcript of 2019 SPO Interview of Witness 1, 082894-TR-ET, 82894-TR-ET Part 2, p. 25, line 18 to p. 26, line 6.

<sup>198</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 53, line 16 to p. 54, line 24.

<sup>199</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 42, lines 3-6.

<sup>200</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 119, lines 14-17.

Witness 1's examination;<sup>201</sup> and (iv) a person's non-inclusion on the SPO's witness list.<sup>202</sup>

121. As to the manner of testifying, according to the 2 July 2023 Visit Transcript, Mr Thaçi instructed that Witness 1 is to testify concisely, by "keep[ing] it brief" or "answer[ing] briefly"<sup>203</sup> so that Witness 1 does not "slip",<sup>204</sup> and not to "philosophise"<sup>205</sup> or "give an opinion".<sup>206</sup>

122. The 2 July 2023 Visit Transcript reveals that Mr Thaçi also instructed Witness 1 to use the preparatory meeting with the SPO, before he takes the stand in the *Thaçi et al.* trial, as an opportunity to make any change to his (at the time) forthcoming testimony.<sup>207</sup>

123. The 2 July 2023 Visit Transcript shows that Mr Thaçi also provided Mr Fazliu with arguments on how to persuade Witness 1 to testify as Mr Thaçi instructed. For instance, he told Mr Fazliu to "[t]ell [Witness 1] 'You are coming here, leave this place a hero. Don't leave shameful'".<sup>208</sup> Said transcript also demonstrates that Mr Thaçi directed that Mr Fazliu use language such as "All our eyes are on you. [...] will be watching you [...]"<sup>209</sup> in order to pressurise Witness 1.<sup>210</sup> Mr Thaçi likewise instructed Mr Fazliu to remind Witness 1 that the latter had himself been

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<sup>201</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 53, lines 16-17. *See supra* footnote 198.

<sup>202</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 42, line 23 to p. 43, line 13.

<sup>203</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 45, line 24 to p. 46 line 1, p. 47, line 7, p. 52, line 17.

<sup>204</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 40, lines 3-7, p. 42, lines 3-22.

<sup>205</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 40, line 4.

<sup>206</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 54, lines 17-18.

<sup>207</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 41, lines 22-25.

<sup>208</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 49, lines 17-18.

<sup>209</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 52, lines 15-16.

<sup>210</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 51, lines 11-19.

“dragged through proceedings” for fourteen years,<sup>211</sup> referring to the trial against Latif Gashi *et al.*<sup>212</sup>

124. As to the response or reaction of Mr Thaçi’s visitor, the 2 July 2023 Visit Transcript demonstrates that Mr Fazliu fully agreed to convey Mr Thaçi’s instructions to Witness 1.<sup>213</sup> Said transcript also reveals that Mr Fazliu had already spoken to Witness 1 shortly before travelling to The Hague.<sup>214</sup>

125. As to the contacts with the witness concerned, according to the 2 July 2023 Visit Transcript, Messrs Thaçi and Fazliu also discussed the means by which Mr Fazliu should get in touch with Witness 1 again to further discuss Witness 1’s (then) impending testimony.<sup>215</sup> In this context, Mr Thaçi cautioned Mr Fazliu that the SPO would likely ask Witness 1 whether anyone had reached out to him, and, that he would not want to put Mr Fazliu at risk, and, that, therefore, Mr Fazliu should contact Witness 1 “indirectly”.<sup>216</sup> The 2 July 2023 Visit Transcript shows that, in response, Mr Fazliu suggested that Mr Fazliu’s son, Mr F. Fazliu, would reach out to Witness 1 and propose to go for a coffee.<sup>217</sup> In reply, Mr Thaçi appeared to agree and further instructed that Mr Fazliu was to also be present during that meeting.<sup>218</sup>

126. Data extracted from the seized mobile telephone of Witness 1 further reveals that Messrs Fazliu and F. Fazliu had both previously met with Witness 1 on 29 June

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<sup>211</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 51, lines 18-24, p. 52, lines 14-23. *See* Case 06 Transcript of Hearing, KSC-BC-2020-06 20230711 ENG pp 5468-5507, p. 5471, line 25 to p. 5472, line 4, which refers to these proceedings.

<sup>212</sup> *See Prosecutor v. Latif Gashi et al.*, C. Nr. 425/2001, District Court of Pristina, [Verdict](#), 16 July 2003.

<sup>213</sup> English Transcript of Audio Recording, 114037-TR-AT-ET, p. 40, line 3 to p. 41, line 7.

<sup>214</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 39, lines 4-8, p. 41, lines 2-4, p. 50, line 19 to p. 51, line 3. *See infra* para. 126.

<sup>215</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 50, line 10 to p. 51, line 14. *See also* p. 41, lines 5-12.

<sup>216</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 50, line 9 to p. 51, line 12.

<sup>217</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 50, line 9 to p. 51, line 12. *See also* p. 41, lines 5-12.

<sup>218</sup> *See supra* footnote 216.

2023, following an exchange of messages on 26 June 2023.<sup>219</sup> The 2 July 2023 Visit Transcript shows that Mr Fazliu refers to this meeting when relaying to Mr Thaçi during that visit that Witness 1 was willing to receive instructions from Mr Thaçi on how to testify.<sup>220</sup>

127. Data extracted from the seized mobile telephone of Witness 1 likewise demonstrates that, on 3 July 2023, Mr F. Fazliu exchanged messages with Witness 1, asking to have coffee.<sup>221</sup> In the view of the Pre-Trial Judge, this conforms with the discussion between Messrs Thaçi and Fazliu during the 2 July 2023 Visit that, upon Mr Fazliu's return to Kosovo, Mr F. Fazliu would reach out to Witness 1 and propose to meet for a coffee, and, as instructed by Mr Thaçi, Mr Fazliu would also be present during that meeting.<sup>222</sup>

128. Furthermore, as to the impact of Mr Thaçi's instruction, the transcripts of hearings in Case 06 reveals that, within days after the 2 July 2023 Visit, Witness 1 began testifying in said trial on 11 July 2023.<sup>223</sup> According to said transcripts, Witness 1 seemingly deviated from his previous SPO interview on points which conformed to the instructions Mr Thaçi gave to Mr Fazliu during the 2 July 2023 Visit, namely regarding [REDACTED]<sup>224</sup> [REDACTED].<sup>225</sup> The transcript of the audio-recording of the 6 October Visit further indicates that, during said visit,

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<sup>219</sup> Mobile Telephone Data, SPOE00343653-00343656, pp. SPOE00343655-00343656, lines 1-21. *See also* English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 39, lines 4-8, p. 41, lines 2-4, p. 50, line 19 to p. 51, line 3.

<sup>220</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 39, lines 5-16, p. 41, lines 2-3, p. 55, line 23 to p. 56, line 3.

<sup>221</sup> Mobile Telephone Data, SPOE00343653-00343656, p. SPOE00343656, line 22-29.

<sup>222</sup> *See supra* paras 124-125 and supporting material referenced therein.

<sup>223</sup> *See supra* para. 114 and supporting material referenced therein.

<sup>224</sup> *Compare* English Transcript of 2019 SPO Interview of Witness 1, 082894-TR-ET, 082894-TR-ET Part 4, p. 13, lines 11-25; English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 40, lines 3-24, p. 52, lines 4-6, p. 55, lines 5-7, p. 56, lines 6-22 *with* Case 06 Transcript of Hearing, KSC-BC-2020-06 20230711 ENG pp 5468-5507, p. 5481, line 17 to p. 5482, line 12, p. 5484, line 24 to p. 5485, line 9.

<sup>225</sup> *Compare* English Transcript of 2019 SPO Interview of Witness 1, 082894-TR-ET, 082894-TR-ET Part 3, p. 19, line 9 to p. 21, line 1; English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 49, line 4 *with* Case 06 Transcript of Hearing, KSC-BC-2020-06 20230712 ENG, p. 5558, line 23 to p. 5561, line 11.

Mr Thaçi expressed his satisfaction with Witness 1's testimony, which, according to the discussion during that visit, Witness 1 appeared to conform to his instructions to be concise, to "not allow things go further than [REDACTED]", [REDACTED] "and that was it".<sup>226</sup>

129. Additionally, the 2 July 2023 Visit Transcript suggests that Mr Thaçi may have tasked Mr Fazliu with approaching other SPO witnesses in a similar manner.<sup>227</sup>

130. Lastly, as to the circumstances of the visit, according to the 2 July 2023 Visit Transcript, in the course of said visit, Mr Thaçi spoke at times with a low voice and whispered.<sup>228</sup>

b. 3 September 2023 Visit

131. Similarly to the other visits, the supporting material shows that, during an approximately three-hour non-privileged visit to Mr Thaçi on 3 September 2023 at the SC Detention Facilities by Mr Kuçi<sup>229</sup> – who at the time was a member of the

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<sup>226</sup> See English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 35, lines 7-24.

<sup>227</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 43, lines 15-18.

<sup>228</sup> See for instance, English Transcript of Audio Recording, 114037-TR-AT-ET, p. 41, lines 5-17 ("HASHIM THAÇI: [whispers] 'Brief'. 'Brief'. They will call him [Whispers with an even lower tone of voice] they will call him about – they will call him, but do not [Indiscernible]. FADIL FAZLIU: No, no. No, no just to have a coffee. No, no. Nothing like that. Never. Because I have my son, Fahri, who /?lives/ next to him [Indiscernible], and will ask him on the phone 'When can we have a coffee?'. HASHIM THAÇI: [Speaks in a quiet voice] That's right! Not you. [Whispers] Tell him 'You will have two days with the Americans' They call him two days earlier 'Do you have anything to be corrected, do you have anything?'. Tell him 'Get it done then'. When they show him two days earlier – will he get a lawyer?"), p. 45, line 21 to p. 46, line 7 ("FADIL FAZLIU: Everyone thinks for himself. That's right, that's right. HASHIM THAÇI: Ahhhh! Fuck it! Who else was it? But the first official coming is Remi. [Whispers] Tell him 'Be brief', [Indiscernible]. Do you have anything? FADIL FAZLIU: Uh? HASHIM THAÇI: [Whispers] Do you have anything? FADIL FAZLIU: No. HASHIM THAÇI: So I can show you, [Indiscernible] – FADIL FAZLIU: Because you left the pencil over there), p. 47, lines 7-17 (HASHIM THAÇI: Be brief. [Whispers] He should answer briefly. [door closes] No, no [Whispers] You know it yourself. FADIL FAZLIU: Yes, done, yes. HASHIM THAÇI: [Whispers] '[REDACTED]' – FADIL FAZLIU: Yes. HASHIM THAÇI: [Indiscernible] [REDACTED]'. FADIL FAZLIU: [REDACTED]. HASHIM THAÇI: [Whispers] [REDACTED]. FADIL FAZLIU: Yes, yes, that is known, it is known. Yes").

<sup>229</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, pp. 1- 137; SC Detention Facilities Visit Log, 117793-117796, p. 117793 (09h15-12h15).

defence team representing Kadri Veseli (“Mr Veseli”) in the *Thaçi et al.* trial (from at least 3 April to 29 November 2023)<sup>230</sup> – Mr Thaçi discussed information about upcoming SPO witnesses in said trial and provided precise instructions that Mr Kuçi was to convey to the witnesses before their (then) upcoming or impending testimony in Case 06.<sup>231</sup> The supporting material demonstrates that Mr Thaçi’s instructions covered both the content of the (then) upcoming testimony of the witnesses as well the manner of testifying.<sup>232</sup>

132. *Witness 5.* In particular, the English transcript of the audio-recording of the 3 September 2023 Visit (“3 September 2023 Visit Transcript”) shows that during said visit, Mr Thaçi discussed, among others, about an individual named [REDACTED].<sup>233</sup> The Pre-Trial Judge finds that, based on the supporting material available – i.e. the declaration of the SPO Witness Security Officer, together with the 3 September 2023 Visit Transcript – the aforesaid name refers to [REDACTED], an SPO witness with the allocated witness code [REDACTED] (“Witness 5”) who is not subject to protective measures.<sup>234</sup> The declaration of the SPO Witness Security Officer also shows that, by 21 February 2023 at the latest, Witness 5 had been identified as an SPO witness in the *Thaçi et al.* trial, in disclosures to the defence teams in Case 06.<sup>235</sup> Likewise, said declaration shows that a summary pursuant to Rule 95 of the Rules of Witness 5 had already been confidentially disclosed to the defence teams in Case 06, at the time of the 3 September 2023 Visit.<sup>236</sup> Lastly, it is on

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<sup>230</sup> Case 06 Transcript of Hearing, KSC-BC-2020-06 20230403 ENG, p. 2141, lines 6-10; Email Correspondence, 121754-121755, 121729-121730, 121734-121735, 121736-121737, and 121753-121753.

<sup>231</sup> See *infra* paras 132-143 and supporting material referenced therein.

<sup>232</sup> See *infra* paras 132-139 and supporting material referenced therein.

<sup>233</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p.19, line 15.

<sup>234</sup> Declaration of the SPO Witness Security Officer, 119396-119410, p. 119396, paras 2-5, pp. 119401-119402; English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, pp. 1-137.

<sup>235</sup> Declaration of the SPO Witness Security Officer, 119396-119410, p. 119396, para. 2.

<sup>236</sup> Declaration of the SPO Witness Security Officer, 119396-119410, pp. 119396-119397, para. 6, pp. 119401-119402.



evidence that Witness 5 was scheduled to testify in the *Thaçi et al.* trial as part of the [REDACTED],<sup>237</sup> but [REDACTED].<sup>238</sup>

133. As to the content of the (then) upcoming testimony in Case 06, the 3 September 2023 Visit Transcript demonstrates that Mr Thaçi repeatedly told Mr Kuçi that Witness 5 must change his previous statements or interviews on three key topics<sup>239</sup> to reflect that: (i) [REDACTED];<sup>240</sup> (ii) [REDACTED];<sup>241</sup> and (iii) [REDACTED].<sup>242</sup> The 3 September 2023 Visit Transcript also indicates that Mr Thaçi directed Witness 5 to specific sources that ought to inform his testimony,<sup>243</sup> such as “stick[ing] to [REDACTED]’s interview”,<sup>244</sup> and “read[ing] [REDACTED]’s book [and] [REDACTED]’s interviews”.<sup>245</sup>

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<sup>237</sup> Declaration of SPO Witness Security Officer, 119396-119410, p. 119397, para. 7.

<sup>238</sup> [REDACTED].

<sup>239</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 35, line 22 to p. 37, line 7.

<sup>240</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 20, line 25 to p. 21, line 13, p. 27, line 14 to p. 28, line 4 (“HASHIM THAÇI: [Whispers] [Indiscernible] [REDACTED]. HAJREDIN KUÇI: [Whispers] [Indiscernible] HASHIM THAÇI: Yes. [REDACTED] Another thing: [REDACTED]. If he really wants to help us! HAJREDIN KUÇI: Yes, yes. HASHIM THAÇI: [Indiscernible] Because they [REDACTED], a great reputation”), p. 34, line 23 to p. 35, line 1, p. 35, line 22 to p. 36, line 2, p. 36, line 23 to p. 37, line 2. *Compare with* Declaration of the SPO Witness Security Officer, 119396-119410, pp. 119401-119402. *Compare with* Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, p. SPOE00344959. *Compare* conversation during the 3 September 2023 Visit, English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 35, lines 7-24 *with* the conversation during the 9 September 2023 Visit, English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 184, lines 16-23.

<sup>241</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 23, line 21 to p. 24, line 25, p. 34, line 23 to p. 35, line 10, p. 35 line 22 to p. 36, line 3 (“HASHIM THAÇI: [...] These are the three [thing]. I am repeating them again: [...] Secondly, [REDACTED]”), p. 36, line 23 to p. 37, line 2.

<sup>242</sup> 115009 030923-072219-101409-TR-AT Revised-ET, p. 28, line 6 to p. 29, line 13, and, in particular, p. 28, lines 6-11 (“HASHIM THAÇI: [Whispers] ‘[REDACTED]’ [...]”), p. 30, lines 4-10, p. 32, lines 12-23, p. 35, lines 10-15.

<sup>243</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 17, lines 1-2, p. 19, lines 8-9, p. 33, line 8, p. 44, lines 7-14.

<sup>244</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 17, lines 1-2.

<sup>245</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 19, lines 8-9.

134. As to the manner of testifying, it is on evidence that Mr Thaçi expressly advised on how Witness 5 should explain the changes in his testimony if confronted with his prior statements or interviews,<sup>246</sup> by responding that “[p]erhaps I have said it by erroneously”<sup>247</sup> or “[t]hey probably mistranslated what I said” or “I was probably tired and mixed it up”.<sup>248</sup>

135. *Witness 2*. Moreover, the 3 September 2023 Visit Transcript shows that Mr Thaçi discussed, among others, about an individual named “Bisa”.<sup>249</sup> The Pre-Trial Judge finds that, based on the supporting material available, i.e. the declaration of the SPO Witness Security Officer together with the 3 September 2023 Visit Transcript, the aforesaid name refers to Bislim Zyrapi, an SPO witness with the allocated witness code W04752 (“Witness 2”), who is not subject to protective measures.<sup>250</sup> Said declaration also shows that, by 30 January 2023 at the latest, Witness 2 had been identified as an SPO witness in the *Thaçi et al.* trial, in disclosures to the defences teams in Case 06.<sup>251</sup> Likewise, it is on evidence that a summary pursuant to Rule 95 of the Rules of Witness 2’s testimony had already been confidentially disclosed to the Case 06 defence teams, at the time of the 3 September 2023 Visit.<sup>252</sup> Lastly, based on the transcripts of hearings in Case 06, Witness 2 testified on 1-4, 8-11, and 15-18 July 2024 in said trial.<sup>253</sup>

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<sup>246</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 22, line 6, p. 24, lines 11-21, p. 33, lines 8-15, p. 35, lines 7-11, p. 44, lines 7-18.

<sup>247</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 22, line 6.

<sup>248</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 24, lines 16-18.

<sup>249</sup> See English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 45, lines 1, 16, p. 46, lines 1, 8.

<sup>250</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, paras 4-5, p. 118244, para. 7; English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, pp. 1-137.

<sup>251</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

<sup>252</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, para. 8.

<sup>253</sup> Case 06 Transcripts of Hearings, KSC-BC-2020-06 20240701 ENG, KSC-BC-2020-06 20240702 ENG pp 17419-17489, KSC-BC-2020-06 20240703 ENG, KSC-BC-2020-06 20240704 ENG pp 17624-17669, KSC-BC-2020-06 20240708 ENG pp 17750-17828, KSC-BC-2020-06 20240709 ENG, KSC-BC-2020-06

136. As to the content of the (then) upcoming testimony in Case 06, the 3 September 2023 Visit Transcript reveals that Mr Thaçi instructed that Witness 2 is to testify that: (i) Witness 2 was [REDACTED];<sup>254</sup> (ii) Mr Thaçi was [REDACTED];<sup>255</sup> (iii) Mr Thaçi [REDACTED];<sup>256</sup> (iv) [REDACTED];<sup>257</sup> and (v) [REDACTED].<sup>258</sup>

137. As to the manner of testifying, the 3 September 2023 Visit Transcript shows that Mr Thaçi also instructed that Witness 2 relativize his previous statements, *inter alia*, by claiming that this was [REDACTED].<sup>259</sup>

138. *Witness 6*. Furthermore, the 3 September 2023 Visit Transcript reveals that, during the same visit, Mr Thaçi discussed about an individual named [REDACTED].<sup>260</sup> The Pre-Trial Judge finds that, based on the supporting material available, i.e. an SPO filing of 9 June 2023 containing an updated witness list and witness summaries in Case 06 together with the 3 September 2023 Visit Transcript, the aforesaid name refers to [REDACTED], an SPO witness with the allocated witness code [REDACTED] (“Witness 6”) who is subject to protective measures.<sup>261</sup>

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20240710 ENG, KSC-BC-2020-06 20240711 ENG pp 18056-18096, KSC-BC-2020-06 20240715 ENG pp 18167-18294, KSC-BC-2020-06 20240716 ENG pp 18298-18377, KSC-BC-2020-06 20240717 ENG, and KSC-BC-2020-06 20240718 ENG. [REDACTED].

<sup>254</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 45, line 25 to p. 47, line 7, p. 54, line 18 to p. 55, line 4, in particular, p. 54, line 18-20 (“HASHIM THAÇI: [Whispers very quietly] [...] And, tell him, [REDACTED]. [...]”), p. 57, line 22 to p. 58, line 10.

<sup>255</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 49, lines 2-8.

<sup>256</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 46, line 14, to p. 48, line 1 (“HASHIM THAÇI: [Whispers very quietly] [...] [REDACTED]”), p. 50, line 18 to p. 51, line 6, p. 54, line 22 to p. 55, line 4, p. 59, lines 10-13, p. 60, lines 13-18.

<sup>257</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 51, line 13 to p. 52, line 1 (“HASHIM THAÇI: [Whispers] [REDACTED]”).

<sup>258</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 55, lines 14-16 (“HASHIM THAÇI: [Whispers] [...] [REDACTED]. He has this written there and this is how he shuts everything”), p. 58, lines 17-20.

<sup>259</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 50, lines 18-23, p. 55, lines 16-24, p. 59, line 23 to p. 60, line 11.

<sup>260</sup> See English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 86, line 24, p. 89, line 21, p. 90, line 22.

<sup>261</sup> Case 06 SPO Filing, [REDACTED]; English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, pp. 1-137.

Said filing also shows that, by 9 June 2023 at the latest, Witness 6 had been identified as an SPO witness in the *Thaçi et al.* trial, in disclosures to the defence teams in Case 06.<sup>262</sup> Email correspondence between the SPO and the defence teams in Case 06 also shows that (i) on [REDACTED], the SPO informed the defence teams in Case 06 that it intended to call Witness 6 in the next block of hearings [REDACTED], and, subsequently, (ii) on [REDACTED], that Witness 6 would be called to testify upon completion of the previous witness's testimony during the week commencing on [REDACTED].<sup>263</sup> Likewise, it is on evidence that a summary pursuant to Rule 95 of the Rules of Witness 6 had already been disclosed to the Case 06 defence teams, at the time of the 3 September 2023 Visit.<sup>264</sup> Lastly, according to the transcripts of hearings in Case 06, Witness 6 testified on [REDACTED] in the *Thaçi et al.* trial.<sup>265</sup>

139. As to the content of the (then) impending testimony in Case 06, the 3 September 2023 Visit Transcript reveals that, in the course of the visit, Mr Thaçi instructed that Witness 6 was to testify that: (i) [REDACTED];<sup>266</sup> (ii) [REDACTED];<sup>267</sup> and (iii) [REDACTED].<sup>268</sup>

140. *Witnesses 2, 5, and 6.* The 3 September 2023 Visit Transcript further demonstrates that, throughout the visit, Mr Thaçi frequently confirmed that Mr Kuçi understood his instructions and insisted that Mr Kuçi “write down” his

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<sup>262</sup> See Case 06 SPO Filing, [REDACTED].

<sup>263</sup> Email Correspondence, 121732-121733.

<sup>264</sup> Case 06 SPO Filing, [REDACTED].

<sup>265</sup> [REDACTED].

<sup>266</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 88, line 17-23, p. 89, lines 9 to 18 (“HASHIM THAÇI: [REDACTED]. That is all. [REDACTED]. That is all. I do not know, whatever it is, you could wrap it up”), p. 91, lines 4-5; English Transcript of Audio-Recording, 115009 030923-092909\_Enhanced-TR-AT Rev-ET Rev, p. 2, lines 14-19. *Compare with* SPO Witness 6 Summary, 123177-123178.

<sup>267</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 88, line 17 to p. 89, line 10. *Compare with* SPO Witness 6 Summary, 123177-123178.

<sup>268</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 89, lines 18-25, in particular lines 24-25 (“HASHIM THAÇI: [Whispers] Huh? Like this. I do not know more hence I cannot say any more”).

instructions.<sup>269</sup> As evidenced by the 3 September 2023 Visit Transcript, paper shuffling and handwriting sounds can be heard on the audio-recording of the visit.<sup>270</sup>

141. As to the response or reaction of Mr Thaçi's visitor, the 3 September 2023 Visit Transcript shows that, throughout the visit, Mr Kuçi confirmed and/or agreed to convey Mr Thaçi's instructions regarding witness interference<sup>271</sup> and provided suggestions on the instructions to be given to Witness 5 and Witness 6.<sup>272</sup>

142. As to contacts with the witnesses concerned, the 3 September 2023 Visit Transcript reveals that Mr Kuçi also told Mr Thaçi that he had met with Witness 5 to discuss Witness 5's testimony on at least one prior occasion.<sup>273</sup>

143. Furthermore, the supporting material, comprising the 3 September 2023 Visit Transcript and an enhanced version of said transcript, reveals that, during said visit, Messrs Thaçi and Kuçi discussed arrangements to get in touch with Witness 6, before the testimony in Case 06.<sup>274</sup> Said supporting material shows that then Mr Thaçi mentioned an individual referred to as [REDACTED] and an individual

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<sup>269</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 17, lines 1-3, p. 20, lines 23-24, p. 56, line 13 to p. 57, line 15, p. 89, lines 9-13 ("HASHIM THAÇI: [Whispers] If you listen to me [Indiscernible] [REDACTED]. Write down '[REDACTED]'. HAJREDIN KUÇI: I wrote it down. HASHIM THAÇI: Are you writing it properly? HAJREDIN KUÇI: Yes"), p. 90, lines 3-18.

<sup>270</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 88, lines 16-18; English Transcript of Audio-Recording, 115009 030923 092909 Enhanced TR AT Rev ET Rev, p. 1, lines-7-16 ("HASHIM THAÇI: [...] [Whispers very quietly] – [REDACTED]. [Noise of Paper shuffling and of a page being torn off]"), p. 1, lines-7-16, p. 2, lines 14-16 ("HASHIM THAÇI: [REDACTED]. And it is in there. [Sound of paper shuffling] Tell him, [REDACTED]").

<sup>271</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 20, lines 23-24, p. 41, lines 22-23, p. 42, line 23-24, p. 45, line 20, p. 49, lines 10-12, p. 52, lines 19-22, p. 53, lines 13-21, p. 56, line 13 to p. 57, line 15.

<sup>272</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 40, line 1 to p. 41, line 23, p. 57, line 2 ("HAJREDIN KUÇI: [Whispers] This is very important"), p. 90, lines 1-2 ("HAJREDIN KUÇI: [Whispers] Because we must say to him [Indiscernible]").

<sup>273</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 25, lines 4-5, p. 38, line 1 to p. 39, line 25.

<sup>274</sup> English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 88, line 25 to p. 91, line 5; English Transcript of Audio-Recording, 115009 030923 092909 Enhanced TR AT Rev ET Rev, p. 1, line 7 to p. 5, line 14. See *infra* footnote 383.

referred to as [REDACTED].<sup>275</sup> According to the available supporting material, [REDACTED] is an alias used to refer to [REDACTED],<sup>276</sup> [REDACTED].<sup>277</sup> It is also on evidence that [REDACTED] visited Mr Thaçi in the SC Detention Facilities on several occasions, including on [REDACTED] and [REDACTED] with an individual named [REDACTED].<sup>278</sup> The transcript of the audio-recording of the [REDACTED] Visit (“[REDACTED] Visit Transcript”) reveals that Mr Thaçi, [REDACTED] talked about the testimony of witnesses in Case 06,<sup>279</sup> including of Witness 2<sup>280</sup> who had

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<sup>275</sup> English Transcript of Audio-Recording, 115009 030923 092909 Enhanced TR AT Rev ET Rev, p. 2, lines 23 to p. 3, line 1, p. 3, lines 4, 9-10.

<sup>276</sup> English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, p. 5, lines 4, 9, p. 9, line 11, p. 17, line 10 (in which during a visit at the SC Detention Facilities on [REDACTED], Mr Thaçi referred to one of his visitor as [REDACTED]); *compare* SC Detention Facilities Visit Log, 117793-117796, p. 117793 ([REDACTED] is listed as visitor on [REDACTED] and [REDACTED] is a visitor on [REDACTED]); SC Detention Facilities Visit Application Forms, SPOE00361001-SPOE00361005-ET, p. SPOE00361002, and SPOE00360995-SPOE00360999-ET, p. SPOE00360996 (the name of the visitor on both [REDACTED] is registered as [REDACTED]); *with* Contacts in Suspects’ Seized Phones, 123522-123523A, 123524-123525A, and 123520-123521A (contact for the phone number which appears on the aforementioned SC Detention Facilities Visit Application Forms is registered as [REDACTED]); SC Detention Facilities Telephone Logs, 123496-123514, p. 123496 (the same phone number which appears on the aforementioned SC Detention Facilities Visit Application Forms is logged for a phone call on [REDACTED]); and p. 123506 (the same phone number which appears on the aforementioned SC Detention Facilities Visit Application Forms is logged for a phone call on [REDACTED]); Transcript of SC Detention Facilities Recorded Telephone Calls, 123490-123492, p. 123490, line 8 (for a phone call between Mr Thaçi and [REDACTED] on [REDACTED]); and Transcript of SC Detention Facilities Recorded Telephone Calls, 123493-123495, p. 123493, line 8 (for a phone call between Mr Thaçi and [REDACTED] on [REDACTED]). *See also* Special Prosecutor Office of the Republic of Kosovo Record of the Examination of the Defendant, [REDACTED]). The Pre-Trial Judge finds that while the spelling of the name of the concerned individual slightly varies throughout the supporting material, it refers to the same individual based on the personal information contained in said supporting material.

<sup>277</sup> SC Detention Facilities Visitor Application Form, SPOE00360995-SPOE00360999-ET, pp. SPOE00360995- SPOE00360997; Special Prosecutor Office of the Republic of Kosovo Record of the Examination of the Defendant, [REDACTED]; European Union Rule of Law Mission in Kosovo Officer’s Report, [REDACTED].

<sup>278</sup> SC Detention Facilities Visit Log, 117793-117796, p. 117793; SC Detention Facilities Visit Application Forms, SPOE00361001-SPOE00361005-ET, p. SPOE00361002 and SPOE00360995-SPOE00360999-ET, p. SPOE00360996; English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, pp. 1-130.

<sup>279</sup> English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, p. 33 line 6 to p. 34, line 15, p. 58, lines 1-21, p. 59, lines 6-15; pp. 63-66, p. 121, line 6 to p. 123, line 2.

<sup>280</sup> English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, p. 64, lines 18-19 to p. 65, line 3, p. 121, line 15-18.

not yet testified in Case 06 at the time of the visit.<sup>281</sup> Said transcript also shows that, in an apparent reference to an impending SPO witness, Mr Thaçi provided details of how the witness preparation session would be conducted and [REDACTED] commented “[...] and it’s better to remove, remove, remove”.<sup>282</sup> It further reveals that, while discussing the events of 1998-1999, Mr Thaçi told [REDACTED] that they “should hang out” with an unnamed individual.<sup>283</sup> In addition, the supporting material – comprising the 3 September 2023 Visit Transcript and an enhanced version of said transcript, as well as clarifications by the translator as to a few lines of the transcript – indicates that, during the 3 September 2023 Visit, in the same portion of the conversation about arrangements to approach Witness 6, Mr Thaçi refers to other unnamed persons.<sup>284</sup>

144. Lastly, as to the circumstances of the visits, as was the case during the 2 July 2023 Visit, Messrs Thaçi and Kuçi spoke at times with a low voice and whispered.<sup>285</sup>

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<sup>281</sup> See *supra* para. 135.

<sup>282</sup> English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, p. 58, lines 1-21.

<sup>283</sup> English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, p. 66, line 4.

<sup>284</sup> English Transcript of Audio-Recording, 115009 030923 092909 Enhanced TR AT Rev ET Rev, p. 1, lines 7-11, p. 7, line 1 to p. 9, line 6.

<sup>285</sup> See English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 34, lines 7-15, p. 35, line 25 to p. 37, line 24, in particular, p. 36, lines 22-25 (“HAJREDIN KUÇI: [Whispers] Yes HASHIM THAÇI: [Whispers] However, the most important point is [REDACTED]”), p. 37, lines 9-14 (“HAJREDIN KUÇI: [Whispers] Yes. HASHIM THAÇI: [Whispers] If he is asked, he should say, ‘Yes’. He should say it unhesitatingly. If he says it like that it will sound good there. HAJREDI KUÇI: [Whispers] Yes, yes HASHIM THAÇI: [Whispers] [REDACTED] [...]”), p. 45, line 16 to p. 46, line 1 (“HASHIM THAÇI: Bisa [Whispers] HAJREDIN KUÇI: [Whispers] [Indiscernible] [...] HASHIM THAÇI: [Whispers very quietly] This is what you should tell Bisa [...]”), p. 53, line 17 to p. 57, line 16 (“HASHIM THAÇI: [Whispers] Yes. I am convinced. However, he should [Indiscernible] say it here. He should be clear about all this. HAJREDIN KUÇI: [Whispers] And secondly, to make it clear, and be convincing [...] HAJREDIN KUÇI: We didn’t even [Indiscernible] HASHIM THAÇI: [Whispers] ‘Then after the war I was no longer interested’. HAJREDIN KUÇI: [Whispers] ‘We never met or consulted with each other’ [...]”).

Likewise, during the [REDACTED] Visit, Mr Thaçi, [REDACTED] spoke at times with a low voice and whispered.<sup>286</sup>

c. 9 September 2023 Visit and 7 October 2023 Visit

145. *9 September 2023 Visit.* Similarly to the previous visits, the supporting material shows that, during an approximately three-hour non-privileged visit to Mr Thaçi on 9 September 2023 at the SC Detention Facilities by Mr Smakaj, Mr Behrami, Mr Shala, and Ismail Syla (“Mr Syla”),<sup>287</sup> Mr Thaçi shared information about upcoming SPO witnesses in the *Thaçi et al.* trial<sup>288</sup> and provided precise instructions to convey to a particular witness before his testimony in said trial.<sup>289</sup> The supporting material demonstrates that Mr Thaçi’s instructions covered both the content of the (then) upcoming testimony of the witness as well as the manner of testifying.<sup>290</sup>

146. In particular, the English transcript of the audio-recording of the 9 September 2023 Visit (“9 September 2023 Visit Transcript”) shows that, during said visit, Mr Thaçi discussed, among others, about an individual named “Bisa” or “Bislim”.<sup>291</sup> The Pre-Trial Judge finds that, based on the supporting material available – i.e. the declaration of the SPO Witness Security Officer – the aforesaid names refer to

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<sup>286</sup> See for instance English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, p. 34, line 7 to p. 35, line 14 (“HASHIM THAÇI: [Whispers] [REDACTED]. But it is good. He has something else. Because he is an idiot, he has nothing more. Nothing. Send him [Indiscernible], to [In Serbian] *bolnicë* /hospital/, leave him. [...] [REDACTED]: [Whispers] You have to be careful with him. [REDACTED]: Uh? [REDACTED]: [Whispers] You have to be careful; don’t trust him [...]”), p. 35, line 22 to p. 36, line 24 (“[REDACTED]. HASHIM THAÇI: [Whispers] He had said before, he had warned him. No, he is nowhere. No, he is not going [Indiscernible] to [...] HASHIM THAÇI: He shouldn’t act in a way [Indiscernible]. [REDACTED]: [Whispers] Yes, man. I told him “yes”, “no”, as I said. HASHIM THAÇI: [Whispers] Put him also to go [REDACTED]. [...]”), p. 59, lines 18-19 (“[REDACTED]: Okay, okay. But at least [Whispers] [Indiscernible]. But that’s what he said”), p. 63, line 6 to p. 66 line, 22.

<sup>287</sup> SC Detention Facilities Visit Log, 117793-117796, p. 117793 (9h20-12h15); English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, pp. 1-279.

<sup>288</sup> See *infra* paras 146-148. See also English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 179, lines 9-20, p. 186, lines 10-12.

<sup>289</sup> See *infra* paras 146-149.

<sup>290</sup> See *infra* paras 146-149.

<sup>291</sup> See English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 179, line 9, line 18, p. 184, lines 17-18, p. 192, line 7.



Witness 2.<sup>292</sup> Said declaration also shows that, by 30 January 2023 at the latest, Witness 2 had been identified as an SPO witness in the *Thaçi et al.* trial, in disclosures to the defence teams in Case 06.<sup>293</sup>

147. As to the content of the (then) upcoming testimony in Case 06, the 9 September 2023 Visit Transcript reveals that Mr Thaçi, who characterised the evidence of Witness 2 as “crucial”,<sup>294</sup> conveyed instructions on how Witness 2 is to summarise [REDACTED],<sup>295</sup> [REDACTED].

148. As to the manner of testifying, the 9 September 2023 Visit Transcript shows that Mr Thaçi advised that Witness 2 is to testify concisely, speak slowly with breaks, “not let loose”, answer “I don’t know, I don’t remember”, simplify matters, not “get mixed up”, and remove or alter a specific part of his account.<sup>296</sup> The Pre-Trial Judge notes that Mr Thaçi’s instructions to relativize or retract are similar

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<sup>292</sup> See *supra* para. 135 and supporting material referenced therein.

<sup>293</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

<sup>294</sup> English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 179, lines 9-10.

<sup>295</sup> English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 179, line 22 to p. 192, line 9, p. 199, lines 6-20, p. 200, line 6-15, p. 202, line 6 to p. 203, line 3.

<sup>296</sup> English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 179, lines 18 to p. 180, line 4 (“HASHIM THAÇI: But Bisa is [Lowers his voice] crucial. Bisa is smart, but he should use full stops, should use full stops more often. HASHIM THAÇI: Sometimes you have to finish your thoughts. [Laughs] [...] HASHIM THAÇI: Shorter is better”), p. 180, lines 15-25 (“HASHIM THAÇI: It is [Unintelligible] You shouldn’t... You should become very wise, but not too wise... wise in solidifying what you want to say. But not wise in... letting your tongue go loose out there. BASHKIM SMAKAJ: Don’t theorise. HASHIM THAÇI: Don’t let it loose out there. No. No. BLERIM SHALA: That’s right. And I would think, do not give additional explanations. HASHIM THAÇI: Do not give opinions. BLERIM SHALA: No, brother. He should look at this file. HASHIM THAÇI: It is very easy. The KLA history is very easy [...]), p. 196, line 21 to p. 197, line 14, p. 198, line 2 to p. 199, line 6, in particular, p. 198, line 20 to p. 199, line 6 (“HASHIM THAÇI: And it is not a shame here to say he doesn’t remember or ‘I don’t know’, ‘I don’t remember’. The most emblematic sentence here is ‘I don’t know’, ‘I don’t remember’. BLERIM SHALA: Yes. HASHIM THAÇI: Nobody can ask you to answer. BASHKIM SMAKAJ: And this [REDACTED] was trying to do that. BLERIM SHALA: He used it, yes. HASHIM THAÇI: Huh? ARTAN BEHRAMI: He used it. [REDACTED] used it a lot. HASHIM THAÇI: Yes, of course. ‘I don’t know’, ‘I don’t remember’ [...])”), p. 200, line 21 to p. 201, line 7.

to those he conveyed to Mr Kuçi during the 3 September 2023 Visit, thus demonstrating the obstructive pattern employed by Mr Thaçi.

149. As to the contacts with the witness concerned, the 9 September 2023 Visit Transcript shows that, in the course of the instructions conveyed to his visitors, Mr Thaçi urged them to see him again at the SC Detention Facilities in a month and underlined that he expected Witness 2 to do “better than Remi”,<sup>297</sup> which, in the view of the Pre-Trial Judge, refers to Witness 1 who testified in July 2023 in the *Thaçi et al.* trial.<sup>298</sup> According to the supporting material, Messrs Smakaj and Behrami met with Mr Thaçi again for an approximately two and a half hour non-privileged visit on 7 October 2023 at the SC Detention Facilities.<sup>299</sup>

150. *7 October 2023 Visit.* The English transcript of the audio-recording of the 7 October 2023 Visit (“7 October 2023 Visit Transcript”) further reveals that, during said visit, Mr Smakaj reported that Witness 2 asked for explanations in relation to his prior statements as he was afraid that certain aspects had or would “hurt” Mr Thaçi.<sup>300</sup> The supporting material shows that, in response, Mr Thaçi outlined his narrative in relation to [REDACTED].<sup>301</sup>

151. The 7 October 2023 Visit Transcript also reveals that, during said visit, Mr Thaçi provided information as to: (i) the contents of Witness 2’s previous

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<sup>297</sup> English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 199, line 22 to p. 200, line 3.

<sup>298</sup> See *supra* para. 114.

<sup>299</sup> SC Detention Facilities Visit Log, 117793-117796, p. 11793 (13:30-16:00); English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, pp. 1-230.

<sup>300</sup> English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, p. 107, line 13 to p. 108, line 25.

<sup>301</sup> English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, p. 110, line 20 to p. 113, line 7.

interview to the SPO;<sup>302</sup> (ii) other SPO witnesses,<sup>303</sup> and (iii) the number of witnesses removed from the SPO witness list.<sup>304</sup>

152. As to other contextual circumstances, the supporting material shows that, in the course of a search operation conducted on 30 October 2023, the SPO recovered a document from a vehicle associated with Mr Smakaj (“Smakaj Document”).<sup>305</sup> The supporting material, in particular a forensic comparison between the Smakaj Document and a high-resolution colour-printed test page of the single printer at the SC Detention Facilities (“SC Detention Facilities Printer”) accessible to the detainees, including Mr Thaçi, strongly suggests that the Smakaj Document was printed off the SC Detention Facilities Printer.<sup>306</sup>

153. Moreover, the Smakaj Document covers key events and names of members of the KLA from 1998 to 1999. In the view of the Pre-Trial Judge, the Smakaj Document closely reflects the version of events as narrated by Mr Thaçi during the

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<sup>302</sup> Compare English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, p. 108, lines 21-24 with English Transcript of Audio-Recording, 083280-TR-ET, 083280-TR-ET Part 2, p. 15, line 24 to p. 17, line 8.

<sup>303</sup> English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, p. 23, lines 2-10.

<sup>304</sup> English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, p. 20, line 12 to p. 21, line 23.

<sup>305</sup> Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-00344961, SPOE00344952-SPOE00344961-ET.

<sup>306</sup> Forensic Institute Report, 118299-118304, p. 118304.

9 September 2023 Visit and the 7 October 2023 Visit<sup>307</sup> and covers the subject matter of Witness 2's anticipated testimony.<sup>308</sup>

154. *9 September 2023 Visit and 7 October 2023 Visit.* As to the impact of Mr Thaçi's instructions conveyed during both visits, the supporting material shows that Mr Thaçi's instructions appear to be in contrast to Witness 2's SPO interview, as concerns, *inter alia*: (i) [REDACTED];<sup>309</sup> and (ii) [REDACTED].<sup>310</sup>

155. Lastly, as to the circumstances of both visits, the Pre-Trial Judge notes that, as was the case during the previous visits, during the 9 September 2023 Visit, Mr Thaçi

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<sup>307</sup> Compare English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 181, line 22 to p. 183, line 6, p. 191, lines 7-10 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, p. 1 ([REDACTED]); English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, pp. 110, line 21 to p. 112, line 5 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, pp. 1-2 ([REDACTED]); English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 200, lines 12-13 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, p. 2 ([REDACTED]); English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 183, lines 6-11, p. 191, lines 7-12 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, p. 5 ([REDACTED]); English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 184, lines 7-22, p. 186, lines 11-12, p. 191, lines 12-17, p. 200, lines 11-12 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, pp. 6, 8 ([REDACTED]); English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 186, lines 12-16 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, p. 8 ([REDACTED]).

<sup>308</sup> Compare for instance English Transcript of 2019 SPO Interview with Witness 2, 083280-TR-ET, 083280-TR-ET Part 11, p. 20, line 9 to p. 21, line 23 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, pp. 9-10 ([REDACTED]); Compare English Transcript of 2019 SPO Interview with Witness 2, 083280-TR-ET, 083280-TR-ET Part 7, p. 8, line 22 to p. 9, line 2, 083280-TR-ET Part 11, p. 20, line 1 to p. 33, line 24 with Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, pp. 9-10 ([REDACTED]).

<sup>309</sup> English Transcript of 2019 SPO Interview with Witness 2, 083280-TR-ET, 083280-TR-ET Part 1, p. 19, lines 11-17, p. 23, line 24 to p. 24, line 5; English Transcript of Audio-Recording, 116083 071023-113000-135500-TR-AT-ET, p. 110, line 20 to p. 111 line, 23; Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, pp. 1-2.

<sup>310</sup> English Transcript of 2019 SPO Interview with Witness 2, 083280-TR-ET, 083280-TR-ET Part 10, p. 12, lines 10-17; 083280-TR-ET, 083280-TR-ET Part 11, p. 19, line 23 to p. 22, line 6; English Transcript of Audio-Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 199, line 19 to p. 200, line 15; Scan of Document Seized from Mr Smakaj on 30 October 2023, SPOE00344952-SPOE00344961-ET, p. 9.

and Mr Smakaj talked in low voices or whispered.<sup>311</sup> Likewise, during the 7 October 2023 Visit, Messrs Smakaj and Behrami actively engaged in the conversation with Mr Thaçi, and Messrs Thaçi, Smakaj, and Behrami regularly spoke with a low voice or whispered.<sup>312</sup>

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<sup>311</sup> English Transcript of Audio Recording, 115189 090923-071500-101500-TR-AT-ET Revised, p. 179, lines 17-21 (“ARTAN BEHRAMI: Yes, they are now trying to... HASHIM THAÇI: But Bisa is [Lowers his voice] crucial. Bisa is smart, but he should use full stops, should use full stops more often. BLERIM SHALA: Yes because...”), p. 192, lines 6-14 (“HASHIM THAÇI: [Unintelligible] But what. [REDACTED]. [Lowers his voice] [Inaudible] problem. Look, Bisa knows that there is... [REDACTED]. BLERIM SHALA: That’s right. HASHIM THAÇI: What it should be. [Lowers his voice] [Unintelligible] [REDACTED]. And now this is a judicial process, and we should get out of here”), p. 199, lines 21 to p. 200, line 19 (“BASHKIM SMAKAJ: [Hard to hear] It is good. HASHIM THAÇI: [With a lower voice] It is good for you, but you have to do better than the other one. You can almost not come out better than Remi. [...] HASHIM THAÇI: [Whispers] [REDACTED] [inaudible]. Because he does our head in in the interview, bllla-blla-bllla. BASHKIM SMAKAJ: [Whispers] [REDACTED].’ This is what the documents say too. He gets mixed up, man, they will fuck him up when he comes here. I watched the video; he was wearing the same shirt for four days. Tell him... this is gentlemen’s kind of stuff, man. Yes, yes, very important”), p. 201, lines 4-9 (“BASHKIM SMAKAJ: [REDACTED]. ARTAN BEHRAMI: Yes, yes. HASHIM THAÇI: Tell him, [REDACTED] [Whispers] literature [Unintelligible] ARTAN BEHRAMI: [REDACTED]”), p. 245, lines 4-11 (“HASHIM THAÇI: [With a low voice] [Unintelligible] about [REDACTED] [Unintelligible] BLERIM SHALA: Yes, man, I will tell him, don’t worry about it at all. Also, about the interview that... ISMAIL SYLA: On Monday because on Monday... HASHIM THAÇI: Yes. But you also [Unintelligible] BLERIM SHALA: [Unintelligible] ISMAIL SYLA: He finishes on Monday”).

<sup>312</sup> English Transcript of Audio Recording, 116083 071023-113000-135500-TR-AT-ET, p. 107, line 19 (“HASHIM THAÇI: What explanations, don’t [Speaks with a low voice] [Unintelligible] BASHKIM SMAKAJ: The statements [Unintelligible] HASHIM THAÇI: [Unintelligible] BASHKIM SMAKAJ: There, there [speaks with a low voice] [Unintelligible] HASHIM THAÇI: what did he want explanations for? To elaborate further?! BASHKIM SMAKAJ: [Unintelligible] No, no, in the aspect that in some spots, he said, he was afraid he hurt you.”), p. 111, line 16-24 (“HASHIM THAÇI: [With a low voice] [REDACTED]. BASHKIM SMAKAJ: Eh HASHIM THAÇI: What? BASHKIM SMAKAJ: [With a low voice] He knows. HASHIM THAÇI: Eh, I don’t know, because he likes it somehow, the issue is he is jealous of [REDACTED]”), p. 223, line 6 to p. 224, line 12 (“BASHKIM SMAKAJ: [With a low voice] [Unintelligible] revealed [Unintelligible] HASHIM THAÇI: [Whispers] Now about [Unintelligible] and [Unintelligible] ARTAN BEHRAMI: Now yes because it means that one more is failing. HASHIM THAÇI: [With a low voice] [Unintelligible] [REDACTED] [Unintelligible] [...] BASHKIM SMAKAJ: [REDACTED]. ARTAN BEHRAMI: Yes, yes. Yes, yes, yes. HASHIM THAÇI: [Unintelligible] is. [REDACTED]. BASHKIM SMAKAJ: [Whispers] [Unintelligible] right. HASHIM THAÇI: Hey, but [Unintelligible] ARTAN BEHRAMI: And -- BASHKIM SMAKAJ: [With a low voice] We tried, really, I know, [REDACTED] ARTAN BEHRAMI: -- but there isn’t anything like [Unintelligible] you know”).

d. 6 October 2023 Visit

156. The supporting material further shows that, on 6 October 2023, Messrs Kilaj and Kryeziu visited Mr Thaçi at the SC Detention Facilities in the context of a non-privileged visit,<sup>313</sup> and that the visit had been planned the month before, in an SC Detention Facilities call between Mr Thaçi and Mr Kilaj on 3 September 2023.<sup>314</sup> Similarly to previous visits, the supporting material shows that, during the 6 October 2023 Visit, Mr Thaçi gave Messrs Kilaj and Kryeziu detailed information about two SPO witnesses who had not yet testified in Case 06, provided detailed instructions that Mr Kilaj was to convey to one of these witnesses before his testimony,<sup>315</sup> and also discussed the evidence of other SPO witnesses in the *Thaçi et al.* trial.<sup>316</sup> The supporting material demonstrates that Mr Thaçi's instructions covered both the content of the (then) impending testimony of the witness as well as the manner of testifying.<sup>317</sup>

157. In particular, the English transcript of the audio-recording of the 6 October 2023 Visit ("6 October 2023 Visit Transcript") shows that, during said visit, Mr Thaçi discussed, among others, about two individuals named [REDACTED] and [REDACTED].<sup>318</sup> The Pre-Trial Judge finds that, based on the supporting material available – i.e. the declaration of the SPO Witness Security Officer, together with the 6 October 2023 Visit Transcript and various items recovered by the SPO

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<sup>313</sup> SC Detention Facilities Visit Log, 117793-117796, p. 11793 (13:20-16:00); English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, pp. 1-169; English Transcript of Mr Kilaj's 2 November 2023 Recorded Suspect Interview, 116809-TR-AT-ET, 116809-TR-AT-ET Part 4, p. 7, line 25 to p. 8, line 6; p. 8, line 25 to p. 9, line 18.

<sup>314</sup> English Transcript of SC Detention Facilities Recorded Phone Call, 119348-119356, p. 119353, line 24 to p. 119356, line 5.

<sup>315</sup> See *infra* paras 157, 159-160 and supporting material referenced therein.

<sup>316</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 25, line 24 to p. 27, line 5. See also Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4, p. 118245, para. 11.

<sup>317</sup> See *infra* paras 160-164.

<sup>318</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 122, lines 8-9.

from Mr Kilaj's residence, as further detailed below<sup>319</sup> – the aforesaid names refer to [REDACTED], an SPO witness with the allocated witness code [REDACTED] ("Witness 3") who is not subject to protective measures, and [REDACTED], an SPO witness with the allocated witness code [REDACTED] ("Witness 4") who is subject to protective measures.<sup>320</sup> The declaration of the SPO Witness Security Officer also shows that, by 30 January 2023 at the latest, both Witness 3 and Witness 4 had been identified as SPO witnesses in the *Thaçi et al.* ongoing trial, in disclosures to the defence teams.<sup>321</sup> Likewise, said declaration shows that summaries pursuant to Rule 95 of the Rules of the witnesses, as well as redacted versions of the prior statements of Witness 4 from [REDACTED], had already been disclosed to the defence teams, in English and Albanian, at the time of the 6 October 2023 Visit.<sup>322</sup> Lastly, it is on evidence that Witness 4 was scheduled to testify in [REDACTED], but ultimately testified on [REDACTED],<sup>323</sup> and Witness 3 [REDACTED].<sup>324</sup>

158. The Pre-Trial Judge also pays heed to evidence that contextualises the visit and Mr Thaçi's instructions. The supporting material shows that, in a statement [REDACTED].<sup>325</sup> [REDACTED].<sup>326</sup> [REDACTED],<sup>327</sup> [REDACTED].<sup>328</sup>

159. As to the content of the (then) impending testimony in Case 06, the 6 October 2023 Visit Transcript shows that, at one point in the course of said visit,

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<sup>319</sup> See *infra*, paras 164-167.

<sup>320</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4, p. 118245, para. 11.

<sup>321</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

<sup>322</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, paras 8-9.

<sup>323</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118245, para. 11. See also Case 06 SPO Filing, [REDACTED]; Case 06 SPO Filing, [REDACTED].

<sup>324</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118245, para. 11. [REDACTED].

<sup>325</sup> Redacted Version of [REDACTED] Statement of Witness 3, [REDACTED].

<sup>326</sup> English Transcript of [REDACTED] SPO Interview with Witness 3, [REDACTED], p. 35, lines 11-22.

<sup>327</sup> Redacted Version of [REDACTED] Statement of Witness 4, [REDACTED].

<sup>328</sup> Redacted Version of English Transcript of [REDACTED] SPO Interview with Witness 4, [REDACTED], p. 6, lines 4-20.

Mr Thaçi handed copies of Witness 4's [REDACTED] prior statements ("Prior Statements of Witness 4") to Mr Kilaj<sup>329</sup> and, in whispered tones, proceeded to: (i) orient Mr Kilaj through the Prior Statements of Witness 4,<sup>330</sup> (ii) explain to Mr Kilaj the particularities of how the SPO would conduct witness preparation;<sup>331</sup> (iii) direct Mr Kilaj to instruct Witness 4 as to how to modify the substance of his testimony and his manner of testifying;<sup>332</sup> (iv) highlight the urgency of the task to

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<sup>329</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 41, line 17 to p. 42, line 10 ("HASHIM THAÇI: [Whispers] He will be /giving testimony/ on the [REDACTED] [inaudible]. ISNI KILAJ: He sends his regards, and whatever you say -- HASHIM THAÇI: Now these ones, these ones now... ISNI KILAJ: -- whatever you say, he can -- HASHIM THAÇI: [Whispers] /?Read all of this/. [People shuffling around the room, and there is silence between 00:01:46-00:01:53] ISNI KILAJ: Shall I put it in my pocket or do you need it? HASHIM THAÇI: [Flicks through pages] No man, [Indiscernible], because I need to orientate you a little. ISNI KILAJ: Huh? HASHIM THAÇI: I must orientate you a little. [Hashim THAÇI changes the place where he is sitting] You just sit here. VLLAZNIM KRYEZIU: Yes. HASHIM THAÇI: [Indiscernible] This part here. This is his /statement/ that he has given in [REDACTED]. ISNI KILAJ: Yes, in [REDACTED]").

<sup>330</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 44, lines 2-24 ("HASHIM THAÇI: [Speaks to Isni KILAJ] [Whispers] This is how it starts, and this is what he begins with. ISNI KILAJ: Uhu. HASHIM THAÇI: [Speaks to Isni KILAJ] [Whispers] in [REDACTED]. ISNI KILAJ: In [REDACTED]. HASHIM THAÇI: [Speaks to Isni KILAJ] [Whispers] This part is very good, this one. ISNI KILAJ: Yes. HASHIM THAÇI: Now [Indiscernible] this one is of [REDACTED]. This is the first one. VLLAZNIM Kryeziu: And this was it, so now -- HASHIM THAÇI: [Speaks to Isni KILAJ] [Whispers] [Indiscernible] Have you [Indiscernible]. ISNI KILAJ: Huh? HASHIM THAÇI: Do you need to [Whispers very quietly] [Indiscernible]. ISNI KILAJ [Indiscernible]. HASHIM THAÇI: I said, these ones too. [Speaks to Vllaznim KRYEZIU] Yes, and? VLLAZNIM KRYEZIU: He never called us since then. Never mind. ISNI KILAJ: [Indiscernible] [Whispers] HASHIM THAÇI: [Speaks to Isni KILAJ] [Whispers] [Inaudible] [Pages flipping are heard] Read this part. Read it from here"), p. 45, line 22 to p. 46, line 4 ("HASHIM THAÇI: [Lowers his voice and speaks to Isni KILAJ] You can see it here. These are the answers, and these are the questions, these are the answers. ISNI KILAJ: Fine. HASHIM THAÇI: Answer-question, answer-question, answer, answer. Question-answer VLLAZNIM KRYEZIU: [Speaks in a normal voice] That's all. HASHIM THAÇI: This is what he says in [REDACTED]"). The Pre-Trial Judge notes that, whereas Mr Thaçi referred to the year [REDACTED], he was in fact referring to the [REDACTED] statement of Witness 4. In this regard, the Pre-Trial Judge further notes that, at a later point during the 6 October 2023 Visit, Mr Thaçi specifies that the documents handed to Mr Kilaj are [REDACTED] (see English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 43, lines 11-13 ("HASHIM THAÇI: [Speaks to Isni KILAJ] [Whispers] This is his /statement/ that he has given in [REDACTED]. ISNI KILAJ: Yes"), p. 56, line 23 to p. 57, line 2 ("HASHIM THAÇI: [Whispers] [REDACTED], it is written there on page [Indiscernible] [REDACTED] [Indiscernible], [REDACTED]. It is written there; you have it there on [Indiscernible]. [Indiscernible] Do not give it to him, do not").

<sup>331</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 52, lines 12-22.

<sup>332</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 48, lines 3-18 ("ISNI KILAJ: [Indiscernible] He suspected that it was not [Indiscernible]. HASHIM THAÇI: Yes,



yes, yes. ISNI KILAJ: [Whispers] [Indiscernible] But now [Indiscernible], now I need to go, and he will remove that, that word. HASHIM THAÇI: [Whispers while speaking to Isni KILAJ] He can remove that one. ISNI KILAJ: [Indiscernible] HASHIM THAÇI: [Whispers] [Indiscernible] ISNI KILAJ: [Indiscernible] HASHIM THAÇI: Here, here, here, he can remove this [Indiscernible]. ISNI KILAJ: [Indiscernible] HASHIM THAÇI: [Whispers] Here, here. [Indiscernible] you mustn't take these with you [Indiscernible]. ISNI KILAJ: Yes"), p. 51, line 1 to p. 52, line 8 ("ISNI KILAJ: The other thing -- HASHIM THAÇI: [Whispers in a very low voice while speaking to Isni KILAJ] He has mentioned the names that he was given by [Indiscernible], who has given them to him. ISNI KILAJ: Huh? HASHIM THAÇI: [Whispers] He has mentioned the names given to him by -- never mind. ISNI KILAJ: No, [Indiscernible]. HASHIM THAÇI: [Whispers very quietly while speaking to Isni KILAJ] [Indiscernible] what is stated here [Indiscernible]. [REDACTED]. ISNI KILAJ: Not even now. HASHIM THAÇI: [Whispers very quietly while speaking to Isni KILAJ] Not even now. They started the war [Indiscernible] [...] HASHIM THAÇI: [Whispers very quietly while speaking to Isni KILAJ] [Indiscernible] this is where he has to [Indiscernible]. ISNI KILAJ: Yes, yes. HASHIM THAÇI: [Whispers] Because now [Indiscernible] will come up with the topics. ISNI KILAJ: He has to say it. HASHIM THAÇI: [Whispers] [Indiscernible] /He/ Should say 'I am sure that [Indiscernible]'. ISNI KILAJ: Yes, because he recently told [Indiscernible] 'I have said that it seemed to me, I had suspected -- HASHIM THAÇI: [Whispers] That's right. ISNI KILAJ: -- I suspected, I suspected that [Indiscernible]'. HASHIM THAÇI: [Whispers] [Indiscernible] ISNI KILAJ: Yes, yes, yes"), p. 52, line 23 to p. 53, line 25 ("HASHIM THAÇI: [Whispers] [Indiscernible] When you come here, before you enter the court room 'Do you want to correct anything?'. Give me that part to have a look. [Indiscernible] [REDACTED] [Indiscernible], [REDACTED], [Indiscernible]. You just take this because we have others. [Indiscernible] [REDACTED]. ISNI KILAJ: [Mutters] [Indiscernible] [?Writes] [REDACTED]. HASHIM THAÇI: [Whispers] [REDACTED]. ISNI KILAJ: [Whispers] [Indiscernible] HASHIM THAÇI: [REDACTED]. ISNI KILAJ: [Whispers] [Indiscernible] HASHIM THAÇI: [Whispers] Tell him 'He has to /?improve/ [REDACTED]'. [Indiscernible] ISNI KILAJ: Huh? HASHIM THAÇI: [Whispers] [Indiscernible] This one. ISNI KILAJ: Shall I write it down here? HASHIM THAÇI: [Whispers] [Indiscernible] This one. ISNI KILAJ: Yes. HASHIM THAÇI: [REDACTED] [Indiscernible] ISNI KILAJ: [Indiscernible] HASHIM THAÇI: This is what has to be changed. [Indiscernible] [REDACTED]. [Indiscernible] [Silence 00:02:39-00:02:51] They are [Indiscernible], he has to say [Indiscernible]. Tell him 'Speak convincingly [Indiscernible]' [Silence 00:03:10-00:03:24]"), p. 55, lines 10-11 ("HASHIM THAÇI: And tell him 'Be brief', tell him 'Be brief' [Indiscernible]"), p. 56, lines 1-22 ("HASHIM THAÇI: No, this one [Indiscernible]. ISNI KILAJ: Yes. HASHIM THAÇI: [Whispers] 'I was [Indiscernible], but I am not sure'. ISNI KILAJ: Yes, yes. HASHIM THAÇI: Just this. They will start to [Whispers very quietly] [Indiscernible], he in fact has to be -- but he needs to improve it the day he comes, before he enters the court room, he improves it [Indiscernible] and then just repeats it. ISNI KILAJ: Can he do this? HASHIM THAÇI: Yes, of course. ISNI KILAJ: Even in front of them? HASHIM THAÇI: No. ISNI KILAJ: Ah no. Will he just have a look? HASHIM THAÇI: [Speaks in a normal voice] For example, for example tomorrow. For example, on Monday. He will start on the Monday, on the Friday he will have all the /statements/ and will have a look at all of them once again. Then they will ask him 'Do you want to improve something, omit something, or add something?'. This is when [Whispers very quietly] [Indiscernible] ISNI KILAJ: [Indiscernible]"), p. 108, line 18 to p. 109, line 3 ("HASHIM THAÇI: [Indiscernible] No, no. It is good. [Whispers very quietly] [Indiscernible] 'No, no, no, concentrate [Indiscernible]'. [Indiscernible] Two days earlier you will have to go to [Indiscernible] to improve it. ISNI KILAJ: [Indiscernible] HASHIM THAÇI: Yes. You will have to [Indiscernible] /?They will tell him/ 'Do you want to correct anything? 'Yes, this one, [REDACTED]. [REDACTED]'. And he is done. [REDACTED]").

Mr Kilaj by clarifying that Witness 4 “[REDACTED]”,<sup>333</sup> (v) provide Mr Kilaj with further context regarding Witness 3 and Witness 4’s prior statements, as outlined in paragraph 158 above,<sup>334</sup> and (vi) explain how the modified testimony would play out in practice.<sup>335</sup>

160. Notably, the 6 October 2023 Visit Transcript reveals that, during said visit, Mr Thaçi specifically referred to [REDACTED] of one of the Prior Statements of Witness 4, instructing Mr Kilaj to “Tell him ‘He has to /?improve/ [REDACTED]’”.<sup>336</sup> The Pre-Trial Judge notes that, [REDACTED].<sup>337</sup> The Pre-Trial Judge also observes that Mr Thaçi’s instructions as to how Witness 4 should alter his testimony to say that “[REDACTED]”<sup>338</sup> would align Witness 4’s forthcoming testimony to the [REDACTED].<sup>339</sup> The Pre-Trial Judge further notes that, at one point during the 6 October 2023 Visit, Mr Thaçi indicated this discrepancy between the prior statements of Witness 3 and Witness 4 to Mr Kilaj, noting that

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<sup>333</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 58, lines 15-21.

<sup>334</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 121, line 25 to p. 122, line 10 (“HASHIM THAÇI: Because they will ask him there ‘[REDACTED]’. Because he has said ‘No – [Indiscernible]’. ‘[REDACTED]’. [Whispers very quietly] [Indiscernible]. ISNI KILAJ: Yes, I know the incident [Indiscernible]. HASHIM THAÇI: That’s right, that’s right. ISNI KILAJ: [Indiscernible] between themselves. HASHIM THAÇI: That’s right, that’s right, that’s right. [REDACTED]. And then it is done”).

<sup>335</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 122, lines 13-16.

<sup>336</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 53, lines 1-2, 6, 8, 10-11. *See also supra* footnote 332.

<sup>337</sup> Redacted Version of Albanian Transcript of [REDACTED] SPO Interview with Witness 4, [REDACTED], p. 7, lines 9-13. *See also* Redacted Version of [REDACTED] English Transcript of SPO Interview with Witness 4, [REDACTED], p. 6, lines 17-20.

<sup>338</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 109, line 1. *See also supra* footnote 332.

<sup>339</sup> *See* English Transcript of SPO Interview with Witness 3, 055919-TR-ET Part 10, p. 35, lines 11-22.

[REDACTED],<sup>340</sup> and stated that, should Witness 4 alter his testimony to say that “No. I am not [convinced]”, “this will shut down”.<sup>341</sup>

161. As to the manner of testifying, the 6 October 2023 Visit Transcript shows that, during said visit, Mr Thaçi instructed Mr Kilaj to tell Witness 4 to “Speak convincingly”<sup>342</sup> and “Be brief”.<sup>343</sup>

162. The 6 October 2023 Visit Transcript shows that Mr Thaçi also provided Mr Kilaj with arguments on how to persuade Witness 4 to testify as Mr Thaçi instructed, by telling him “This is to your benefit”.<sup>344</sup>

163. As to the response or reaction of Mr Thaçi’s visitor, the 6 October 2023 Visit Transcript reveals that Mr Kilaj fully agreed to convey Mr Thaçi’s instructions to Witness 4, stating “I will get this done when I go back, I will get this done”.<sup>345</sup>

164. As to other contextual circumstances, the supporting material, in particular forensic photographs and Prior Statements of Witness 4, further reveals that, in the course of a search and seizure operation conducted on 2 November 2023 (“Kilaj Search & Seizure”), the SPO recovered from Mr Kilaj’s residence torn up pieces of the Prior Statements of Witness 4 (“Witness 4 Torn Up Prior Statements”).<sup>346</sup> In this connection, a forensic comparison between the Witness 4 Torn Up Prior Statements

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<sup>340</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 122, lines 8-9. *See also supra* footnote 334.

<sup>341</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 122, lines 14-16. *See also supra* footnote 335.

<sup>342</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 53, line 24. *See also supra* footnote 332.

<sup>343</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 55, line 10. *See also supra* footnote 332.

<sup>344</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 57, lines 4-5.

<sup>345</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 57, lines 15-16.

<sup>346</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, pp. 116884-116885; Photos Received from Forensic Processing of the Prior Statements of Witness 4, SPOE00343593-SPOE00343606, pp. SPOE00343595-00343606. *See also* Redacted Version of [REDACTED] Witness Statement of Witness 4 to the [REDACTED]; Redacted Version of English Transcript of [REDACTED] SPO Interview with Witness 4, [REDACTED].

and a high-resolution colour-printed sample page from the SC Detention Facilities Printer accessible to the detainees, including Mr Thaçi, lends strong support to the conclusion that the Witness 4 Torn Up Prior Statements were printed off the SC Detention Facilities Printer.<sup>347</sup>

165. Annotations in the Prior Statements of Witness 4<sup>348</sup> further prove Mr Thaçi's instructions at the time of the 6 October 2023 Visit. According to the supporting material, notably forensic photographs, the Witness 4 Torn Up Prior Statements include, among others, [REDACTED] of the Albanian transcript of Witness 4's [REDACTED] interview, which is marked as of [REDACTED] specifically, with a black pen frame.<sup>349</sup> The Pre-Trial Judge further takes note that the portion of the interview where Witness 4 expressed possible uncertainty regarding Mr Thaçi's involvement [REDACTED] is highlighted in blue.<sup>350</sup> In the view of the Pre-Trial Judge, the foregoing suggests that (i) Mr Kilaj received instructions from Mr Thaçi as to how Witness 4 should manipulate his forthcoming testimony in the *Thaçi et al.* trial,<sup>351</sup> and (ii) the Witness 4 Torn Up Prior Statements are the copies of the Prior Statements of Witness 4 that Mr Thaçi handed to Mr Kilaj during the 6 October 2023 Visit.<sup>352</sup>

166. The supporting material further demonstrates that, during the Kilaj Search & Seizure, the SPO recovered three notebooks containing handwritten details about

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<sup>347</sup> Forensic Institute Report, 118299-118304, p. 118304.

<sup>348</sup> Photos Received from Forensic Processing of of the Prior Statements of Witness 4, SPOE00343593-SPOE00343606, p. SPOE00343600.

<sup>349</sup> Photos Received from Forensic Processing of the Prior Statements of Witness 4, SPOE00343593-SPOE00343606, p. SPOE00343600.

<sup>350</sup> Photos Received from Forensic Processing of the Prior Statements of Witness 4, SPOE00343593-SPOE00343606, p. SPOE00343600. *See also* Redacted Version of [REDACTED] English Transcript of SPO Interview with Witness 4, [REDACTED], p. 6, lines 17 to 20.

<sup>351</sup> *See also* English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 52, line 23 to p. 53, line 21.

<sup>352</sup> *See also* English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 41, line 20 to p. 42, line 10, p. 45, line 22 to p. 46, line 4.

several SPO witnesses, including Witness 3 and Witness 4 (“Kilaj Notebooks”),<sup>353</sup> as well as a list of names of other SPO witnesses with corresponding witness codes (“Witness List”).<sup>354</sup> In this regard, in the course of an SPO interview conducted with Mr Kilaj on 2 November 2023 (“Kilaj Interview”), he acknowledged that the notes made in the Kilaj Notebooks had been taken by him.<sup>355</sup> The supporting material, including photographs and documents, also demonstrates that some of the witness codes in the Witness List (*i.e.* [REDACTED]) were only assigned after 25 September 2020, the date on which Hysni Gucati and Nasim Haradinaj were arrested following their unlawful dissemination of confidential witness-related information to the public.<sup>356</sup>

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<sup>353</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, pp. 116888-116927; Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342; English Translation of Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342-ET; Photos of Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344379-SPOE00344394; English Translation of Photos of Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344379-SPOE00344394-ET; Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770, p. SPOE00346757 ; English Translation of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770-ET, p. SPOE00346757; Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346771-SPOE00346787, p. SPOE00346772; English Translation of Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346771-SPOE00346787-ET, p. SPOE00346772.

<sup>354</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, p. 116915; Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342, pp. SPOE00344329-SPOE00344330; English Translation of Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342-ET, pp. SPOE00344329-SPOE00344329-ET-SPOE00344330-SPOE00344330-ET; Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770, p. SPOE00346757; English Translation of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770-ET, p. SPOE00346757.

<sup>355</sup> English Transcript of Mr Kilaj’s 2 November 2023 Recorded Suspect Interview, 116809-TR-AT-ET, 116809-TR-AT-ET Part 2, p. 19, line 1 to p. 25, line 25.

<sup>356</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, p. 116915; Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342, pp. SPOE00344329-SPOE00344330; English Translation of Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342-ET, pp. SPOE00344329-SPOE00344329-ET-SPOE00344330-SPOE00344330-ET; Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770, p. SPOE00346757; English Translation of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770-ET, p. SPOE00346757; Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, para. 6. *See also* Case 07 Trial Judgment, para. 297.

167. The Pre-Trial Judge is of the view that, contrary to Mr Kilaj's assertions during the Kilaj Interview, the Witness List, as well as the additional information detailed in the Kilaj Notebooks, is not merely a recounting of material that could be found in the public domain,<sup>357</sup> but was unlawfully disclosed to Mr Kilaj. In this regard, the Pre-Trial Judge further observes that the Witness List matches overall the order in which this information is listed in the witness chart provided in disclosures to the defence teams in Case 06 by 30 January 2023.<sup>358</sup> Moreover, the supporting material, including documents and material seized from Mr Kilaj, indicates that the Kilaj Notebooks include summaries of the anticipated evidence of a number of SPO witnesses, which mirror the content and structure of the SPO's witness summaries, which had been confidentially provided to the defence teams in the *Thaçi et al.* trial before the 6 October 2023 Visit.<sup>359</sup>

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<sup>357</sup> English Transcript of Mr Kilaj's 2 November 2023 Recorded Suspect Interview, 116809-TR-AT-ET, 116809-TR-AT-ET Part 2, p. 24, lines 3-12.

<sup>358</sup> *Compare* Photos Shown to Mr Kilaj During Suspect Interview, 116884, 116884-116927, p. 116915; Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342, pp. SPOE00344329-SPOE00344330; English Translation of Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342-ET, pp. SPOE00344329-SPOE00344329-ET-SPOE00344330-SPOE00344330-ET; Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770, p. SPOE00346757; English Translation of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770-ET, p. SPOE00346757 *with* Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

<sup>359</sup> *Compare* Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118246-118260 *with* Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342, pp. SPOE00344331-SPOE00344342; English Translation of Photos of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344329-SPOE00344342-ET, pp. SPOE00344331-SPOE00344331-ET-SPOE00344342-SPOE00344342-ET; Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770, pp. SPOE00346758-SPOE00346769; English Translation of Brown Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346751-SPOE00346770, pp. SPOE00346758-SPOE00346769; Photos of Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344379-SPOE00344394; English Translation of Photos of Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00344379-SPOE00344394-ET; Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346771-SPOE00346787; English Translation of Photos of Black Notebook with Handwritten Notes Seized from Mr Kilaj, SPOE00346771-SPOE00346787-ET. *See also* Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, para. 8.

168. According to the supporting material, the SPO also recovered from a jacket pocket at Mr Kilaj's residence loose papers containing handwritten notes ("Handwritten Notes").<sup>360</sup> The Pre-Trial Judge observes that the Handwritten Notes contain remarks, such as "[m]ust not mention that he [REDACTED]", "[m]ust not say that [REDACTED]", "I thought it was but it was not. I was misinformed at that time", "I heard that [REDACTED]. He was someone with authority", "[REDACTED]", or "[REDACTED]".<sup>361</sup> They appear to reflect instructions meant to be delivered to (some of) the witnesses named in the Handwritten Notes.

169. The Pre-Trial Judge further observes that, at least two of the names that appear in the Handwritten Notes, match the names of protected SPO witnesses [REDACTED], allocated witness code [REDACTED], and [REDACTED], allocated witness code [REDACTED], who testified in the *Thaçi et al.* trial between [REDACTED] and [REDACTED], respectively.<sup>362</sup> In this regard, the Pre-Trial Judge takes note that the SC Detention Facilities visit log shows that Mr Kilaj visited Mr Thaçi at the SC Detention Facilities on 2 February 2023,<sup>363</sup> namely (i) soon after 30 January 2023, the date by which [REDACTED] and [REDACTED] had been identified as SPO witnesses in Case 06 in disclosures to the defence teams in that

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<sup>360</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, pp. 116886-116887; English Translation of Photos Shown to Mr Kilaj During Suspect Interview, 116886-116901-ET, pp. 116886-116887; Photos Received from Forensic Processing of Folded Paper Scraps Seized from Mr Kilaj, SPOE00343582-SPOE00343592, pp. SPOE00343584-SPOE00343592; English Translation of Photos Received from Forensic Processing of Folded Paper Scraps Seized from Mr Kilaj, SPOE00343582-SPOE00343592-ET Revised, pp. SPOE00343584-SPOE00343592.

<sup>361</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, pp. 116886-116887; English Translation of Photos Shown to Mr Kilaj During Suspect Interview, 116886-116901-ET, pp. 116886-116887; Photos Received from Forensic Processing of Folded Paper Scraps Seized from Mr Kilaj, SPOE00343582-SPOE00343592, pp. SPOE00343582-SPOE00343591; English Translation of Photos Received from Forensic Processing of Folded Paper Scraps Seized from Mr Kilaj, SPOE00343582-SPOE00343592-ET Revised, pp. SPOE00343582-SPOE00343591.

<sup>362</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, p. 116886; English Translation of Photos Shown to Mr Kilaj During Suspect Interview, 116886-116901-ET, p. 116886; English Transcript of Mr Kilaj's 2 November 2023 Recorded Suspect Interview, 116809-TR-AT-ET, 116809-TR-AT-ET Part 2, p. 12, lines 13-22; Declaration of the SPO Witness Security Officer, 118243-118260, p. 118245, para. 11.

<sup>363</sup> SC Detention Facilities Visit Log, 117793-117796, p. 11793 (13:15-16:00).

case,<sup>364</sup> and (ii) previous to said witnesses' testimonies in [REDACTED] and [REDACTED], respectively. The Pre-Trial Judge is likewise mindful that, according to the transcript of the 6 October 2023 Visit, during said visit Mr Thaçi discussed the prior testimony of a witness by the name of [REDACTED], and explained to his visitors that "[the witness] was very good".<sup>365</sup> Based on the 6 October 2023 Visit Transcript and the declaration of the SPO Witness Protection Officer, the Pre-Trial Judge is of the view that [REDACTED] refers to [REDACTED].<sup>366</sup> In this regard, the Pre-Trial Judge further notes that Mr Kilaj conveyed to Mr Thaçi that he "[contacted this witness] beforehand too".<sup>367</sup>

170. As to the contacts with witnesses, the 6 October 2023 Visit Transcript shows that Mr Thaçi also discussed about the prior testimony of at least another SPO witness during said visit, who he described as "[Mr Kilaj's] man", and whose testimony he perceived as "positive".<sup>368</sup> According to the 6 October 2023 Visit Transcript, in response to Mr Thaçi's account, Mr Kilaj indicated that he had "met [the witness] a week before /?he/ came here".<sup>369</sup>

171. The 6 October 2023 Visit Transcript also suggests that, in the course of said visit, Messrs Kilaj and Thaçi discussed about how to best approach another (then) forthcoming SPO witness, which they referred to by the name of [REDACTED], and in that context Mr Kilaj suggested that he would approach the witness "indirectly".<sup>370</sup> Based on the updated witness list filed by the SPO in Case 06 on

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<sup>364</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

<sup>365</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 25, line 24 to p. 26, line 3.

<sup>366</sup> See *supra* footnote 316.

<sup>367</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 27, lines 6-9.

<sup>368</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 16, line 25 to p. 18, line 10, p. 18, line 24 to p. 23, line 23. The Pre-Trial Judge notes in this regard that it is clear from the context that the conversation between Mr Thaçi and Messrs Kilaj and Kryeziu concerned the prior testimony of an SPO witness in the *Thaçi et al.* trial.

<sup>369</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 21, line 6.

<sup>370</sup> English Transcript of Audio-Recording, 116083 061023-111500-135746-TR-AT-ET, p. 118, line 5 to p. 119, line 11.



9 June 2023, the Pre-Trial Judge is of the view that [REDACTED] refers to [REDACTED], an SPO witness with the allocated witness code [REDACTED], who is subject to protective measures.<sup>371</sup> In this regard, the Pre-Trial Judge notes that the name [REDACTED] also appears in the Handwritten Notes.<sup>372</sup>

172. Lastly, as to the circumstances of the visits, as was the case in previous visits, Messrs Thaçi and Kilaj often spoke in low voices or whispered tones, in particular when discussing Mr Thaçi's instructions as to how Witness 4 should alter his upcoming testimony.<sup>373</sup>

e. Conclusion

173. In the following, the Pre-Trial Judge sets out her conclusion in relation to the 3 September 2023 Visit involving Mr Kuçi, before presenting her conclusion in relation to all other visits of Mr Thaçi by Messrs Fazliu, Smakaj and Kilaj.

174. *Mr Kuçi.* In the context of the 3 September 2023 Visit, the Pre-Trial Judge recalls that, in the Further Amended Indictment, the SPO alleges that Messrs Thaçi and Kuçi agreed to obstruct official persons in performing official duties through the common action of a group, which included one or more other persons.<sup>374</sup> In the SPO Further Submissions, it contends that, since Messrs Thaçi and Kuçi are not charged with commission of said offence and since the conduct foreseen under Article 35 of the KCC only requires an agreement of two or more persons to commit an offence, Messrs Thaçi and Kuçi alone are sufficient as the parties to the charged

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<sup>371</sup> Case 06 SPO Filing, [REDACTED].

<sup>372</sup> Photos Shown to Mr Kilaj During Suspect Interview, 116884-116927, p. 116887; English Translation of Photos Shown to Mr Kilaj During Suspect Interview, 116886-116901-ET, p. 116887; Photos Received from Forensic Processing of Folded Paper Scraps Seized from Mr Kilaj, SPOE00343582-SPOE00343592, pp. SPOE00343584, SPOE00343589-SPOE00343590; English Translation of Photos Received from Forensic Processing of Folded Paper Scraps Seized from Mr Kilaj, SPOE00343582-SPOE00343592-ET Revised, pp. SPOE00343584, SPOE00343589-SPOE00343590.

<sup>373</sup> See, for instance, *supra* footnote 332.

<sup>374</sup> See *supra* para. 111. See Further Amended Rule 86 Outline, pp. 43-45. See also SPO Further Submissions, paras 4-5.

conduct forming the basis of Counts 2 and 19.<sup>375</sup> Notwithstanding this, the SPO also specifies in the Further Amended Indictment that the group included one or more other persons, including [REDACTED] and/or a person referred to as [REDACTED], and/or other unnamed persons.<sup>376</sup> In the Further Amended Rule 86 Outline, the SPO also argues as part of the substantial preparatory acts within the meaning of Article 35(2) of the KCC that Messrs Thaçi and Kuçi agreed to involve other persons in their plan to obstruct official persons in performing official duties.<sup>377</sup>

175. The Pre-Trial Judge observes, at the outset, that an agreement to commit an offence within the meaning of Article 35 of the KCC must relate to the material elements of the concerned offence as well as any concrete factual elements necessary for the commission of the offence.<sup>378</sup> Importantly, the material elements of the offence must exist at the time of the agreement. Lastly, the Pre-Trial Judge underscores that the material elements of the offence and the elements of the mode of liability shall not be conflated.

176. The Pre-Trial Judge finds that, in the context of Article 401(2) of the KCC, this means that any agreement between Messrs Thaçi and Kuçi must relate to the fact that the intended obstruction is to be committed as part of a “group”. In other words, if the “group” element is not supported by evidence, then any agreement reached by Messrs Thaçi and Kuçi cannot be viewed as intending the commission of a criminal offence within the meaning of Article 35(1) of the KCC. The Pre-Trial Judge thus deems it appropriate to determine whether the “group” element is satisfied.

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<sup>375</sup> SPO Further Submissions, para. 5.

<sup>376</sup> Further Amended Indictment, para. 29.

<sup>377</sup> Further Amended Rule 86 Outline, p. 44.

<sup>378</sup> See *Salihu et al.*, Article 35 of the 2012 KCC, mn. 4-5, p. 175.

177. In this regard, the Pre-Trial Judge finds that, while Article 401(2) of the KCC does not require proof of the identity of each member of the group,<sup>379</sup> as similarly argued by the SPO,<sup>380</sup> the supporting material must demonstrate the existence or formation of a group comprising at least three persons, as mandated under Article 113(12) of the KCC.<sup>381</sup> This depends on the facts of the case: the involvement of a crowd will regularly pose less evidentiary challenges than the presence of a very small circle of persons. The Pre-Trial Judge further finds that, where the threshold of a minimum of three persons is not immediately apparent from the facts, the participation of at least a third person must be sufficiently ascertained to conclude that there is well-grounded suspicion that the offence contemplated by the parties to the agreement is to be committed by a group. The Pre-Trial Judge thus finds that it would not be sufficient to support the existence or formation of a group comprising at least three persons by solely showing that, as part of the substantial preparatory acts, within the meaning of Article 35(2) of the KCC, two persons agree to involve “other persons” in their obstruction plan, whose link to and participation in the group is hypothetical or unclear.

178. In the instant case, the Pre-Trial Judge notes that the SPO presents supporting material – i.e. portions of the 3 September 2023 Visit Transcript and of an enhanced version of said transcript, as well as clarifications by the translator as to a few lines of the transcript – showing that, during the 3 September 2023 Visit, while discussing arrangements to approach said witness, Mr Thaçi referred to [REDACTED],

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<sup>379</sup> See for instance *Prosecutor v. Albin Kurti*, P. Nr. 281/07, District Court of Pristina, [Verdict](#), 14 June 2010, in which Albin Kurti was found guilty of the offence under Article 318 of the Provisional Criminal Code of Kosovo of 6 July 2003 (UNMIK/REG/2003/25) entitled “Participation in a group obstructing official persons in performing official duties” for leading a large crowd into trespassing a police cordon in the context of a march of protest.

<sup>380</sup> See SPO Further Submissions, para. 6.

<sup>381</sup> See *supra* para. 52. See *similarly* Case 07 Trial Judgment, paras 678-691.

[REDACTED],<sup>382</sup> and other unnamed persons.<sup>383</sup> The Pre-Trial Judge finds, however, that the aforementioned supporting material does not allow her to

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<sup>382</sup> See *supra* para. 143 and supporting material referenced therein.

<sup>383</sup> Further Amended Rule 86 Outline, pp. 16-17, footnotes 58-63 referring to English Transcript of Audio-Recording, 115009 030923-072219-101409-TR-AT Revised-ET, p. 88, line 25 to p. 89, line 8 (“HASHIM THAÇI: [Whispers very quietly] He will arrive in the evening [Indiscernible]. He will [testify] on [REDACTED]. He will arrive on [REDACTED]. [Inaudible] Call him in the morning. Give it to him. Call him when you are on the way. Tell him, [Inaudible]. As soon as it is given to him, urgently meet up with him, tell him these things straight away, [Indiscernible]. What can you say to him, I am going; you complicate it. HAJREDIN KUÇI: [Whispers] It’s done”), p. 90, line 3 to p. 91, line 5 (“HASHIM THAÇI: With what? [REDACTED], ‘Get up. In questioning, you must be like this’. Tell him call him urgently and [Unintelligible] he can come too. Do not leave [REDACTED] without [Indiscernible]. Call him. Give him this [Inaudible] the following day. When he comes here to make the corrections, you should sort out his hotel. HAJREDIN KUÇI: [Whispers] Yes. HASHIM THAÇI: [Whispers very quietly] [REDACTED] he will have the corrections. [Indiscernible] The next day, the next day in the evening, on [REDACTED], in the morning [Indiscernible] you should take him somewhere, you know, [REDACTED], I would like to see you’. HAJREDIN KUÇI: Yes. HASHIM THAÇI: And tell him, get up, just [Indiscernible] while going, I don’t want to see you, tell him. And [Indiscernible] this business and and tell him, do not -- do not leave his side him until he confirms it. Tell him, [REDACTED] comes straight away [REDACTED] straight away. Get up very early [Inaudible]. Tell him, get up and [Inaudible] because he is under pressure and he has [Inaudible]. However, tell him that these elements should not ... if he comes’, [REDACTED]. [...] Tell him, these one, two, three things”); English Transcript of Audio-Recording, 115009 030923 092909 Enhanced TR AT Rev ET Rev, p. 1, line 7 to p. 5, line 14 (“HASHIM THAÇI: [...] [Whispers very quietly] – ‘We have at the latest’ tell him, ‘until ...’ -- ‘as he will leave’, tell him ‘on [REDACTED]’. You tell him that [REDACTED]’, because he might leave on [REDACTED]. HAJREDIN KUÇI: Yes. HASHIM THAÇI: And he will leave on [REDACTED]. Tell him, ‘You have [REDACTED] because he won’t finish; as ‘he speaks badly’. [Noise of Paper shuffling and of a page being torn off]. ‘Until [REDACTED]’, tell him, ‘because [REDACTED]’, tell him, ‘you never know’. [REDACTED], for example’, tell him, “he has to be seen the day next, the day after the next day. Are you there [REDACTED] to inform you? I want to see you - tell him - because when I come to [REDACTED]...” you know it yourself. HAJREDIN KUÇI: Yes, yes. Yes, yes. I understand. HASHIM THAÇI: Because you arrive at 12 at night, don’t you? HAJREDIN KUÇI: Yes, at 12 at night. HASHIM THAÇI: Tell him, ‘You know what is new for us’. HAJREDIN KUÇI: Yes. Of course. HASHIM THAÇI: And tell him ‘Drop everything you have got on. Drop it, because even [REDACTED] [Whispers] [Indiscernible]’ And write to him and tell him ‘Do not cause damage’. HAJREDIN KUÇI: Yes, yes. HASHIM THAÇI: [Whispers] That is all. Tell him, ‘Get up, take it seriously now. Get up and go because [Indiscernible] it is very /?serious/. Because [Indiscernible], there is nothing he can do. He has it, whether like this or like that, he has it. HAJREDIN KUÇI: Yes. HASHIM THAÇI: Yes, but it is bad. HAJREDIN KUÇI: Yes. HASHIM THAÇI: He stopped him, he took him, he /?beat/ him, of them. And it is in there. [Sound of paper shuffling] Tell him, ‘Get up, get up [Indiscernible]. You must come’. [Indiscernible] And when they ask you, ‘Yes, yes, without them, [REDACTED]. Nothing’. [REDACTED]’. Just took them [Indiscernible], tell him. [Paper shuffling] [Indiscernible] HAJREDIN KUÇI: Yes, yes. HASHIM THAÇI: [Whispers very quietly] And [Indiscernible] [REDACTED] [Whispers] [Indiscernible] because [REDACTED] [Indiscernible], and [REDACTED] will stay with him -- HAJREDIN KUÇI: Yes. HASHIM THAÇI: -- another time. But [REDACTED] [Indiscernible]. HAJREDIN KUÇI: [Indiscernible]. HASHIM THAÇI: [Whispers] No, no, [Indiscernible] because [REDACTED]. Did

conclude to the requisite evidentiary threshold that Messrs Thaçi and Kuçi agreed to involve any of these individuals in their plan to approach Witness 6 as regards his (then) impending testimony in the *Thaçi et al.* trial (or any other witness). In this regard, the Pre-Trial Judge is acutely aware that the SPO's hypothesis need not be the *only* reasonable conclusion drawn from the supporting material in order to meet the evidentiary threshold applicable at this stage of the proceedings, i.e. well-grounded suspicion, since that would amount to requiring a level of proof for conviction, i.e. beyond reasonable doubt.<sup>384</sup> However, the Pre-Trial Judge's conviction at this stage must exceed mere theory or suspicion, and must be based on tangible supporting material. The Pre-Trial Judge finds that, in the present case, the evidence is simply too vague and inconclusive to draw any reasonable

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you call [REDACTED]? HAJREDIN KUÇI: No. HASHIM THAÇI: You will have two on the second of the month. HAJREDIN KUÇI: Yes, yes. HASHIM THAÇI: [Whispers] And perhaps you won't have to tell [REDACTED] to go and pick him up. HAJREDIN KUÇI: [REDACTED] [Indiscernible]. HASHIM THAÇI: Yes, at twelve o'clock at midnight. HAJREDIN KUÇI: [Indiscernible], you know. HASHIM THAÇI: Yes, indeed, tell him, 'You pick me up at twelve, tell him, only when I come, tell him, and do not ...' HAJREDIN KUÇI: Yes. HASHIM THAÇI: [Whispers] -- until you reach Pristina. HAJREDIN KUÇI: Yes. HASHIM THAÇI: [Whispers] 'On your way /?home/', tell him, 'you can stop somewhere, /?at [REDACTED]. HAJREDIN KUÇI: Yes. HASHIM THAÇI: When you go, when you go, he will take you home. HAJREDIN KUÇI: [Whispers] Yes, yes. I understand. I understand. HASHIM THAÇI: [Whispers] 'When he /?answers/ -- call him and ask him to pick you up, because he will come. Call him and tell him 'Will get in touch?'. And stay outside'. HAJREDIN KUÇI: Yes. HASHIM THAÇI: [Whispers] write it down. You wait until he writes it down -- HAJREDIN KUÇI: Yes. HASHIM THAÇI: -- because he writes slowly. HAJREDIN KUÇI: [Whispers] Yes. HAJREDIN KUÇI: [Whispers] Yes. HASHIM THAÇI: [Whispers] He writes it down. And one more thing, you have to write this 'Yours is on [REDACTED]' [Indiscernible], you tell him, you until -- because you might then have to tell him how it is. HAJREDIN KUÇI: I will give him -- HASHIM THAÇI: What? HAJREDIN KUÇI: -- the case files. HASHIM THAÇI: [Whispers] Yeah, the case files. Tell him 'I just want to meet you once'. Tell him 'If it is not too much trouble for you, I would like you to pick me up [REDACTED]'. Tell him 'Wait for us -- HAJREDIN KUÇI: Yes. HASHIM THAÇI: -- [REDACTED]'. He will come. HAJREDIN KUÇI: Yes, yes. HASHIM THAÇI: Huh? [Indiscernible] HAJREDIN KUÇI: Okay. HASHIM THAÇI: [Whispers] Tell him, 'Do not joke!' HAJREDIN KUÇI: [Indiscernible]. HASHIM THAÇI: 'Or tell him to go to [REDACTED], there, right now'. HAJREDIN KUÇI: Yes. HASHIM THAÇI: Because it is better if he [Whispers] [Indiscernible] [REDACTED]. HAJREDIN KUÇI: Yes. Done. HASHIM THAÇI: Tell him 'Leave right now, I will /?return/ now -- HAJREDIN KUÇI: Yeah. HASHIM THAÇI: -- because you should meet him at eight.' HAJREDIN KUÇI: Yes HASHIM THAÇI: That's it. [...])", p. 7, line 1 to p. 9, line 6. See also *supra* para. 143.

<sup>384</sup> See, similarly, ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09-73, Appeals Chamber, *Judgment on the appeal of the Prosecutor against the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir"*, 3 February 2010, paras 30, 33.

conclusion therefrom against the requisite threshold. In particular, the mention of suggested meetings or locations in the context of the discussion on the (then) impending testimony of Witness 6 and arrangements to approach said witness, as recorded in the aforementioned supporting material,<sup>385</sup> is insufficient to draw the connection between any of the persons mentioned and said suggested meetings or locations and the plan, discussed between Mr Thaçi and Mr Kuçi, to approach Witness 6.

179. To illustrate the insufficient nature of the evidence, the Pre-Trial Judge presents her analysis with regard to the SPO's allegation involving [REDACTED].<sup>386</sup> The Pre-Trial Judge notes that the supporting material shows that [REDACTED] previously worked [REDACTED] and visited the latter at the SC Detention Facilities on different occasions.<sup>387</sup> The Pre-Trial Judge finds however that, while the relevant [REDACTED] Visit Transcript shows that, during said visit, Messrs Thaçi and [REDACTED] talked about the testimony of SPO witnesses in the *Thaçi et al.* trial, such as Witness 2, it does not show to the requisite standard (if at all such conclusion can be drawn from the supporting material) that they also discussed plans to approach SPO witnesses for the purpose of influencing their testimony or that [REDACTED] was aware of such plans or conduct.<sup>388</sup> The Pre-Trial Judge finds that the evidence referred to by the SPO<sup>389</sup> is simply too vague and inconclusive to draw any such reasonable conclusion therefrom against the requisite threshold. Crucially, it does not allow her to conclude, to the requisite threshold, that [REDACTED] is part (or is to be part) of the group that is to commit the offence

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<sup>385</sup> See *supra* footnote 383.

<sup>386</sup> Further Amended Rule 86 Outline, pp. 17-19, footnotes 64-76. Since the SPO does not present any further supporting material as regards [REDACTED] and the "other unnamed persons", the Pre-Trial Judge does not further consider these individuals in her analysis of the "group".

<sup>387</sup> See *supra* para. 143 and supporting evidence references therein.

<sup>388</sup> See *supra* para. 143 and supporting evidence references therein.

<sup>389</sup> See Further Amended Rule 86 Outline, p. 19, footnotes 73-74 referring to English Transcript of Audio-Recording, 114548 [REDACTED]-075244-121616-TR-AT-ET, p. 64, line 12 to p. 65, line 16, p. 66, lines 1-15, and footnotes 75-75.

contemplated by Messrs Thaçi and Kuçi in their agreement. Conversely, Mr Thaçi's instruction to Mr Fazliu to use a third-party to approach Witness 1, namely his son Mr F. Fazliu,<sup>390</sup> Mr Fazliu's agreement and participation of Mr F. Fazliu, allows the conclusion that Mr F. Fazliu's was part of the group in the context of the 2 July 2023 Visit.<sup>391</sup>

180. Even assuming, for the sake of argument, that the supporting evidence shows that Messrs Thaçi and Kuçi agreed to involve any of these persons mentioned during the 3 September 2023 Visit in their plan to approach Witness 6 as regards his (then) impending testimony in the *Thaçi et al.* trial, the Pre-Trial Judge finds that the group cannot be construed by including a third person through agreement between Mr Thaçi and Mr Kuçi alone, without evidence that the third person is part (or is to be part) of the group. This would mean that a *constitutive* material element of the offence (without which Article 401(2) of the KCC would not materialise, i.e. group consisting of at least three persons) is supplanted by the objective element of the mode of liability, which establishes, for its purposes, less stringent requirements (agreement of two persons). As explained above, such an approach conflates the two concepts and bears the risk to create a new offence with fewer constitutive elements, notwithstanding Article 401(2) of the KCC.

181. Considering the above, the Pre-Trial Judge finds that the supporting material does not demonstrate the existence or formation of a group comprising at least three persons in the context of the 3 September 2023 Visit. As a result, this material element of the offence under Article 401(2) of the KCC is not fulfilled.

182. *Messrs Thaçi, Fazliu, Smakaj Kilaj.* In the context of the 2 July 2023 Visit, the 9 September 2023 Visit/7 October 2023 Visit, and 6 October 2023 Visit, the Pre-Trial Judge finds that, based on the supporting material available, Mr Thaçi and his

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<sup>390</sup> See Further Amended Rule 86 Outline, p. 19.

<sup>391</sup> See *supra* paras 125-127 and *infra* para. 185.

respective visitors formed and participated in separate groups comprising each of at least three persons, as foreseen under Article 113(12) of the KCC.<sup>392</sup> In particular, the Pre-Trial Judge finds that the supporting material demonstrates that, in the context of the 2 July 2023 Visit, Mr Thaçi formed a group comprising at least him, Mr Fazliu, and Mr F. Fazliu (“Fazliu Group”). Likewise, in the context of the 9 September 2023 Visit and 7 October 2023 Visit, Mr Thaçi formed a group comprising at least him, Mr Smakaj, Mr Shala, Mr Behrami, and Mr Syla (“Smakaj Group”). Lastly, in the context of the 6 October 2023 Visit, Mr Thaçi formed a group comprising at least him, Mr Kilaj, and Mr Kryeziu (“Kilaj Group”).<sup>393</sup>

183. The Pre-Trial Judge further finds that each aforementioned suspect in his respective group, contributed to, or enabled in some other form, the common action,<sup>394</sup> i.e. to unlawfully influence the testimony of SPO witnesses in the *Thaçi et al.* trial. The Pre-Trial Judge recalls in this regard that Article 401(2) of the KCC does not require that the actions of *each* participant in the group contribute directly to the obstructive purpose.<sup>395</sup>

184. More specifically, the supporting material reveals a consistent *modus operandi* during the 2 July 2023 Visit, 9 September 2023 Visit/7 October 2023 Visit, and

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<sup>392</sup> See *supra* para. 52.

<sup>393</sup> The Pre-Trial Judge also takes notes that, in the context of some of the visits, Mr Thaçi emphasised the notion of “group” by referring to “us” or by using language such as “if he really wants to help us” and “that is the most important for us” (see (3 Sept Visit) English Transcript of Audio-Recording, 115009 030923 072219 101409 TR AT Revised ET, p. 28, line 1, p. 34, line 23); see also (2 Jul Visit) English Transcript of Audio Recording, 114037-TR-AT-ET, p. 52, lines 14-21 (“HASHIM THAÇI: [overlapping speakers] He is a smart ass and if he comes to you asking ‘How are you’, tell him ‘All our eyes are on you’. [Indiscernible] will be watching you. Tell him, ‘You keep it brief’. ‘What more can they do to you? They kept you for fourteen years. They imprisoned you for four years, for fourteen years you were dragged through proceedings. They ruined your career’ It is true. FADIL FAZLIU: That’s right”); (9 Sept Visit) English Transcript of Audio Recording 115189 090923-071500-10500-TR-AT-ET Revised, p. 198, lines 6-10 (“BLERIM SHALA: You should speak slowly. I agree fully. HASHIM THAÇI: Bler/Blerim/, the more he – he won’t lose his manhood. He should think about it as we are the ones who will... BLERIM SHALA: That’s right. That’s right.”).

<sup>394</sup> See *supra* paras 113-130, 145-155, 156-172 and *infra* 184-188 and supporting material referenced therein.

<sup>395</sup> See *supra* para. 52.



6 October 2023 Visit. In the course of each of these visits, Mr Thaçi repeatedly revealed, without authorisation, to Messrs Fazliu, Smakaj, Shala, Behrami, Kilaj, Sylja, and Kryeziu, confidential information disclosed to him in his trial proceedings, such as the identity of (then) forthcoming (protected) SPO witnesses, including Witness 1, Witness 2, and Witness 4 (“Targeted Witnesses”) and the content of their expected testimony.<sup>396</sup> Mr Thaçi repeatedly provided, in the course of each visit, precise instructions, in particular, to Messrs Fazliu, Smakaj, and Kilaj, on the content of the upcoming testimony of the Targeted Witnesses in the *Thaçi et al.* trial as well as on the manner of testifying.<sup>397</sup> Mr Thaçi’s instructions went as far as requesting that certain Targeted Witnesses alter their (then) forthcoming testimony in Case 06.<sup>398</sup> Mr Thaçi further tasked at least Messrs Fazliu and

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<sup>396</sup> See *infra* paras 215-232 and supporting material referenced therein.

<sup>397</sup> See *supra* paras 115, 147-148, 150, 159-160 and supporting material referenced therein. See in this regard the repeated use of “Tell him” as evidenced in the English Transcripts of Audio-Recordings: English Transcript of Audio Recording 114037-TR-AT-ET p. 51, lines 10-12 (“HASHIM THAÇI: Go to him [Whispers] go to him indirectly. [Normal voice] Not you directly. And tell him ‘You did not finish that business of the gathering’”) and lines 18-24 (“HASHIM THAÇI: [Whispers] [Indiscernible]. Tell him ‘We are waiting for you, it is going to be *live* on TV’. Tell him ‘Do you have to go [Indiscernible]?’ [Whispers] [...] Tell him ‘You know, you are not unwise, you can come out well’”); English Transcript of Audio Recording 115189 090923-071500-101500-TR-AT-ET Revised, p. 200, lines 15-19 (“HASHIM THAÇI: [...] He gets mixed up, man, they will fuck him up when he comes here. I watched the video; he was wearing the same shirt for four days. Tell him... this is gentlemen’s kind of stuff man, Yes, yes, very important”), and p. 201, lines 6-8 (“HASHIM THAÇI: Tell him, ‘You couldn’t, everyone was a peasant [Unintelligible] and... [Whispers] literature (...)”); English Transcript of Audio Recording 116083 071023-113000-135500-TR-AT-ET p. 107, lines 16-17 (“HASHIM THAÇI: What explanations?! Ah, tell him, those are your problems”); English Transcript of Audio Recording 116083 061023-111500-135746-TR-AT-ET p. 53, lines 10-11 (“HASHIM THAÇI: [Whispers] Tell him ‘He has to/?improve/ [REDACTED]’. [Indiscernible]”).

<sup>398</sup> English Transcript of Audio Recording 116083 061023-111500-135746-TR-AT-ET p. 53, lines 10-11 (“HASHIM THAÇI: [Whispers] Tell him ‘He has to/?improve/ [REDACTED]’. [Indiscernible]”); and lines 19-24 (“HASHIM THAÇI: [Whispers] [Indiscernible] This is what has to be changed. [Indiscernible] [REDACTED] [Indiscernible] was also [Indiscernible] must not leave it (...) he has to say [Indiscernible]. Tell him ‘Speak convincingly [Indiscernible]’”); English Transcript of Audio Recording 114037-TR-AT-ET p. 54, lines 17-23 (“HASHIM THAÇI: [Indiscernible] He must not give an opinion either. FADIL FAZLIU: Like my [Indiscernible] do not take into account my [REDACTED]. HASHIM THAÇI: [Whispers] Tell him [Indiscernible]. ‘I don’t know, I have no comment, I do not remember’. [Normal voice] He will be told ‘When you are not sure...’, this is it. But...”); English Transcript of Audio Recording 115189 090923-071500-101500-TR-AT-ET Revised p. 200, line 21 to p. 201, line 4 (“HASHIM THAÇI: Don’t come there like a rebel. Come like a gentleman because it is a high level, it is not the level of [Unintelligible] don’t say it but... as for the meaning of

F. Fazliu,<sup>399</sup> and Smakaj,<sup>400</sup> and Kilaj,<sup>401</sup> to convey his instructions to the Targeted Witnesses. Lastly, Mr Thaçi, as well as Messrs Smakaj, Shala, Behrami, and Kilaj, regularly spoke in low or whispered tones when discussing information related to, *inter alia*, the Targeted Witness and Mr Thaçi's instructions,<sup>402</sup> which, in the view of the Pre-Trial Judge, is consistent with deliberate and purposive efforts to render those portions of the conversation inaudible to non-participants.

185. Moreover, as regards the Fazliu Group, the Pre-Trial Judge finds that Messrs Thaçi's, Fazliu's, and F. Fazliu's acts and statements indicate a joint endeavour to influence the forthcoming testimony of Witness 1, identified as "crucial" by Mr Thaçi, in the *Thaçi et al.* trial, based on the following considerations: (i) the meeting between Messrs Fazliu, F. Fazliu and Witness 1 on 29 June 2023; (ii) the exchange of messages between Mr Fazliu, Mr F Fazliu, and Witness 1 before and after the 2 July 2023 Visit; (iii) Mr Thaçi's concrete instructions to Mr Fazliu on how to contact Witness 1 and persuade or pressure him to testify in a certain way; (iv) the suggestion to contact Witness 1 through Mr Fazliu's son; and (v) Mr Thaçi's instruction to approach other SPO witnesses. The Pre-Trial Judge is of the view that the timing and sequence of said communications and meetings is indicative of Messrs Thaçi, Fazliu, and F. Fazliu's concerted effort to influence the (then) forthcoming testimony of Witness 1 in the *Thaçi et al.* trial.<sup>403</sup>

186. As regards the Smakaj Group, the Pre-Trial Judge equally finds that Messrs Thaçi's, Smakaj's, Shala's, Behrami's, and Sylja's acts and statements indicate a joint effort to influence the forthcoming testimony of Witness 2 in the

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what is being said... and simplify it, tell him, don't get mixed up. Don't get mixed up, man. [Unintelligible] because... Don't talk about how it should have been, don't talk about how the [REDACTED]. BASHKIM SMAKAJ: Yes, yes theory").

<sup>399</sup> See *supra* paras 123-125 and footnotes 186, 194, 199-200, 216.

<sup>400</sup> See *supra* paras 147-148, 150-151 and footnotes 295-296, 300-301.

<sup>401</sup> See *supra* paras 123, 159-163, 166-169 and footnote 332-345.

<sup>402</sup> See *supra* paras 130, 144, 147-148, 150, 155, 159, 172 and *infra* para. 187187 and supporting material referenced therein.

<sup>403</sup> See *supra* paras 113-130 and supporting material referenced therein.

*Thaçi et al.* trial, based on the following considerations: (i) the follow-up visit to Mr Thaçi on 7 October 2023 by Messrs Smakaj and Behrami; (ii) Mr Smakaj's contact with Witness 2 after the 9 September 2023 Visit; (iii) Messrs Shala's, Behrami's and Syl'a's acknowledgment of Mr Thaçi's instructions regarding the upcoming testimony of Witness 2 in the *Thaçi et al.* trial and follow-up comments made by themselves, during the 9 September 2023 Visit and 7 October 2023 Visit; and (iv) the discovery on 30 October 2023 of the Smakaj Document, which most likely originated from the SC Detention Facilities Printer and was recovered from a vehicle associated to Mr Smakaj.<sup>404</sup>

187. As regards the Kilaj Group, the Pre-Trial Judge likewise finds that Messrs Thaçi's, Kilaj's, and Kryeziu's acts and statements indicate a joint endeavour to influence the forthcoming testimony of Witness 4 in the *Thaçi et al.* trial, based on the following considerations: (i) the planning of the 6 October 2023 Visit one month in advance in an earlier SC Detention Facilities call between Messrs Thaçi and Kilaj on 3 September 2023; (ii) Mr Thaçi's directions to Mr Kryeziu on where to sit in the room and the conduct of the conversation in a normal voice with Mr Kryeziu on innocuous topics, while conveying in low or whispered tones to Mr Kilaj concrete instructions as regards the testimony of Witness 4 in the *Thaçi et al.* trial, during the 6 October 2023 Visit; (iii) Mr Thaçi's handing to Mr Kilaj of copies of the Prior Statements of Witness 4 during the 6 October 2023 Visit; (iv) Mr Kryeziu's prior efforts, at a minimum, to contact Witness 4 as regards the matter of his testimony in the *Thaçi et al.* trial, and, potentially, interfere with the testimony of Witness 4; (v) Mr Kilaj's potential involvement in approaching other SPO witnesses in the *Thaçi et al.* trial; and (vi) the recovery of Witness 4 Torn Up Prior Statements from Mr Kilaj's residence on 2 November 2023 during the Kilaj Search & Seizure.<sup>405</sup>

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<sup>404</sup> See *supra* paras 145-155 and supporting material referenced therein.

<sup>405</sup> See *supra* paras 156-172 and supporting material referenced therein.

188. Considering the above, the Pre-Trial Judge finds that Messrs Thaçi, Fazliu, Smakaj, and Kilaj, in the context of their respective visits, each participated in the common action of a group, within the meaning of Article 401(2) of the KCC.

(ii) Obstructs or attempts to obstructs

189. The Pre-Trial Judge is of the view that the acts and statements of Messrs Thaçi, Fazliu, Smakaj, and Kilaj, in the context of each visit, could in principle, impede, hinder and/or delay the work of SC/SPO Officials, namely SPO prosecutors and investigators, as well as SC staff members, in the context of SC Proceedings.<sup>406</sup> Indeed, attempts to unlawfully influence the testimony of SPO witnesses slated to testify in a trial before the SC, could result in compromised evidence that may no longer be used in such trial, lead to impeachment of witnesses, and, even, affect the integrity of the SC proceedings, which, in turn, could hinder or delay the SPO's presentation of evidence in such SC proceedings as well as the overall SC proceedings.

190. The Pre-Trial Judge observes that, according to the SPO, Messrs Thaçi, Fazliu, Smakaj, and Kilaj, obstructed or attempted to obstruct SC proceedings by compromising the ability of the SPO and the SC to effectively investigate and prosecute crimes, including obtaining and securing relevant witness evidence.<sup>407</sup> Regarding the impact on SC/SPO time and resources, the SPO refers to: (i) the involvement of multiple SC/SPO staff in otherwise unnecessary additional efforts to ensure that the witnesses affected could testify without undue influence in the *Thaçi et al.* trial; (ii) the expenditure of SPO resources to investigate the facts alleged in the present case; and (iii) repercussions on the conduct of the proceedings in the

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<sup>406</sup> See *similarly* Case 07 Trial Judgment, para. 647; Case 10 Confirmation Decision, para. 102; Case 11 Confirmation Decision, para. 108.

<sup>407</sup> Further Amended Indictment, para. 27; Further Amended Rule 86 Outline, pp. 29-30.

*Thaçi et al.* trial.<sup>408</sup> The SPO further specifies that the testimony of Witness 2 was delayed in significant part by the attempted interferences with his testimony.<sup>409</sup>

191. The Pre-Trial Judge accepts that securing the testimony of witnesses who decide to alter their previous accounts to the SPO for the benefit of an accused, following undue interference, may raise particular challenges for the SPO, even more so when several witnesses in the same trial are being targeted (and even more so when the witnesses are identified as “crucial” or “decisive”) and those witnesses are expected to testify soon. However, in the case at hand, the SPO has not: (i) demonstrated any concrete and actual impediment to its investigations that could be imputed to the conduct of Messrs *Thaçi*, *Fazliu*, *Smakaj*, and *Kilaj*, or that the conduct of the proceedings in the *Thaçi et al.* trial have been negatively impacted as a result of their actions, beyond the allegations that Witness 1 may have altered his testimony following alleged undue interference<sup>410</sup> or that the testimony of Witness 2 was delayed in significant part as a result of the attempted interference with this testimony;<sup>411</sup> (ii) pointed to any act that the SC/SPO was prevented, hindered or delayed in performing as part of their work in SC proceedings; or (iii) demonstrated that, as a result of additional expenditure to investigate the facts alleged in the present case, the SPO was prevented from or delayed in carrying out its regular investigative functions.<sup>412</sup> The Pre-Trial Judge also considers that the use of resources by investigative or prosecutorial authorities to respond to criminal activity undermining their work is the normal and expected course of action, and is not necessarily evidence of obstruction.<sup>413</sup> Moreover, the Pre-Trial Judge is not persuaded that the expenditure of additional SPO or SC resources, as supported by

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<sup>408</sup> Further Amended Indictment, para. 27; Further Amended Rule 86 Outline, p. 30.

<sup>409</sup> See Further Amended Rule 86 Outline, p. 24. See also Further Amended Rule 86 Outline, p. 31 and footnote 125 in relation to Witness [REDACTED].

<sup>410</sup> See *supra* para. 128 and supporting material referenced therein.

<sup>411</sup> See *supra* para. 190.

<sup>412</sup> See *similarly* Case 07 Trial Judgment, paras 651, 653; Case 10 Confirmation Decision, para. 104.

<sup>413</sup> See *similarly* Case 07 Trial Judgment, para. 654; Case 10 Confirmation Decision, para. 104.

investigative notes provided by the SPO,<sup>414</sup> was so significant that it led to the obstruction of the work of SC/SPO Officials in the context of SC Proceedings.

192. Considering the above, the Pre-Trial Judge finds that the supporting material does not demonstrate that there is a well-grounded suspicion that the acts and statements of Messrs Thaçi, Fazliu, Smakaj, and Kilaj, obstructed the work of SC/SPO Officials in the context of SC Proceedings.

193. Notwithstanding the above, Article 401(2) of the KCC also prohibits the attempt to obstruct an official person in performing official duties.<sup>415</sup> In this regard, the Pre-Trial Judge recalls that she already found that Messrs Thaçi, Fazliu, Smakaj, and Kilaj, each participated in the common action of a group, within the meaning of Article 401(2) of the KCC, which, in principle, could result in the obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings.<sup>416</sup> Accordingly, the aforementioned acts and statements of Messrs Thaçi, Fazliu, Smakaj, and Kilaj fulfil one of the material elements of the present offence, amounting to an attempted form of this offence.

194. For these reasons, the Pre-Trial Judge is satisfied that the acts and statements of Messrs Thaçi, Fazliu, Smakaj, and Kilaj, in the context of each visit and group, amounted to attempted obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, within the meaning of Article 401(2) of the KCC.

### (iii) Conclusion

195. Based on the supporting material available, the Pre-Trial Judge finds that, in the context of the 2 July 2023 Visit, Messrs Thaçi and Fazliu participated in a group which, by common action, attempted to obstruct the work of the SPO/SC Officials,

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<sup>414</sup> See Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244-118245, para. 10.

<sup>415</sup> See *supra* para. 108.

<sup>416</sup> See *supra* paras 185-188, 189.

in particular SPO prosecutors and investigators, within the context of SC Proceedings, through a joint endeavour aimed at unlawfully influencing the forthcoming testimony of Witness 1 in the *Thaçi et al. trial*. The Pre-Trial Judge also finds that, in the context of the 9 September 2023 Visit and the 7 October 2023 Visit, Messrs Thaçi and Smakaj participated in a group which, by common action, attempted to obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, through a joint endeavour aimed at unlawfully influencing the forthcoming testimony of Witness 2 in the *Thaçi et al. trial*. The Pre-Trial Judge further finds that, in the context of the 6 October 2023 Visit, Messrs Thaçi and Kilaj participated in a group which, by common action, attempted to obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, through a joint endeavour aimed at unlawfully influencing the forthcoming testimony of Witness 4 in the *Thaçi et al. trial*.

(b) Mental element

(i) Mr Thaçi

196. Regarding the mental element of the offence, the supporting material demonstrates the deliberate and repeated manner in which Mr Thaçi: (i) revealed, without authorisation, to Messrs Fazliu, Smakaj, Shala, Behrami, Sylja, Kilaj and Kryeziu, confidential information disclosed to him in his trial, such as the identity of forthcoming (protected) SPO witnesses, including the Targeted Witnesses, as well as the content of their expected testimony in said trial;<sup>417</sup> (ii) provided instructions as regards the content of the testimony of the Targeted Witnesses as well as the manner of testifying in the *Thaçi et al. trial*,<sup>418</sup> and (iii) handed to Mr Kilaj

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<sup>417</sup> See *infra* paras 215-232 and supporting material referenced therein.

<sup>418</sup> See *supra* paras 115, 133-134, 147, 159-160, and supporting material referenced therein.

copies of the Prior Statements of Witness 4 during the 6 October 2023 Visit,<sup>419</sup> for the purpose of unlawfully influencing the testimony of the Targeted Witnesses in the *Thaçi et al.* trial. Moreover, according to the supporting material, Mr Taçi targeted certain witnesses specifically because he considered them to be “crucial” or “decisive”.<sup>420</sup> The supporting material also shows that, in the context of the 9 September 2023 Visit and 6 October 2023 Visit, Mr Taçi expressed his wish that Witness 2 testifies in the *Thaçi et al.* trial “better than Remi”.<sup>421</sup> The supporting material further reveals that, during the 6 October 2023 Visit, Mr Taçi overtly expressed his view that, by aligning Witness 4’s forthcoming testimony to the [REDACTED] Prior Statement of Witness 3, in line with his instructions, “this will shut down”, which is a reference to the expected impact of Witness 4’s (altered) testimony on the Case 06 proceedings.<sup>422</sup>

197. Furthermore, the supporting material reveals that Mr Taçi deliberately used language such as “if he really wants to help us” and “that is the most important for us”<sup>423</sup> to emphasise loyalty between the Suspects and the SPO witnesses, and language such as “[...] tell [Witness 1] ‘All our eyes are on you’. [...] will be watching you [...]”<sup>424</sup> and that Witness 1 “[...] did not finish that business of the gathering” in order to pressure the witnesses.<sup>425</sup>

198. In addition, the supporting material shows that Mr Taçi: (i) systematically used low tones and whispers to convey his instructions while he used a normal voice to discuss innocuous topics during the aforementioned visits;<sup>426</sup> and (ii) during the 2 July 2023 Visit, cautioned Mr Fazliu that the SPO would likely ask

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<sup>419</sup> See *supra* para. 159 and supporting material referenced therein.

<sup>420</sup> See *supra* paras 115, 145, 147 and supporting material referenced therein.

<sup>421</sup> See *supra* para. 149 and supporting material referenced therein.

<sup>422</sup> See *supra* para. 160 and supporting material referenced therein.

<sup>423</sup> See *supra* footnote 393.

<sup>424</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 52, lines 15-16.

<sup>425</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 51, lines 11-12.

<sup>426</sup> See *supra* paras 130, 144, 155, 159, 172, 187 and supporting material referenced therein.



Witness 1 whether anyone had reached out to him, and, that Mr Fazliu should contact Witness 1 “indirectly” so as to not be put at risk.<sup>427</sup> In the view of the Pre-Trial Judge, this reveals Mr Thaçi’s awareness of the prohibited nature of his conduct.

199. The supporting material further shows that Mr Thaçi’s conduct was part of a broader pattern of efforts on his part to reveal confidential information and/or influence SPO witnesses in the *Thaçi et al.* trial, further demonstrating his direct intent to engage in obstructive conduct, in the course of the events set out above.

200. In the Pre-Trial Judge’s assessment, Mr Thaçi’s statements and acts during the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit, translate into a direct intent to obstruct the work of the SPO/SC Officials within the context of SC Proceedings: they show that Mr Thaçi acted with awareness of, and desire for, using the confidential information disclosed to him in his trial and the instructions provided to the Fazliu Group, the Smakaj Group, and the Kilaj Group, to unlawfully influence the testimony of the Targeted Witnesses in the *Thaçi et al.* trial, thus, ultimately, obstructing the work of SPO/SC Officials, in particular SPO prosecutors and investigators, in SC Proceedings. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, Mr Thaçi was aware that, as a result of his and Messrs Fazliu’s, Smakaj’s, and Kilaj’s coordinated and concerted efforts, the Targeted Witnesses would be minded to alter their forthcoming testimonies in the *Thaçi et al.* trial, and, this would, ultimately, obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, in SC Proceedings. He nevertheless acceded to this possible occurrence.

(ii) Mr Fazliu

201. Regarding the mental element of the offence, the supporting material shows that: (i) Messrs Fazliu and F. Fazliu contacted and met with Witness 1 before the

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<sup>427</sup> See *supra* paras 124-125 and supporting material referenced therein.

2 July 2023 Visit, and the former reported this meeting to Mr Thaçi during the 2 July 2023 Visit, including the fact that Witness 1 was willing to receive instructions; (ii) Mr Fazliu actively engaged with Mr Thaçi in response to the latter's remarks and instructions regarding the (then) upcoming testimony of Witness 1 in the *Thaçi et al.* trial, sometimes making follow-up comments himself;<sup>428</sup> (iii) Mr Fazliu suggested how to approach Witness 1, in an unsuspecting manner, in order to transmit Mr Thaçi's instructions as to the testimony of said witness in the *Thaçi et al.* trial;<sup>429</sup> and (iv) Mr F. Fazliu contacted Witness 1 to arrange a meeting with him and Mr Fazliu, in line with Mr Thaçi's instructions,<sup>430</sup> for the likely purpose of unlawfully influencing the testimony of Witness 1 in the *Thaçi et al.* trial.

202. In the Pre-Trial Judge's assessment, Mr Fazliu's statements and acts, as set out above in the context of the 2 July 2023 Visit, translate into a direct intent to obstruct the work of the SPO/SC Officials within the context of SC Proceedings: they show that Mr Fazliu acted with awareness of, and desire for, using the confidential information disclosed and the instructions provided by Mr Thaçi, to unlawfully influence the testimony of Witness 1 in the *Thaçi et al.* trial, thus, ultimately, obstructing the work of SPO/SC Officials, in particular SPO prosecutors and investigators, in SC Proceedings. Notably, Mr Fazliu's contact with Witness 1 prior to the 2 July 2023 Visit clearly shows that he was aware of Mr Thaçi's plan to unlawfully influence Witness 1's testimony in the *Thaçi et al.* trial, and willingly and specifically followed-up with Mr Thaçi during said visit. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, Mr Fazliu was aware that, as a result of the Fazliu Group's coordinated and concerted efforts, Witness 1 would alter his forthcoming testimony in the *Thaçi et al.* trial, and, this would, ultimately, obstruct the work of the SPO/SC Officials, in particular SPO prosecutors

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<sup>428</sup> See for instance *supra* footnotes 186, 194, 198-199.

<sup>429</sup> See *supra* paras 124-125 and references therein.

<sup>430</sup> See *supra* para. 127 and references therein.

and investigators, in SC Proceedings. He nevertheless acceded to this possible occurrence.

(iii) Mr Smakaj

203. Regarding the mental element of the offence, the supporting material shows that, during the 9 September 2023 Visit and 7 October 2023 Visit: (i) Mr Smakaj actively and deliberately engaged with Mr Thaçi in response to the latter's remarks and instructions regarding the (then) upcoming testimony of Witness 2 in the *Thaçi et al.* trial, sometimes making follow-up comments himself;<sup>431</sup> and (ii) like Mr Thaçi, Mr Smakaj, spoke in low tones and whispers, thereby signalling an awareness of the prohibited nature and purpose of the conversation.<sup>432</sup> Moreover, the supporting material shows that, while having direct knowledge of Mr Thaçi's plan to unlawfully influence the testimony of Witness 2 in the *Thaçi et al.* trial, which was communicated at the latest during the 9 September 2023 Visit, Messrs Smakaj and Behrami met again with Mr Thaçi on 7 October 2023, and received once more instructions as regards the (then) forthcoming testimony of Witness 2 in the *Thaçi et al.* trial.<sup>433</sup> The supporting material further reveals that, during the 7 October 2023 Visit, Mr Smakaj told Mr Thaçi that he had been in contact with Witness 2 and that the latter desired to provide some explanations as regards his prior account, which shows that Mr Smakaj followed-up on Mr Thaçi's instructions provided during the 9 September 2023 Visit.<sup>434</sup> Lastly, according to the supporting material, on 30 October 2023, the Smakaj Document, which covers the subject matter of Witness 2's anticipated testimony and contains a narrative consistent with Mr Thaçi's instructions given during the 9 September 2023 Visit and 7 October 2023 Visit, and most likely originated from the SC Detention Facilities Printer, was

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<sup>431</sup> See *supra* footnotes 288, 312, 314, 318-319.

<sup>432</sup> See *supra* footnotes 288, 318-319.

<sup>433</sup> See *supra* paras 149-151 and references therein.

<sup>434</sup> See *supra* para. 149 and references therein.

recovered from a vehicle associated with Mr Smakaj.<sup>435</sup> The Pre-Trial Judge is of the view that this indicates Mr Smakaj's intent and desire to unlawfully receive confidential witness-related documents from Mr Thaçi, take them out of the SC Detention Facilities, despite existing house rules prohibiting such action, and execute Mr Thaçi's instructions to unlawfully influence the testimony of Witness 2 in the *Thaçi et al.* trial.

204. In the Pre-Trial Judge's assessment, Mr Smakaj's statements and acts, as set out above in the context of the 9 September 2023 Visit and 7 October 2023 Visit, translate into a direct intent to obstruct the work of the SPO/SC Officials within the context of SC Proceedings: they show that Mr Smakaj acted with awareness of, and desire for, using the confidential information and documents disclosed and the instructions provided by Mr Thaçi, to unlawfully influence the testimony of Witness 2 in the *Thaçi et al.* trial, thus, ultimately, obstructing the work of SPO/SC Officials, in particular SPO prosecutors and investigators, in SC Proceedings. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, Mr Smakaj was aware that, as a result of the Smakaj Group's coordinated and concerted efforts, Witness 2 would alter his forthcoming testimony in the *Thaçi et al.* trial, and, this would, ultimately, obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, in SC Proceedings. He nevertheless acceded to this possible occurrence.

(iv) Mr Kilaj

205. Regarding the mental element of the offence, the supporting material shows that, during the 6 October 2023: (i) Mr Kilaj actively and deliberately engaged with Mr Thaçi in response to the latter's remarks and instructions regarding the upcoming testimony of Witness 4 in the *Thaçi et al.* trial, sometimes making follow-

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<sup>435</sup> See *supra* paras 152-153 and references therein.

up comments himself,<sup>436</sup> and (ii) Messrs Thaçi and Kilaj spoke in low tones and whispers on the matter of the testimony of Witness 4 whereas Messrs Thaçi and Kryeziu proceeded in parallel with an innocuous conversation, using normal voices, thereby signalling their awareness of the prohibited nature and purpose of the conversation.<sup>437</sup> The supporting material further shows that torn up pieces of the blue-marked Prior Statement of Witness 4, with the portion of the interview where Witness 4 expressed possible uncertainty regarding Mr Thaçi's involvement [REDACTED], which had been handed by Mr Thaçi to Mr Kilaj during the 6 October 2023 Visit, were recovered from Mr Kilaj's residence.<sup>438</sup> In the view of the Pre-Trial Judge, this suggests Mr Kilaj's intent to unlawfully receive confidential witness-related documents from Mr Thaçi, take them out of the SC Detention Facilities, despite existing house rules prohibiting such action, and execute the instructions of Mr Thaçi as regards the (then) upcoming testimony of Witness 4 in the *Thaçi et al.* trial. Lastly, Mr Kilaj's intent to engage in obstructive conduct is further supported by the systematic way in which he appears to have collected information regarding the forthcoming testimony of Witness 4 in the *Thaçi et al.* trial in the Kilaj Notebooks.<sup>439</sup>

206. In the Pre-Trial Judge's assessment, Mr Kilaj's statements and acts, as set out above in the context of the 6 October 2023 Visit, translate into a direct intent to obstruct the work of the SPO/SC Officials within the context of SC Proceedings: they show that Mr Kilaj acted with awareness of, and desire for, using the confidential information and documents disclosed and the instructions provided by Mr Thaçi, to unlawfully influence the testimony of Witness 4 in the *Thaçi et al.* trial, thus, ultimately, obstructing the work of SPO/SC Officials, in particular SPO prosecutors and investigators, in SC Proceedings. In the alternative, the Pre-Trial Judge finds

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<sup>436</sup> See *supra* footnotes 316, 329-332.

<sup>437</sup> See *supra* footnotes 329-332.

<sup>438</sup> See *supra* paras 165, 187 and supporting material referenced therein.

<sup>439</sup> See *supra* para. 165 and supporting material referenced therein.

that, on the basis of the supporting material, Mr Kilaj was aware that, as a result of the Kilaj Group's coordinated and concerted efforts, Witness 4 would alter his forthcoming testimony in the *Thaçi et al.* trial, and, this would, ultimately, obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, in SC Proceedings. He nevertheless acceded to this possible occurrence.

(c) Leader or organiser of the groups

207. The supporting material demonstrates that Mr Thaçi tasked each group with the approach of different SPO witnesses in his ongoing trial proceedings, in particular some of whom Mr Thaçi specifically characterised as "decisive" and "crucial".<sup>440</sup> Moreover, Mr Thaçi provided the confidential information and documents disclosed to him in his trial as well as specific and anticipated instructions, whereas members of each group, i.e. Messrs Fazliu, F. Fazliu Smakaj, and Kilaj, were tasked with the delivery of Mr Thaçi's said instructions to the Targeted Witnesses, for the purpose of unlawfully influencing the testimony of the Targeted Witnesses in the *Thaçi et al.* trial.<sup>441</sup>

208. Considering the above, the Pre-Trial Judge finds that, based on the supporting material available, Mr Thaçi acted as the leader or organiser of each group, i.e. the Fazliu Group, the Smakaj Group, and the Kilaj Group and, as a result, the requirements of the aggravated form of the offence of attempted obstruction set forth under Article 401(3) of the KCC are met.

(d) Official persons in performing official duties

209. The Pre-Trial Judge recalls her finding that the acts and statements of Messrs Thaçi, Fazliu, Smakaj, and Kilaj, in the context of each visit and group, amounted to attempted obstruction of the work of the SPO/SC Officials, in

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<sup>440</sup> See *supra* paras 147-185, 196, and footnotes 294, 420.

<sup>441</sup> See *supra* paras 113, 131, 145, 156, 196, 201, 203, 205/196.

particular SPO prosecutors and investigators, within the context of SC Proceedings, notably through interference of SPO witnesses, within the meaning of Article 401(2) of the KCC.<sup>442</sup> Accordingly, the Pre-Trial Judge finds that Messrs Thaçi, Fazliu, Smakaj and Kilaj committed the offence of attempted obstruction against an “official” within the meaning of Article 113(2) of the KCC, in the performance of “official duties” as defined above<sup>443</sup> and, thus, the requirements of the aggravated form of the offence set forth under Article 401(5) of the KCC are met.

(e) Conclusion

210. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of attempting to obstruct official persons in performing official duties within the meaning of Article 401(2)-(3) and (5) of the KCC and Article 15(2) of the Law was committed with direct intent, or alternatively eventual intent, by Mr Thaçi between at least 26 June and 2 November 2023, in the context of the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit.

211. Likewise, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of attempting to obstruct official persons in performing official duties within the meaning of Article 401(2) and (5) of the KCC and Article 15(2) of the Law was committed with direct intent, or alternatively eventual intent, by: (i) Mr Fazliu, between at least 26 June and 18 July 2023, in the context of the 2 July 2023 Visit; (ii) Mr Smakaj, between at least 9 September and 30 October 2023, in the context of the 9 September 2023 Visit and 7 October 2023 Visit; and (iii) Mr Kilaj, between at least 6 October and 2 November 2023, in the context of the 6 October 2023 Visit. Conversely, recalling that the material elements of the offence are not fulfilled with respect to Mr Thaçi and Mr Kuçi, the Pre-Trial Judge finds that the offence of

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<sup>442</sup> See *supra* para. 194.

<sup>443</sup> See *supra* para. 53.

attempting to obstruct official persons in performing official duties within the meaning of Article 401(2) and (5) of the KCC and Article 15(2) of the Law did not materialize under Counts 2 and 19.

## **2. Violating the Secrecy of Proceedings – Protected Information (Article 392(1) KCC) (Counts 5, 6, 7)**

212. In the Further Amended Indictment, the SPO avers that, between at least 26 June and 2 November 2023, in the context of the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit, Mr Thaçi revealed, without authorisation, Protected Information, including (i) the identity of SPO witnesses, while their respective identity remained confidentially classified by the SC/SPO; (ii) the substance of their anticipated evidence (including references to their evidence found only in confidentially classified material); and/or (iii) information subject to measures of protection.<sup>444</sup>

### **(a) Material elements**

213. Regarding the material elements of the offence, the Pre-Trial Judge takes note of and relies on the facts and circumstances outlined in relation to the obstruction allegations, and the related supporting material.<sup>445</sup>

214. Critical to this offence is the confidential nature of the information revealed in all visits. The declarations of the SPO Witness Security Officer indicate that the SPO, in the performance of its functions, treats as confidential a person's status as an SPO witness before they testify, regardless of whether the witness has been granted protective measures or not.<sup>446</sup> The declarations of the SPO Witness Security Officer further show that the content of a witness' anticipated evidence, found in their prior

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<sup>444</sup> Further Amended Indictment, paras 10-11, 18-21, 22-24, 30-31(i), 32-33, 37, 50.

<sup>445</sup> See *supra* paras 113-172.

<sup>446</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, paras 7-9; Declaration of the SPO Witness Security Officer, 119396-119410, pp. 11936-119397, paras 5-6.



statements or as summarised by the SPO in witness summaries, is likewise treated as confidential by the SPO.<sup>447</sup> According to the declarations of the SPO Witness Security Officer, the foregoing information was provided confidentially to the defence teams in Case 06.<sup>448</sup>

(i) 2 July 2023 Visit

215. The Pre-Trial Judge recalls that, according to the supporting material, in the course of the 2 July 2023 Visit, Mr Thaçi and Mr Fazliu discussed, among others, the impending testimony of Witness 1, who was scheduled to testify publicly in the *Thaçi et al.* trial in July 2023, but whose status as an SPO witness was classified as confidential by the SPO at the time of the 2 July 2023 Visit.<sup>449</sup> More specifically, the 2 July 2023 Visit Transcript shows that, during said visit, Mr Thaçi and Mr Fazliu discussed Witness 1's travel to The Hague for his (then) upcoming testimony in Case 06,<sup>450</sup> and that Mr Thaçi clarified, at a certain point, that "the first official coming is Remi [*i.e.* Witness 1]".<sup>451</sup> The 2 July 2023 Visit Transcript also shows that, while giving instructions on how Witness 1 should testify, Mr Thaçi referred, among others, to the substance of Witness 1's evidence,<sup>452</sup> which could only be found in confidentially classified material, such as Witness 1's prior statements or the witness summaries provided by the SPO.<sup>453</sup>

216. In addition, the 2 July 2023 Visit Transcript shows that, on several other occasions during said visit, Mr Thaçi further imparted information that had been confidentially disclosed to the Case 06 defence teams, such as the expected length

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<sup>447</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, para. 7; Declaration of the SPO Witness Security Officer, 119396-119410, p. 11936, para. 5.

<sup>448</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, paras 7-9; Declaration of the SPO Witness Security Officer, 119396-119410, pp. 11936-119397, paras 5-6.

<sup>449</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, para. 7.

<sup>450</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 39, line 2 to p. 40, line 2.

<sup>451</sup> English Transcript of Audio-Recording, 114037-TR-AT-ET, p. 45, lines 24-25.

<sup>452</sup> See *supra* para. 115 and supporting material referenced therein.

<sup>453</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, para. 8.

of Witness 1's direct examination, the fact that he would testify in public and that he would be asked about a specific exhibit during his testimony, or the composition of the SPO's witness list.<sup>454</sup>

(ii) 9 September 2023 Visit and 7 October 2023 Visit

217. The Pre-Trial Judge further recalls that, in the course of the 9 September 2023 Visit, Mr Thaçi and Messrs Smakaj, Behrami, Shala, and Sylja discussed, *inter alia*, the upcoming testimony of Witness 2, who had not yet testified and whose status as an SPO witness in Case 06 was classified as confidential at that time.<sup>455</sup> In particular, the 9 September 2023 Visit Transcript demonstrates that, during said visit, Mr Thaçi directed one or more of his visitors to instruct Witness 2 to remove or alter a specific part of his expected testimony,<sup>456</sup> the substance of which could only be found in material classified as confidential by the SPO, such as Witness 2's prior statements or the summary of the witness, as provided by the SPO.<sup>457</sup>

218. In addition, the 7 October 2023 Visit Transcript shows that, during said visit, Mr Thaçi further conveyed to Messrs Smakaj and Behrami, who had returned to visit him at the SC Detention Facilities, details about the contents of Witness 2's prior statements, as well as information about (then) forthcoming SPO witnesses and the number of witnesses removed from the SPO witness list, as confidentially disclosed to the *Thaçi et al.* trial defence teams.<sup>458</sup> Lastly, the Pre-Trial Judge recalls that during said visit, Mr Thaçi unlawfully handed over the Smakaj Document, which was most likely printed off the SC Detention Facilities Printer, and (i) contained key events and names of members of the KLA from 1998 to 1999

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<sup>454</sup> See *supra* para. 120 and supporting material referenced therein. See also Declaration of the SPO Witness Security Officer, 118243-118260, p. 118244, para. 8.

<sup>455</sup> Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118244-118245, paras 7, 11.

<sup>456</sup> See *supra* para. 147 and supporting material referenced therein.

<sup>457</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 11824, para. 8.

<sup>458</sup> See *supra* para. 150 and supporting material referenced therein.

following Mr Thaçi's narrative, and (ii) covered the subject matter of Witness 2's anticipated testimony.<sup>459</sup> In this regard, the Pre-Trial Judge recalls that the information contained in the Smakaj Document was classified as confidential at the time.<sup>460</sup>

(iii) 6 October 2023 Visit

219. The Pre-Trial Judge further recalls that, on the occasion of the 6 October 2023 Visit, Mr Thaçi and Messrs Kilaj and Kryeziu discussed, among others, the (then) forthcoming testimonies of Witness 3 and Witness 4 (who benefits from protective measures) in the *Thaçi et al.* trial.<sup>461</sup> According to the declaration of the SPO Security Officer, the status of Witness 3 and Witness 4 as SPO witnesses in Case 06 was classified by the SPO as confidential at that time.<sup>462</sup> The 6 October 2023 Visit Transcript, considered in light of the various items recovered by the SPO from Mr Kilaj's residence, suggests that, during said visit, Mr Thaçi (i) handed copies of the Prior Statements of Witness 4 to Mr Kilaj; (ii) informed him about the expected date of the testimony of Witness 4; and (iii) directed him to instruct the witness on how to alter his testimony, with specific reference to the substance of the [REDACTED] Prior Statement of Witness 3, which had been favourable to him.<sup>463</sup> Notably, the report by the Forensic Institute shows that the Witness 4 Torn Up Statements are copies of the Prior Statements of Witness 4 that were handed to Mr Kilaj by Mr Thaçi during the 6 October 2023 Visit.<sup>464</sup> According to the declaration of the SPO Witness Officer, at that time, the Prior Statements of Witness 4, as well as the [REDACTED] Prior Statement of Witness 3, were classified as confidential by the SPO.<sup>465</sup>

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<sup>459</sup> See *supra*, paras 147, 150-153 and supporting material referenced therein.

<sup>460</sup> Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118244-118245, paras 7-8, 11.

<sup>461</sup> See *supra* paras 158-160 and supporting material referenced therein.

<sup>462</sup> Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118244-118245, paras 7, 11.

<sup>463</sup> See *supra* paras 158-160 and supporting material referenced therein.

<sup>464</sup> See *supra* paras 164-165 and supporting material referenced therein.

<sup>465</sup> Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118244-118245, paras 7-9, 11.

220. Lastly, the Pre-Trial Judge recalls that the information contained in the Kilaj Notebooks, the Witness List, and the Handwritten Notes contains confidential information, otherwise not available to Mr Kilaj. Rather, the supporting material suggests that the information contained therein was conveyed unlawfully by Mr Thaçi during the 6 October 2023 Visit.<sup>466</sup> According to the supporting material, at that time, the information contained in the Kilaj Notebooks, the Witness List, and the Handwritten Notes was classified as confidential by the SPO.<sup>467</sup>

(iv) Conclusion

221. The Pre-Trial Judge finds that, during each of the aforementioned visits, Mr Thaçi revealed, without authorisation, Protected Information to Messrs Fazliu, Smakaj, Behrami, Shala, Sylja, Kilaj, and Kryeziu.

222. The Pre-Trial Judge finds that, in the context of the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit and based on the supporting material, the aforementioned Protected Information, disclosed to Mr Thaçi in official SC proceedings, namely the *Thaçi et al.* trial, qualifies as *information declared secret by a competent authority, and information which must not be revealed according to the law*, within the meaning of Article 392(1) of the KCC.<sup>468</sup> Specifically, the Protected Information is either subject to judicial orders preventing Mr Thaçi from sharing this information with unauthorised persons, or is part of the SPO record, classified as confidential, the revelation of which is prohibited by Article 62(1) of the Law. In this regard, the Pre-Trial Judge notes that Messrs Fazliu, Smakaj, Behrami, Shala, Sylja, Kilaj, and Kryeziu were neither members of Mr Thaçi's defence team, nor otherwise legally privy to the Protected Information disclosed.

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<sup>466</sup> See *supra*, paras 164-169 and supporting material referenced therein.

<sup>467</sup> Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118244-118245, paras 4, 7-9, 11.

<sup>468</sup> See *supra* paras 65-66.

223. The Pre-Trial Judge further finds that, based on the supporting material, Mr Thaçi revealed the aforementioned Protected Information to Messrs Fazliu, Smakaj, Behrami, Shala, Sylja, Kilaj, and Kryeziu by (i) referring to persons' identity as SPO's witnesses, (ii) describing or referring to the content of their anticipated evidence, and, (iii) in the context of the 6 October 2023 Visit, disclosing to Mr Kilaj the Prior Statements of Witness 4 and confidential information as contained in the Kilaj Notebooks, the Witness List, and the Handwritten Notes, and, in the context of the 9 September 2023 Visit and the 7 October 2023 Visit, by making the Smakaj Document available to Mr Smakaj.<sup>469</sup>

(b) Mental element

224. Regarding the mental element of the offence, the supporting material shows the deliberate and repeated manner in which Mr Thaçi directly revealed Protected Information during the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit.

225. At the outset, the Pre-Trial Judge notes that Mr Thaçi was duly notified that he was under a general obligation not to disclose to third parties any confidential documents or information, unless such disclosure is directly and specifically necessary for the presentation and preparation of his case.<sup>470</sup> Mr Thaçi was also notified of the obligation not to disclose the identity of a witness to a third party, unless such disclosure is directly and specifically necessary for the preparation and presentation of his case,<sup>471</sup> and of the duty to respect the confidential status of a Party's filings.<sup>472</sup> The Pre-Trial Judge further recalls that, pursuant to Rule 82(3) of the Rules, unless and until otherwise ordered by a Panel, any filing that is classified as strictly confidential or confidential shall be treated in accordance with that

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<sup>469</sup> See *supra* para. 62.

<sup>470</sup> Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 - F00854, p. 85-86, (I)(a) and (c).

<sup>471</sup> Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 - F00854, p. 86(I)(e). See also Case 06 Court of Appeals Filing, KSC-BC-2020-06 - IA024 - F00019.

<sup>472</sup> Case 06 Trial Panel II Filing, KSC-BC-2020-06 - F01226 - A01, para. 3.

classification. In this regard, the Pre-Trial Judge observes that Mr Thaçi was also put on notice by Rule 82(6) of the Rules, which specifies that unauthorised disclosure of records or information bearing the classification levels strictly confidential or confidential may lead to proceedings under Article 15(2) of the Law and Article 392(1) of the KCC<sup>473</sup> for violating the secrecy of proceedings. The Pre-Trial Judge is of the view that the foregoing, considered in conjunction with (i) the fact that the information revealed by Mr Thaçi had been confidentially disclosed to the defence teams in Case 06,<sup>474</sup> and (ii) the clandestine manner in which the Protected Information was imparted or made available during the above-mentioned visits, by speaking in low voices or whispered tones and covertly handing over documents,<sup>475</sup> demonstrate Mr Thaçi's awareness of the prohibited nature of his conduct.

226. The Pre-Trial Judge also observes that, according to the supporting material, Mr Thaçi's conduct was part of a broader pattern of efforts on his part to reveal Protected Information for the purpose of unlawfully influencing SPO witnesses in the *Thaçi et al.* trial,<sup>476</sup> which further demonstrates that, in the course of the above-mentioned visits at the SC Detention Facilities, Mr Thaçi specifically acted with the intent to violate the secrecy of the proceedings in Case 06.

227. In the Pre-Trial Judge's assessment, Mr Thaçi's statements and acts during the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit, translate into a direct intent to violate the secrecy of the proceedings within the meaning of Article 392(1) of the KCC: they show that Mr Thaçi acted with the awareness of, and desire for, unlawfully revealing the Protected Information in question to Messrs Fazliu, Smakaj, Behrami, Shala, Sylja, Kilaj, and Kryeziu. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material,

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<sup>473</sup> See *supra* footnote 81.

<sup>474</sup> See *supra* para. 222 and supporting material referenced therein.

<sup>475</sup> See *supra* paras 196-198 with further references.

<sup>476</sup> See *supra* para. 199.

Mr Thaçi acted with the awareness that, as a result of his statements and actions, said Protected Information might be revealed without authorisation, and he nevertheless acceded to this possible occurrence.

(c) Conclusion

228. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of violating the secrecy of proceedings within the meaning of Article 392(1) of the KCC and Article 15(2) of the Law was committed with direct intent, or alternatively eventual intent, by Mr Thaçi, between at least 26 June and 2 November 2023, in the context of the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit.

**3. Violating the Secrecy of Proceedings – Protected Persons  
(Article 392(2) KCC) (Count 8)**

229. In the Further Amended Indictment, the SPO contends that, between at least 6 October and 2 November 2023, in the context of the 6 October 2023 Visit, Mr Thaçi revealed or attempted to reveal, without authorisation, information on the identity and personal data of Witness 4, a protected witness in the *Thaçi et al.* trial.<sup>477</sup>

(a) Material elements

230. Regarding the material elements of the offence, the Pre-Trial Judge recalls the treatment of confidential information in SC proceedings,<sup>478</sup> and takes note of and relies on the facts and circumstances outlined in relation to the 6 October 2023 Visit under the obstruction allegations, and the related supporting material.<sup>479</sup>

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<sup>477</sup> Further Amended Indictment, paras 23-24, 30-31(ii), 32-33, 50.

<sup>478</sup> See *supra* para. 222.

<sup>479</sup> See *supra* paras 156-172 and supporting material referenced therein.

231. The Pre-Trial Judge recalls that, during the 6 October 2023 Visit, Mr Thaçi and Messrs Kilaj and Kryeziu discussed, among others, the upcoming testimony of Witness 4. More specifically, the 6 October 2023 Visit Transcript shows that, in the course of said visit, Mr Thaçi handed copies of the Prior Statements of Witness 4 to Mr Kilaj, informed him about the expected date of the testimony of Witness 4, and directed him to instruct Witness 4 on how to alter his testimony.<sup>480</sup> Notably, the report by the Forensic Institute shows that the Witness 4 Torn Up Statements are the copies of the Prior Statements of Witness 4 that Mr Thaçi handed to Mr Kilaj during the 6 October 2023 Visit.<sup>481</sup> The Pre-Trial Judge observes that, in this context, and also in light of the information contained in the Kilaj Notebooks and Witness List,<sup>482</sup> Mr Thaçi revealed the identity of Witness 4 to Messrs Kilaj and Kryeziu.

232. The Pre-Trial Judge finds that, during the 6 October 2023 Visit, Mr Thaçi revealed, without authorisation, the identity of Witness 4 to Mr Kilaj, as discussed above concerning the unauthorised revelation of Protected Information.<sup>483</sup> According to the declaration of the SPO Witness Security Officer and decision [REDACTED], Witness 4 has been granted protective measures in the *Thaçi et al.* trial,<sup>484</sup> thus making him a *person under protection in criminal proceedings* within the meaning of Article 392(2) of the KCC.<sup>485</sup> The Pre-Trial Judge notes, in particular, that Witness 4's status as a Protected Person could only be altered by an SC Panel in accordance with Rules 80 or 81 of the Rules.<sup>486</sup> The Pre-Trial Judge is thus satisfied that the revelation by Mr Thaçi of the identity of Witness 4 as a Protected Person was unauthorised, within the meaning of Article 392(2) of the KCC.

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<sup>480</sup> See *supra* paras 158-160 and supporting material referenced therein.

<sup>481</sup> See *supra* paras 164-165 and supporting material referenced therein.

<sup>482</sup> See *supra* paras 166-167 and supporting material referenced therein.

<sup>483</sup> See *supra* paras 219-220.

<sup>484</sup> Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118243-118244, paras 4, 7. See also [REDACTED].

<sup>485</sup> See *supra* para. 76. See also *supra* footnote 116, as regards the scope of the term "criminal proceedings".

<sup>486</sup> See also *supra* para. 76.



(b) Mental element

233. Regarding the mental element of the offence, the supporting material shows, as was discussed in the context of revealing Protected Information,<sup>487</sup> the deliberate and repeated manner in which Mr Thaçi directly revealed the identity of Witness 4 as a Protected Person during the 6 October 2023 Visit. The Pre-Trial Judge finds, in particular that, in light of decision [REDACTED], Mr Thaçi had been duly notified of the protected status of Witness 4 in the *Thaçi et al.* trial at the time of the 6 October 2023 Visit.<sup>488</sup> The Pre-Trial Judge is of the view that the foregoing, considered alongside the clandestine manner in which the identity of Witness 4 as a Protected Person was revealed during the 6 October 2023 Visit, by speaking in low voices or whispered tones and covertly handing over documents,<sup>489</sup> demonstrates Mr Thaçi's awareness of the prohibited nature of his conduct.

234. In the Pre-Trial Judge's assessment, Mr Thaçi's statements and acts during the 6 October 2023 Visit translate into a direct intent to violate the secrecy of the proceedings within the meaning of Article 392(2) of the KCC: they show that Mr Thaçi acted with the awareness of, and desire for, revealing without authorisation the identity of the Protected Person in question to Mr Kilaj. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, Mr Thaçi acted with the awareness that, as a result of his statements and actions, the identity of the Protected Person might be revealed without authorisation, and he nevertheless acceded to this possible occurrence.

(c) Conclusion

235. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of violating the secrecy of the proceedings

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<sup>487</sup> See *supra* paras 224-227.

<sup>488</sup> [REDACTED]; Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

<sup>489</sup> See *supra* para. 165.

within the meaning of Article 392(2) of the KCC and Article 15(2) of the Law was committed, with direct intent, or alternatively eventual intent, by Mr Thaçi between at least 6 October and 2 November 2023, in the context of the 6 October 2023 Visit.

**4. Contempt of Court (Article 393 of the KCC) (Counts 9-12, 14, 16, 18, 20-21)**

(a) Counts 9-12, 14, 16, 18, 20

236. In the Further Amended Indictment, the SPO alleges that, between at least 26 June and 2 November 2023, Messrs Thaçi, Fazliu, Smakaj, Kuçi, and Kilaj failed to obey final orders contained in decision KSC-BC-2020-06/F00854 (as upheld in KSC-BC-2020-06/IA024/F00019 and incorporated in KSC-BC-2020-06/F01226/A01), and Messrs Thaçi and Kilaj also failed to obey final decision [REDACTED].<sup>490</sup>

(i) Material elements

237. Regarding the material elements of the offence, the Pre-Trial Judge takes note of and relies on the facts and circumstances outlined in relation to the allegations of obstruction, as well as the violation of the secrecy of proceedings charges, and related supporting material.<sup>491</sup>

238. At the outset, the Pre-Trial Judge notes that decision KSC-BC-2020-06/F00854, issued at the pre-trial phase of Case 06, specifically ordered Parties and participants in the *Thaçi et al.* trial not to (i) disclose to third parties any confidential documents or information unless such disclosure is directly and specifically necessary for the preparation and presentation of their case;<sup>492</sup> (ii) disclose the identity of a witness to a third party unless such disclosure is directly and specifically necessary for the preparation and presentation of their case, or reveal to third parties that any

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<sup>490</sup> Further Amended Indictment, paras 34, 36-37, 40, 42-46, 48, 50-54.

<sup>491</sup> See *supra* paras 113-170, 215-220, 231-232.

<sup>492</sup> Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 -F00854, pp. 86-87, (I)(a) and (c).

protected witness is involved with the activities of the SC/SPO or the nature of such involvement;<sup>493</sup> and (iii) contact a witness of another Party outside the terms specified therein (“Case 06 Contact Protocol”).<sup>494</sup> Said decision is final.<sup>495</sup> Furthermore, the Pre-Trial Judge notes that decision [REDACTED] ordered protective measures as regards Witness 4, and that the terms thereof have not been varied pursuant to Rules 80 or 81 of the Rules.<sup>496</sup> It is equally final.

239. The Pre-Trial Judge notes that, as an accused in Case 06, Mr Thaçi is a Party in the *Thaçi et al.* trial. In the same vein, as a member of the defence team representing Mr Veseli from at least 3 April to 29 November 2023, who is also a Party in the *Thaçi et al.* trial, Mr Kuçi was also a Party in the same proceedings. Accordingly, at the time of the 3 September 2023 Visit, both Mr Thaçi, as well as Mr Kuçi, were directly addressed by decisions KSC-BC-2020-06/F00854 (and related decisions) and [REDACTED].

a. Mr Thaçi (Counts 9, 11-12)

240. The Pre-Trial Judge finds that, by (i) referring to the content of the anticipated evidence of SPO witnesses in conversations with Messrs Fazliu, Smakaj, Behrami, Shala, Sylja, Kilaj, and Kryeziu, in the context of the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit,<sup>497</sup> and making available to Mr Kilaj the Prior Statements of Witness 4, as well as disclosing confidential information as contained in the Kilaj Notebooks, the Witness List, and the

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<sup>493</sup> Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 - F00854, p. 87, (I)(e) and (f).

<sup>494</sup> Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 - F00854, pp. 87-92, (II)(a)-(o).

<sup>495</sup> The Pre-Trial Judge observes in this regard that the Case 06 Contact Protocol was challenged by interlocutory appeal, and became final after being upheld by the Court of Appeals Panel (*see* Case 06 Court of Appeals Filing, KSC-BC-2020-06 - IA024 - F00019). Its terms were also expressly incorporated in Case 06 Trial Panel II Filing, KSC-BC-2020-06 - F01226 - A01, para. 71. The remaining orders contained in Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 - F00854 were not challenged by interlocutory appeal, thus becoming final as well.

<sup>496</sup> [REDACTED]. *See also* Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118243-18244, paras 4, 7.

<sup>497</sup> *See supra* paras 113-170 and supporting material referenced therein. *See also* paras 215-220.

Handwritten Notes during the 6 October 2023 Visit, and as contained in the Smakaj Document during the 9 September 2023 Visit and 7 October 2023 Visit,<sup>498</sup> (ii) in the context of the same visits, disclosing the identity of various SPO witnesses in the *Thaçi et al.* trial to Messrs Fazliu, Smakaj, Behrami, Shala, Sylaj, Kilaj, and Kryeziu;<sup>499</sup> (iii) during the 2 July 2023 Visit, 9 September 2023 Visit, 6 October 2023 Visit, and 7 October 2023 Visit, tasking Messrs Fazliu, Smakaj, and Kilaj to contact SPO witnesses after the SPO's intention to call the Targeted Witnesses to testify or to rely on their statements in Case 06 had been notified to the defence teams;<sup>500</sup> and (iv) in the context of the 6 October 2023 Visit, revealing to Messrs Kilaj and Kryeziu the identity of Witness 4,<sup>501</sup> Mr Thaçi failed to obey final orders and decisions of the SC, as set out in paragraph 238 above, within the meaning of Article 393 of the KCC. More specifically, the Pre-Trial Judge finds that Mr Thaçi failed to obey decision KSC-BC-2020-06/F00854 and, as far as the revelation of the identity of Witness 4 is concerned, Mr Thaçi also failed to obey decision [REDACTED].

b. Mr Thaçi and Mr Kuçi (Counts 10, 20)

241. Even though the SPO allegation concerns Mr Thaçi's and Mr Kuçi's agreement to commit contempt of court, the Pre-Trial Judge finds it necessary to ascertain that the agreement pertains to all material elements of the offence.<sup>502</sup> The Pre-Trial Judge notes that, as described above, during the 3 September 2023 Visit, Mr Thaçi provided Mr Kuçi specific instructions to convey to Witness 5, Witness 2 and Witness 6 in relation to their (then) forthcoming testimony in the *Thaçi et al.* trial,<sup>503</sup> and advised Mr Kuçi on how and when he should approach Witness 6, stressing

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<sup>498</sup> See *supra* paras 147, 150-154, 159-169 and supporting material reference therein. See also, paras 218-220, 231.

<sup>499</sup> See *supra* paras 113-170 and supporting material referenced therein. See also paras 215-220.

<sup>500</sup> See *supra* paras 113-170 and supporting material referenced therein.

<sup>501</sup> See *supra* paras 157-167 and supporting material referenced therein. See also paras 219-220, 231.

<sup>502</sup> See *supra*, para. 175.

<sup>503</sup> See *supra* paras 132-139 and supporting material referenced therein.

the urgency of the task.<sup>504</sup> In this connection, the Pre-Trial Judge likewise observes that Mr Kuçi took notes of Mr Thaçi's instructions, confirmed and agreed to them, and also provided suggestions on the instructions to be conveyed to Witness 5 and Witness 6.<sup>505</sup> The Pre-Trial Judge further pays heed to the fact that Mr Kuçi told Mr Thaçi that, on at least one prior occasion, he had met with Witness 5 to discuss his forthcoming testimony.<sup>506</sup>

242. As regards the court order pertaining to contact with witnesses outside the terms specified in the Case 06 Contact Protocol, the Pre-Trial Judge finds that, insofar as Mr Thaçi and Mr Kuçi agreed to contact witnesses outside said framework, their failure to obey the court order fulfils the elements of contempt of court, within the meaning of Article 393 of the KCC.

243. As regards the court orders involving the sharing of confidential information and documents with and disclosing to a third party the identity of a witness, the Pre-Trial Judge is not satisfied that a failure to obey is involved *vis-à-vis* Messrs Thaçi and Kuçi. This is so because, at the time of the 3 September 2023 Visit, they are both Parties, in their respective capacity as accused and member of the Veseli Defence team, in the *Thaçi et al.* trial. In the view of the Pre-Trial Judge, neither of them qualifies as a "third party" within the meaning of the relevant orders. As a consequence, Article 393 of the KCC is not fulfilled in this regard.

c. Messrs Fazliu, Smakaj, and Kilaj (Counts 14, 16, 18)

244. The Pre-Trial Judge takes note that decision KSC-BC-2020-06/F00854 and related decisions are addressed to the Parties and participants in the *Thaçi et al.* trial. The Pre-Trial Judge further notes that Messrs Fazliu, Smakaj, and Kilaj are neither Parties nor participants in the *Thaçi et al.* trial and that, as such, the aforementioned

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<sup>504</sup> See *supra* para. 143 and supporting material referenced therein.

<sup>505</sup> See *supra* paras 140-141 and supporting material reference therein.

<sup>506</sup> See *supra* para. 141 and supporting material referenced therein.

decisions<sup>507</sup> do not impose any direct obligations upon them that could be disobeyed.

245. In the same vein, the Pre-Trial Judge notes that (i) decision [REDACTED] is classified as confidential;<sup>508</sup> and (ii) the status of Witness 4 as a (protected) SPO witness, the SPO summary of the witness, and the Prior Statements of Witness 4, were also disclosed confidentially to the defence teams in Case 06, including the accused.<sup>509</sup> Therefore, since decision [REDACTED] was not addressed to Mr Kilaj, who is neither a Party nor a participant in the *Thaçi et al.* trial, it does not impose any direct obligations upon him that could be disobeyed.

246. As a consequence, Article 393 of the KCC is not fulfilled.

(ii) Mental element

247. *Mr Thaçi (Counts 9, 11-12)*. Regarding the mental element of the offence, the Pre-Trial Judge refers to the above findings as to the deliberate and repeated manner in which Mr Thaçi attempted to obstruct the work of the SPO/SC Officials within the context of SC Proceedings, and revealed Protected Information, as well as the identity of Witness 4 as a Protected Person.<sup>510</sup> The Pre-Trial Judge notes, in particular, that decision KSC-BC-2020-06/F00854 was formally notified to Mr Thaçi, who was a direct addressee of the orders contained therein as a Party in the *Thaçi et*

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<sup>507</sup> The Pre-Trial Judge clarifies that Messrs Fazliu's, Smakaj's, and Kilaj's alleged failure to obey the decision KSC-BC-2020-06/F00854 (as upheld in KSC-BC-2020-06/IA024/F00019 and incorporated in KSC-BC-2020-06/F01226/A01), concerns the order not to disclose to third parties (i) any confidential documents or information unless such disclosure is directly and specifically necessary for the preparation and presentation of their case; and (ii) the identity of a witness unless such disclosure is directly and specifically necessary for the preparation and presentation of their case, or reveal to third parties that any protected witness is involved with the activities of the SC/SPO or the nature of such involvement.

<sup>508</sup> See [REDACTED].

<sup>509</sup> See Declaration of the SPO Witness Security Officer, 118243-118260, pp.118243-118244, paras 4, 8-9.

<sup>510</sup> See *supra* paras 196-200, 224-227, 233-234.

*al.* trial.<sup>511</sup> In the same vein, decision [REDACTED] was notified to Mr Thaçi, and the status of Witness 4 as a (protected) SPO witness, the SPO summary of the witness, as well as the Prior Statements of Witness 4, were also disclosed confidentially to the defence teams in Case 06, including to him personally.<sup>512</sup> The Pre-Trial Judge finds that the foregoing, considered in conjunction with the clandestine manner in which Mr Thaçi (i) referred to the content of the anticipated evidence of SPO witnesses in conversations with Messrs Fazliu, Smakaj, Behrami, Shala, Sylja, Kilaj, and Kryeziu;<sup>513</sup> made available to Mr Kilaj the Prior Statements of Witness 4, and disclosed confidential information as contained in the Kilaj Notebooks, the Witness List and the Handwritten Notes during the 6 October 2023 Visit, as the Smakaj document during the 9 September 2023 Visit and 8 October 2023 Visit;<sup>514</sup> (ii) disclosed the identity of various SPO witnesses in the *Thaçi et al.* trial to Messrs Fazliu, Smakaj, Behrami, Shala, Sylja, Kilaj, and Kryeziu;<sup>515</sup> (iii) tasked Messrs Fazliu, Smakaj, and Kilaj to contact SPO witnesses after the SPO intention to call the Targeted Witnesses to testify or to rely on their statements in Case 06 had been notified to the defence teams;<sup>516</sup> and (iv) revealed to Messrs Kilaj and Kryeziu the identity of Witness 4,<sup>517</sup> demonstrate Mr Thaçi's awareness of the prohibited nature of his conduct.

248. In the Pre-Trial Judge's assessment, the above shows that Mr Thaçi acted with the awareness of, and desire for, disobeying final court orders and decisions. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, Mr Thaçi was aware that, as a result of his acts and statements, he would fail to obey court orders. He nevertheless acceded to this possible occurrence.

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<sup>511</sup> Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 - F00854, pp. 86-92.

<sup>512</sup> Declaration of the SPO Witness Security Officer, 118243-118260, pp. 118243-118244, paras 4, 8-9.

<sup>513</sup> See *supra* paras 113-170 and supporting material referenced therein. See also paras 215-220.

<sup>514</sup> See *supra* paras 159-169 and supporting material referenced therein. See also, para. 231.

<sup>515</sup> See *supra* paras 113-170 and supporting material referenced therein. See also paras 215-220.

<sup>516</sup> See *supra* paras 113-170 and supporting material referenced therein.

<sup>517</sup> See *supra* paras 157-167 and supporting material referenced therein. See also paras 219-220, 231.

(iii) Conclusion

249. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of contempt of court (Counts 9, 11-12) within the meaning of Article 393 of the KCC and Article 15(2) of the Law was committed with direct intent, or alternatively eventual intent, by Mr Thaçi, between at least 26 June and 2 November 2023.

250. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that, between at least 1 and 13 September 2023, as regards the court order pertaining to contact of a witness outside the terms specified in the Case 06 Contact Protocol, Mr Thaçi's and Mr Kuçi's conduct fulfills the material elements of contempt of court, within the meaning of Article 393 of the KCC and Article 15(2) of the Law (Counts 10 and 20). For the reasons set out above, Counts 10 and 20 do not encompass the factual allegations relating to the court orders involving the sharing of confidential information and documents with and disclosing to a third party the identity of a witness. Lastly, the Pre-Trial Judge refers to paragraphs 295-297 and 300 regarding the alleged agreement between Mr Thaçi and Mr Kuçi.

251. Conversely, and for the reasons laid down above, the Pre-Trial Judge finds that the supporting material, examined in relation to the aforementioned requirements, does not demonstrate that there is a well-grounded suspicion that Messrs Fazliu, Smakaj, and Kilaj committed the offence of contempt of court within the meaning of Article 393 of the KCC and Article 15(2) of the Law. This is without prejudice to the findings that Messrs Fazliu, Smakaj, and Kilaj may incur individual criminal responsibility as accessories to this offence.<sup>518</sup>

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<sup>518</sup> See *infra* paras 287-288.



## (b) Count 21

252. In the Further Amended Indictment, the SPO alleges that, on or about 12 April 2023, Mr Kuçi failed to obey a final court order contained in KSC-BC-2020-06/F00854, namely the prohibition to contact SPO witnesses outside the terms applied in the Case 06 Contact Protocol.<sup>519</sup>

## (i) Material elements

253. Regarding the material elements of the offence, the Pre-Trial Judge notes that, according to the forensic extraction of Witness 1's seized phone, following the opening statements in the *Thaçi et al.* trial,<sup>520</sup> on 12 April 2023, at 22:14 hours, Mr Kuçi sent Witness 1 a WhatsApp message, whereby he conveyed congratulations on behalf of an unnamed individual.<sup>521</sup> Witness 1 responded on the same day, at 22:15 hours, via WhatsApp message, "Thank you!" to the aforesaid message ("Witness 1 WhatsApp Exchange").<sup>522</sup> The supporting material further shows that, on 12 April 2023, before or at about the same time as the Witness 1 WhatsApp Exchange,<sup>523</sup> KTV Konfront broadcasted an interview with Witness 1.<sup>524</sup> The English transcript of the interview with Witness 1 reveals that, during the aforesaid interview, Witness 1 (i) stated, *inter alia*, that the accusations levied

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<sup>519</sup> Further Amended Indictment, paras 35, 37, 40, 54.

<sup>520</sup> See Case 06 Transcript of Hearing, KSC-BC-2020-06 20230403 ENG.

<sup>521</sup> SPOE00353233-00353237, p. SPOE00353236 (Chats Log 22) ("Friend he congratulated you for your professionalism for your clear ideas about the country and the war and for your courage Bravo").

<sup>522</sup> Forensic Extraction of Witness 1's Seized Phone, SPOE00353233-00353237, p. SPOE00353236 (Chats Log 23).

<sup>523</sup> See Further Amended Rule 86 Outline, footnote 150, referring to Koha, "Mustafa: the main accusations of the Special were dropped at the beginning, they are false, <<https://www.koha.net/arberi/mustafa-akuzat-kryesore-te-speciale-rane-ne-fillim-jane-te-rreme>> accessed 29 November 2024. The Pre-Trial Judge notes that the time stamp of the respective media article, which discusses Witness 1's KTV Konfront interview, shows that it was published online on 12 April 2023 at 22:29 hours, together with a link to the video of the interview.

<sup>524</sup> Video Interview with Witness 1 on KTV Konfront,122005-01; English Transcript of Video Interview with Witness 1 on KTV Konfront, 122005-01-TR-AT-ET.

against KLA members are fabrications<sup>525</sup> [REDACTED],<sup>526</sup> and (ii) [REDACTED].<sup>527</sup> Considering the temporal proximity of the TV broadcast and the Witness 1 WhatsApp Exchange, viewed against the backdrop of the opening of the *Thaçi et al.* trial, it can be reasonably inferred that the Witness 1 WhatsApp Exchange relates directly to the Witness 1's KTV Konfront interview. It also shows that, being aware on 12 April 2023 that Witness 1's testimony was forthcoming, Mr Kuçi reached out to him in order to confirm the specific narrative Witness 1 laid out in the TV interview.

254. Recalling that (i) the Case 06 Contact Protocol contained in decision KSC-BC-2020-06/F00854 specifically ordered the Parties in the *Thaçi et al.* trial, including members of all Case 06 defence teams, not to contact a witness of another Party outside the terms specified therein,<sup>528</sup> and (ii) as a member of the Veseli defence team in Case 06 at the time of the Witness 1 WhatsApp Exchange, Mr Kuçi was directly addressed by the Case 06 Contact Protocol contained in decision KSC-BC-2020-06/F00854,<sup>529</sup> the Pre-Trial Judge finds that, by virtue of his conduct in relation to the Witness 1 WhatsApp Exchange, Mr Kuçi failed to obey the Case 06 Contact Protocol contained in decision KSC-BC-2020-06/F00854.

(ii) Mental element

255. Regarding the mental element of the offence, the Pre-Trial Judge refers to the deliberate and purposeful manner in which Mr Kuçi contacted Witness 1, an SPO witness, in the context of the Witness 1 WhatsApp Exchange.<sup>530</sup> The Pre-Trial Judge notes, in particular, that (i) decision KSC-BC-2020-06/F00854, containing the

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<sup>525</sup> English Transcript of Video Interview with Witness 1 on KTV Konfront, 122005-01-TR-AT-ET, p. 3.

<sup>526</sup> [REDACTED].

<sup>527</sup> [REDACTED].

<sup>528</sup> See *supra* para. 238.

<sup>529</sup> See *supra* para. 239.

<sup>530</sup> See *supra* para. 253.

Case 06 Contact Protocol, was formally notified to Mr Kuçi, who was a direct addressee of the orders contained therein as a member of the defence team of Mr Veseli in the *Thaçi et al.* trial;<sup>531</sup> and (ii) by 30 January 2023 at the latest, Witness 1 had been identified as a SPO witness in the *Thaçi et al.* trial in disclosures to the defence teams in that case.<sup>532</sup> The Pre-Trial Judge finds that the foregoing demonstrate Mr Kuçi's awareness of the prohibited nature of his conduct.

256. In the Pre-Trial Judge's assessment, the above shows that Mr Kuçi acted with the awareness of, and desire for, disobeying final court orders and decisions. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, Mr Kuçi was aware that, as a result of his acts and statements, he would fail to obey court orders. He nevertheless acceded to this possible occurrence.

(iii) Conclusion

257. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of contempt of court within the meaning of Article 393 of the KCC and Article 15(2) of the Law was committed with direct intent, or alternatively eventual intent, by Mr Kuçi on 12 April 2023.

B. THE MODES OF LIABILITY CHARGED

1. Commission

258. In the Further Amended Indictment, the SPO alleges that: (i) Mr Thaçi committed the offences under Counts 1, 3-9, 11-12 (obstructing official persons; violating secrecy of proceedings; contempt of court); (ii) Mr Smakaj committed the offence under Count 13 (obstructing official persons); (iii) Mr Kilaj committed the

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<sup>531</sup> Case 06 Pre-Trial Judge Filing, KSC-BC-2020-06 - F00854, pp. 87-92, (II)(a)-(o).

<sup>532</sup> Declaration of the SPO Witness Security Officer, 118243-118260, p. 118243, para. 4.

offence under Count 15 (obstructing official persons); (iv) Mr Fazliu committed the offence under Count 17 (obstructing official persons); and (v) Mr Kuçi committed the offence under Count 21 (contempt of court), pursuant to Article 17 of the KCC and Article 16(3) of the Law.<sup>533</sup>

259. Regarding the objective and subjective elements of the Suspects' physical commission of the offences under Counts 1, 3-9, 11-12 (Mr Thaçi), 13 (Mr Smakaj), 15 (Mr Kilaj), 17 (Mr Fazliu), and Count 21 (Mr Kuçi), the Pre-Trial Judge refers to the above findings in Counts 1, 3-9, 11-12, 13, 15, 17 and 21.<sup>534</sup>

260. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that: (i) Mr Thaçi committed the offences under Counts 1, 3-9, 11-12 (obstruction of official persons, violation of secrecy of proceedings and contempt of court); (ii) Mr Smakaj committed the offence under Count 13 (obstruction of official persons); (iii) Mr Kilaj committed the offence under Count 15 (obstruction of official persons); (iv) Mr Fazliu committed the offence under Count 17 (obstruction of official persons); and (v) Mr Kuçi committed the offence under Count 21 (contempt of court), pursuant to Articles 17 and 21 of the KCC and Article 16(3) of the Law.

## 2. Co-Perpetration

261. In the Further Amended Indictment, the SPO alleges that the offence of contempt of court was committed in co-perpetration by: (i) the members of the Fazliu Group under Counts 9 and 18; (ii) the members of the Smakaj Group under Counts 11 and 14; and (iii) the members of the Kilaj Group under Counts 12 and 16, by participating in the commission of the offences or by substantially contributing

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<sup>533</sup> Further Amended Indictment, paras 37-41, 49-54.

<sup>534</sup> See *supra* paras 113-211, 213-228, 230-235, 237-251 and supporting material referenced therein.

to their commission in any other way, pursuant to Article 31 of the KCC and Article 16(3) of the Law.<sup>535</sup>

262. At the outset, the Pre-Trial Judge recalls her finding that Messrs Smakaj, Kilaj, and Fazliu did not commit the offences under Counts 14, 16 and 18, given that their alleged conduct does not fulfil the material elements of the offence of contempt of court pursuant to Article 393 of the KCC.<sup>536</sup> Furthermore, the Pre-Trial Judge is of the view that, in the present case, as evidenced in the supporting material, Mr Thaçi was in possession of all confidential information, subject to and aware of related judicial orders, and coordinated all efforts from within the SC Detention Facilities. As the main beneficiary of the efforts, he thus played a central role in the conception, design and implementation of the strategy to interfere with witnesses. On the other hand, the involvement of Messrs Fazliu, Smakaj and Kilaj was more limited. When visiting Mr Thaçi, they were primarily the recipients of confidential information provided and instructions given by Mr Thaçi. According to the supporting material, their engagement, though of some relevance, was not at the same level and of the same quality as that of Mr Thaçi. Consequently, the Pre-Trial Judge finds that their contribution is best captured by other forms of criminal responsibility, as detailed below.

263. In light of the foregoing, Mr Thaçi's criminal responsibility for the contempt of court charges cannot be based on co-perpetration, but is best captured under the form of commission, pursuant to Articles 17 and 21 of the KCC.

264. Having examined the supporting material as a whole, the Pre-Trial Judge rejects the criminal liability of Messrs Thaçi, Fazliu, Smakaj, and Kilaj for the offence of contempt of court (Counts 9, 11, 12, 14, 16 and 18) under Articles 21 and 31 of the KCC and Article 16(3) of the Law.

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<sup>535</sup> Further Amended Indictment, paras 42, 49-53.

<sup>536</sup> See *supra* para. 251.

### 3. Incitement

265. In the Further Amended Indictment, the SPO alleges that Mr Thaçi incited, within the meaning of Article 32(1) of the KCC and Article 16(3) of the Law, the other members of the Fazliu Group, the Smakaj Group, and the Kilaj Group, to commit the offences under Counts 1, 3-4 (obstructing official persons), and Counts 9, 11-12 (contempt of court).<sup>537</sup> In addition, or in the alternative, the SPO alleges that Mr Thaçi is responsible: (i) under Article 32(2) of the KCC and Article 16(3) of the Law, for inciting the commission of obstructing official persons and contempt of court, even if such offences were ultimately only attempted, but not committed (*see* Counts 1, 3-4, 9, 11-12);<sup>538</sup> and (ii) under Article 32(3) of the KCC and Article 16(3) of the Law, for inciting the commission of obstructing official persons, even if such offences were ultimately, neither committed, nor attempted (*see* Counts 1, 3-4).<sup>539</sup>

#### (a) Article 32(1) of the KCC

266. The Pre-Trial Judge turns to Mr Thaçi's criminal responsibility as inciter to the commission of attempted obstruction of official persons and contempt of court under Articles 21 and 32(1) of the KCC and Article 16(3) of the Law. They will be discussed in turn.

#### (i) Obstruction of Official Persons

267. Regarding the objective elements of the mode of liability provided under Article 32(1) of the KCC, with respect to obstructing official persons under Counts 1, 3-4, the Pre-Trial Judge first recalls her finding that Messrs Smakaj, Kilaj,

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<sup>537</sup> Further Amended Indictment, paras 37, 45, 49-50.

<sup>538</sup> Further Amended Indictment, paras 37, 46, 49-50.

<sup>539</sup> Further Amended Indictment, paras 37, 47, 49-50.

and Fazliu, committed attempted obstruction, as detailed above (*see* Counts 13, 15, 17).<sup>540</sup>

268. Moreover, the Pre-Trial Judge finds that the supporting material indicates that Mr Thaçi, as the leader and main beneficiary of the obstruction efforts, incited the commission of these offences in the following manner. First, Mr Thaçi tasked each group to approach different SPO witnesses, some of whom Mr Thaçi specifically characterised as “decisive” or “crucial”, and handed over documents to Mr Kilaj, thereby showing that he planned and prepared in advance for the visits.<sup>541</sup> Second, Mr Thaçi repeatedly and purposefully revealed, without authorisation, Protected Information to Messrs Fazliu, Smakaj, Kilaj and other visitors (Messrs Behrami, Shala, Sylja, and Kryeziu) and revealed, without authorisation, the identity of the Protected Person to Messrs Kilaj and Kryeziu,<sup>542</sup> thereby providing them with the very means for the commission of the offences under Counts 13, 15 and 17. Third, Mr Thaçi unmistakably encouraged and urged, in the context of each group, i.e. the Fazliu Group, the Smakaj Group, and the Kilaj Group, Messrs Fazliu, Smakaj, and Kilaj, to receive and memorise his precise instructions and to contact the Targeted Witnesses, for the purpose of unlawfully influencing their (then) forthcoming testimony in the *Thaçi et al.* trial.<sup>543</sup>

269. Furthermore, in the context of the Fazliu Group, Mr Thaçi’s encouragement and urging are exemplified in particular by his repeated use of the phrase “Tell him” throughout the 2 July 2023 Visit when speaking to Mr Fazliu and referring to Witness 1.<sup>544</sup> Mr Thaçi also encouraged Mr Fazliu to use specific arguments and language in order to persuade or pressure Witness 1.<sup>545</sup> Mr Thaçi further urged

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<sup>540</sup> *See supra* para. 260.

<sup>541</sup> *See supra* paras 115, 145, 147, 159.

<sup>542</sup> *See supra* paras 215-232.

<sup>543</sup> *See supra* paras 113-195.

<sup>544</sup> *See supra* footnotes 186, 194, 198-200, 203, 207-210, 216.

<sup>545</sup> *See supra* para. 123.

Mr Fazliu to contact Witness 1 but cautioned him to do so “indirectly”, in light of Mr Thaçi’s knowledge that the SPO would likely ask Witness 1 whether anyone had reached out to him.<sup>546</sup>

270. In the context of the Smakaj Group, Mr Thaçi’s encouragement and urging are exemplified in particular by: (i) Mr Thaçi’s repeated use of the phrase “Tell him” throughout the 9 September Visit when speaking to Messrs Smakaj, Shala, Behrami, and Sylja, and referring to Witness 2;<sup>547</sup> (ii) urging Messrs Smakaj and Behrami to meet him again after the 9 September 2023 Visit for a follow-up; and (iii) during that second meeting, i.e. on 7 October 2023, providing once more Messrs Smakaj and Behrami with precise instructions as regards the testimony of Witness 2 in the *Thaçi et al.* trial.<sup>548</sup>

271. In the context of the Kilaj Group, Mr Thaçi’s encouragement and urging are exemplified in particular by Mr Thaçi’s repeated use of the phrase “Tell him” throughout the 6 October 2023 Visit when speaking to Mr Kilaj and referring to Witness 4.<sup>549</sup>

272. Regarding the subjective elements of this mode of liability, the aforementioned deliberate acts of encouragement and urging demonstrate Mr Thaçi’s direct intention to incite the commission of attempted obstruction of official persons by Messrs Fazliu, Smakaj, and Kilaj under Counts 13, 15 and 17.

(ii) Contempt of Court

273. Regarding the objective elements of the mode of liability provided under Article 32(1) of the KCC, with respect to contempt of court, under Counts 9, 11-12, the Pre-Trial Judge first recalls that the responsibility of the inciter rests on the

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<sup>546</sup> See *supra* para. 125.

<sup>547</sup> See *supra* footnotes 295-297, 300.

<sup>548</sup> See *supra* para. 149.

<sup>549</sup> See *supra* footnote 332.



commission of the offence by the direct perpetrator. As co-perpetration is not confirmed in relation to Messrs Fazliu, Smakaj, and Kilaj for the offence of contempt of court, this form of incitement is inapplicable in the present instance.<sup>550</sup>

(b) Article 32(2) of the KCC

274. In relation to the offence of obstructing official persons, the Pre-Trial Judge recalls that this offence is *committed* either when the obstruction has occurred, or when it has only been attempted. As a result, Article 32(1) of the KCC is operative for obstruction as well as *attempted* obstruction, while Article 32(2) of the KCC is inapplicable.

275. In relation to the offence of contempt of court, the Pre-Trial Judge finds that, since punishment for attempting this offence is not provided by law,<sup>551</sup> Article 32(2) of the KCC is likewise inapplicable.

(c) Article 32(3) of the KCC

276. The Pre-Trial Judge recalls that the third form of incitement provided in Article 32(3) of the KCC applies only to offences punishable by imprisonment of *at least* five (5) years, even if said offences are not attempted.<sup>552</sup> As the offence of obstructing official persons is punishable in its aggravated forms under Article 401(3) and (5) of the KCC in relation to Mr Thaçi by imprisonment “of one (1) to five (5) years”, this form of incitement is inapplicable in the present case.<sup>553</sup>

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<sup>550</sup> The supporting material also supports the Pre-Trial Judge’s understanding of the facts insofar as it clearly emerges that Mr Thaçi controls and steers the revelation of confidential information and documents from within the SC Detention Facilities.

<sup>551</sup> Article 28(2) of the KCC provides: “An attempt to commit a criminal offence for which a punishment of three or more years may be imposed shall be punishable. An attempt to commit any other criminal offence shall be punishable only if expressly provided by law”. Article 393 of the KCC does not impose punishment of three or more years and does not punish attempted contempt of court.

<sup>552</sup> See *supra* para. 101.

<sup>553</sup> See *supra* paras 49-50. Similarly, Case 07 Trial Judgment, paras 193 and 781.

(d) Conclusion

277. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Thaçi incited the commission of attempted obstruction of official persons under Counts 13, 15 and 17, within the meaning of Articles 21 and 32(1) of the KCC and Article 16(3) of the Law (*see* Counts 1, 3-4). For the same obstruction offences, the Pre-Trial Judge rejects Mr Thaçi's criminal liability under Articles 21 and 32(2)-(3) of the KCC and Article 16(3) of the Law.

278. For the reasons laid out above in relation to the contempt of court charges, the Pre-Trial Judge rejects Mr Thaçi's criminal liability under Articles 21 and 32(1)-(2) of the KCC and Article 16(3) of the Law.

#### 4. Assistance

279. In the Further Amended Indictment, the SPO alleges that, Messrs Thaçi, Fazliu, Smakaj, and Kilaj, provided assistance, within each group, in the commission of obstructing official persons (Mr Thaçi: Counts 1, 3-4; Mr Smakaj: Count 13; Mr Kilaj: Count 15; Mr Fazliu: Count 17), and contempt of court (Mr Thaçi: Counts 9, 11-12; Mr Smakaj: Count 14; Mr Kilaj: Count 16; Mr Fazliu: Count 18), pursuant to Article 33 of the KCC and Article 16(3) of the Law.<sup>554</sup>

(a) Obstructing Official Persons

280. At the outset, the Pre-Trial Judge recalls that Mr Thaçi played a central role in the conception, design and implementation of the strategy to interfere with witnesses, whereas the involvement of Messrs Fazliu, Smakaj and Kilaj was more limited and – importantly – not at the same level and of the same quality as that of

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<sup>554</sup> Further Amended Indictment, paras 37, 48, 49-53.

Mr Thaçi. It was found that Mr Thaçi's criminal responsibility is best captured under the form of commission, pursuant to Articles 17 and 21 of the KCC.

281. In light of Mr Thaçi's prominent role, characterizing him as an accessory who merely "assists" other members of the respective groups in attempting to obstruct official persons does not accurately reflect his degree of responsibility. In this regard, the Pre-Trial Judge notes that Article 33(2) of the KCC includes, as a means of assistance, "giving advice or instruction on how to commit a criminal offence". Notwithstanding the wording of Article 33(2) of the KCC, Mr Thaçi's role, instructions, statements, and actions, in their totality exceed the accessory conduct contemplated by Article 33(2) of the KCC. In light of the foregoing, Mr Thaçi's criminal responsibility for the obstruction charges cannot be based on assistance, but is best captured under other forms of criminal responsibility.

282. Regarding the objective elements of this mode of liability for Messrs Fazliu, Smakaj and Kilaj, the Pre-Trial Judge finds that the supporting material indicates that Messrs Fazliu, Smakaj, and Kilaj (at least) assisted Mr Thaçi and one another, in the context of their respective groups, by means of various acts and statements, such as: visiting Mr Thaçi on 2 July 2023, 9 September 2024/7 October 2023, and 6 October 2023; providing advice, feedback and moral support; taking notes; providing and taking confidential documents; contacting witnesses; and conveying Mr Thaçi's instructions (also through third persons), in the commission of obstructing official persons under Counts 13 (Mr Smakaj), 15 (Mr Kilaj), and 17 (Mr Fazliu). In this respect, the Pre-Trial Judge refers to the above findings in Counts 13, 15 and 17.<sup>555</sup>

283. Regarding the subjective elements of this mode of liability, the Pre-Trial Judge refers to the above findings under Counts 13, 15 and 17<sup>556</sup> which, in her view, demonstrate the direct and purposeful intention of Messrs Fazliu, Smakaj, and Kilaj:

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<sup>555</sup> See *supra* paras 183-185, 215-216, 230-232 and supporting material referenced therein.

<sup>556</sup> See *supra* paras 183-234 and supporting material referenced therein.

(i) giving advice on how to commit the offences under Counts 13, 15 and 17;  
(ii) making available the means to commit the offences under Counts 13, 15 and 17;  
and/or (iii) creating the conditions for, as well as removing the impediments to, the commission of the offence under Counts 13, 15 and 17.

(b) Contempt of Court

284. At the outset, the Pre-Trial Judge clarifies that, having found that Messrs Fazliu, Smakaj, and Kilaj did not commit contempt of court under Counts 14, 16 and 18,<sup>557</sup> Mr Thaçi cannot be held to have assisted them in the commission of said offences within their respective groups. The Pre-Trial Judge proceeds to analyse the assistance of Messrs Fazliu, Smakaj and Kilaj to Mr Thaçi in relation to said offence under Counts 14 (Mr Smakaj), 16 (Mr Kilaj), and 18 (Mr Fazliu).

285. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that Messrs Fazliu, Smakaj, and Kilaj assisted Mr Thaçi, in the context of their respective groups, in the commission of contempt of court by means of various acts and statements which created the conditions to the commission of said offence, in particular visiting Mr Thaçi on 2 July 2023, 9 September 2024/7 October 2023 and 6 October 2023, actively engaging in the discussion, providing advice, feedback and moral support, and taking notes and confidential documents. These acts and statements enabled Mr Thaçi to disclose confidential information to his visitors, thus disobeying judicial decisions. In this respect, the Pre-Trial Judge refers to the above findings regarding Counts 13, 15 and 17.<sup>558</sup>

286. Regarding the subjective elements of this mode of liability, the Pre-Trial Judge refers to the aforementioned deliberate acts and statements, demonstrating the

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<sup>557</sup> See *supra* para. 249.

<sup>558</sup> See *supra* paras 209, 210-211 and 259.

direct and purposeful intention of Messrs Fazliu, Smakaj, and Kilaj of (i) giving advice, practical and moral support to Mr Thaçi in order for him to commit the offences under Counts 9, 11, and 12; (ii) making available the means for Mr Thaçi to commit the offences under Counts 9, 11, and 12; and/or (iii) creating the conditions for, as well as removing the impediments to, the commission of the offence under Counts 9, 11, and 12.

(c) Conclusion

287. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that, in the context of each group, Messrs Fazliu, Smakaj, and Kilaj assisted Mr Thaçi and one another in the commission of attempted obstruction of official persons under Counts 13, 15, and 17, within the meaning of Articles 21 and 33 of the KCC and Article 16(3) of the Law.

288. Moreover, having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Fazliu, Smakaj, and Kilaj, in their respective groups, assisted Mr Thaçi in the commission of contempt of court under Counts 14, 16 and 18, within the meaning of Articles 21 and 33 of the KCC and Article 16(3) of the Law.

289. Lastly, having examined the supporting material as a whole, the Pre-Trial Judge rejects Mr Thaçi's criminal liability under Articles 21 and 33 of the KCC and Article 16(3) of the Law in relation to the offences under Counts 1, 3-4 (obstructing official persons) and Counts 9, 11, 12 (contempt of court).

## 5. Agreement to Commit Criminal Offences

290. In the Further Amended Indictment, the SPO alleges that: (i) the members of the Fazliu Group each entered into an agreement to commit the offences under Counts 1 and 17 (obstructing official persons) and Counts 9 and 18 (contempt of

court); (ii) the members of the Smakaj Group entered into an agreement to commit the offences under Counts 3 and 13 (obstructing official persons) and Counts 11 and 14 (contempt of court); (iii) the members of the Kilaj Group entered into an agreement to commit the offences under Counts 4 and 15 (obstructing official persons) and Counts 12 and 16 (contempt of court); (iv) Messrs Thaci and Kuçi entered into an agreement to commit the offences under Counts 2 and 19 (obstructing official persons) and under Counts 10 and 20 (contempt of court); and (v) one or more of the persons who were party to those agreements undertook substantial acts towards the commission of such offences, pursuant to Article 35 of the KCC and Article 16(3) of the Law.<sup>559</sup>

(a) Obstructing Official Persons

291. As regards Counts 2 and 19 (Messrs Thaci and Kuçi), the Pre-Trial Judge recalls her finding that the supporting material does not demonstrate the existence or the formation of a group comprising at least three persons in the context of the 3 September 2023 Visit and, as a result, this material element of the offence of obstructing official persons pursuant to Article 401(2) of the KCC is not satisfied.<sup>560</sup> The Pre-Trial Judge finds that, as a consequence, Messrs Thaci and Kuçi could not agree, within the meaning of Article 35(1) of the KCC and Article 16(3) of the Law, to commit said offence.<sup>561</sup>

292. Turning to Counts 1, 3-4, 13, 15, and 17 (Messrs Thaci, Fazliu, Smakaj and Kilaj), regarding the objective elements of this mode of liability, the Pre-Trial Judge recalls her findings as regards: (i) the visits to Mr Thaci on 2 July 2023, 9 September 2023/7 October 2023, and 6 October 2023; (ii) the regular use of low and whispered tones during conversations concerning SPO witnesses amongst Mr Thaci, and Messrs Fazliu, Smakaj and Kilaj respectively; (iii) the provision of advice, feedback,

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<sup>559</sup> Further Amended Indictment, paras 37, 43-44, 49-54.

<sup>560</sup> See *supra* para. 181.

<sup>561</sup> See *supra* paras 175-176.

(in the case of Mr Thaçi) instructions, and moral support; (iv) the taking of notes of Mr Thaçi's instructions; (v) the provision and taking of confidential documents; and (vi) the contacts before and after these visits in order to make arrangements to receive Mr Thaçi's instructions on the testimony of (then) forthcoming SPO witnesses in the *Thaçi et al.* trial and to contact (also through third persons) said witnesses in order to convey those instructions.<sup>562</sup>

293. When assessing the context of the 2 July 2023 Visit, the 9 September 2023 Visit/7 October 2023 Visit, and the 6 October 2023 Visit, together with the aforementioned acts and statements of the members of the Fazliu Group, the members of the Smakaj Group, and the members of the Kilaj Group, the Pre-Trial Judge infers that, in the context of each of these groups, there existed an agreement between at least three persons of each of these groups to commit the offences charged under Counts 1, 3-4, 13, 15, and 17, and that one or more members of each of these groups took substantial preparatory steps towards the commission of the offences, for which the Pre-Trial Judge refers to her findings under Counts 1, 3-4, 13, 15, and 17.<sup>563</sup>

294. Regarding the subjective element of this mode of liability, the Pre-Trial Judge also refers to the above findings in Counts 1, 3-4, 13, 15, and 17.<sup>564</sup>

(b) Contempt of Court

295. As regards Counts 10 and 20 (Messrs Thaçi and Kuçi), regarding the objective elements of this mode of liability, the Pre-Trial Judge recalls her findings as regards: (i) the visit to Mr Thaçi on 3 September 2023; (ii) the regular use of low and whispered tones during conversations concerning SPO witnesses amongst Messrs Thaçi and Kuçi; (iii) the provision of advice, feedback, (in the case of Mr Thaçi) instructions, and moral support; (iv) the taking of notes of Mr Thaçi's

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<sup>562</sup> See *supra* paras 113-211 and supporting material referenced therein.

<sup>563</sup> See *supra* paras 113-211 and supporting material referenced therein.

<sup>564</sup> See *supra* paras 113-211 and supporting material referenced therein.

instructions; and (v) contacts with an SPO witness prior to the visit in relation to his (then) forthcoming testimony in the *Thaçi et al.* trial and the arrangements and instructions to be conveyed that were discussed during said visit.<sup>565</sup>

296. When assessing the context of the 3 September 2023 Visit, together with the aforementioned acts and statements of Messrs Thaçi and Kuçi, the Pre-Trial Judge infers that there existed an agreement between at least two persons to contact SPO witnesses, and finds that these contacts were to take place outside the terms specified in the Case 06 Contact Protocol.<sup>566</sup> Furthermore, the Pre-Trial Judge finds that Messrs Thaçi and Kuçi took, through their actions and statements in the context of the 3 September 2023 Visit, substantial preparatory steps towards the commission of the offence under Counts 10 and 20, for which the Pre-Trial Judge refers to her findings analysed under Counts 2 and 19 above.<sup>567</sup>

297. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the aforementioned deliberate acts and statements in the context of the 3 September 2023 Visit, demonstrating the direct and purposeful intention of Messrs Thaçi and Kuçi to disobey the court order not to contact SPO witnesses outside the terms of the Case 06 Contact Protocol.<sup>568</sup>

298. As regards Counts 9, 11-12, 14, 16, and 18 (Messrs Thaçi, Fazliu, Smakaj and Kilaj), the Pre-Trial Judge recalls that Mr Thaçi committed the offence of contempt of court by revealing confidential information to Messrs Fazliu, Smakaj, and Kilaj at the time of their visits at the SC Detention Facilities, thereby disobeying concomitantly judicial orders. This means that, at the moment Mr Thaçi revealed

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<sup>565</sup> See *supra* paras 131-144 and supporting material referenced therein.

<sup>566</sup> The Pre-Trial Judge recalls her finding that contempt of court in the case at hand entailed a failure to obey the relevant court orders in decision KSC-BC-2020-06/F00854 and related decisions, and, in particular, the order to the Parties and participants in the *Thaçi et al.* trial not to contact a witness of another Party outside the terms specified in the Case 06 Contact Protocol. See *supra* paras 238-239. The Pre-Trial Judge recalls that the factual basis of Counts 10 and 20 concerns only the failure to obey the court order relating to contacting SPO witnesses, see *supra*, paras 243 and 250.

<sup>567</sup> See *supra*, paras 131-144 and supporting material referenced therein. See also *supra*, paras 242-243.

<sup>568</sup> See *supra*, paras 131-144, 241-242.



such information to Messrs Fazliu (2 July 2023 Visit), Smakaj (together 9 September 2023 Visit and 7 October 2023 Visit) and Kilaj (6 October 2023 Visit), the offence is actually and instantaneously *committed*. Mr Thaçi's disobedience of court orders by revealing the confidential information to his visitors does not leave room for his visitors to take substantial preparatory steps towards the commission of the offence. To the contrary, Messrs Smakaj, Kilaj and Fazliu could only agree as soon as Mr Thaçi actually disobeyed the order, meaning committed the offence. Any other prior meeting or contact with SPO witnesses cannot be considered such preparatory steps, as it is the SPO's allegation that the disclosure of confidential information occurred at the time of the specified visits.<sup>569</sup> Accordingly, the Pre-Trial Judge finds that Messrs Fazliu, Smakaj, and Kilaj cannot be deemed to have agreed to commit the offence. Their criminal responsibility is best described under the form of assistance, within the meaning of 21 and 33 of the KCC, as set forth above.<sup>570</sup>

(c) Conclusion

299. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that, in the context of their respective groups, Messrs Thaçi, Fazliu, Smakaj, and Kilaj agreed to commit the offences under Counts 1, 3-4, 13, 15, and 17 (obstructing official persons) and undertook substantial acts towards their commission, within the meaning of Articles 21 and 35 of the KCC and Article 16(3) of the Law.

300. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that, in the context of the 3 September 2023 Visit, as regards the court order pertaining to contacts of witnesses outside the terms specified in the Case 06 Contact Protocol, Messrs Thaçi and Kuçi agreed to commit the offences under Counts 10 and 20 (contempt of court) and undertook

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<sup>569</sup> See Further Amended Indictment, paras 10-11 (Fazliu Group), 18-19 (Smakaj Group), 23 (Kilaj Group).

<sup>570</sup> See *supra*, paras 285-286.

substantial acts towards their commission, within the meaning of Articles 21 and 35 of the KCC and Article 16(3) of the Law.

301. Having examined the supporting material as a whole, the Pre-Trial Judge rejects Messrs Thaçi's and Kuçi's criminal liability under Articles 21 and 35 of the KCC and Article 16(3) of the Law in relation to the offences under Counts 2 and 19 (obstructing official persons).

302. Lastly, having examined the supporting material as a whole, the Pre-Trial Judge rejects Messrs Thaçi's Fazliu's, Smakaj's and Kilaj's criminal responsibility for agreeing to commit contempt of court (Counts 9, 11-12, 14, 16, 18) under Articles 21 and 35 of the KCC and Article 16(3) of the Law.

## **6. Attempt**

303. In the Further Amended Indictment, the SPO alleges that, in addition or alternatively to his responsibility under the above modes of liability, Mr Thaçi attempted the commission of the offence under Count 8 (violation of secrecy), pursuant to Article 28 of the KCC and Article 16(3) of the Law.<sup>571</sup>

304. Having found that there is a well-grounded suspicion that Mr Thaçi committed the offence under said count, within the meaning of Article 17 of the KCC and Article 16(3) of the Law,<sup>572</sup> the Pre-Trial Judge does not find it necessary to assess the liability of Mr Thaçi under Article 28 of the KCC and Article 16(3) of the Law.

### **C. AMENDMENT OF INDICTMENT**

305. The Pre-Trial Judge finds that the legal reference to the mental element is missing under Counts 1-21 in the Further Amended Indictment and thus reference

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<sup>571</sup> Further Amended Indictment, paras 37, 41, 49-50.

<sup>572</sup> See *supra* para. 260.

to Article 21 of the KCC shall be included under each Count to reflect the full characterisation of the offences pleaded by the SPO. In addition, the legal reference to the specific form of incitement (Article 32 of the KCC) and the legal reference to assistance (Article 33 of the KCC) shall be added under sections B.4 and B.5, respectively, of the Further Amended Indictment.

## VII. RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY

306. As a general rule, Rule 88(1) of the Rules provides that an indictment shall be made public upon confirmation. Further, pursuant to Rules 95(1) and (2)(b) and 102(1)(a) of the Rules, any disclosure of material, including the names of witnesses and victims, will take place after the initial appearance of the accused, against whom an indictment has been confirmed. In exceptional circumstances, however, pursuant to Rules 88(2) and 105(1) of the Rules, the SPO may apply for the temporary non-disclosure of the indictment, related documents, and the identities of victims and witnesses, to continue after confirmation of the indictment or initial appearance of the accused, as the case may be. It is highlighted that the measures under Rule 105(1) of the Rules are provisional in nature, allowing for the protection of vulnerable witnesses and victims until such time as a request for protective measures has been decided.

307. The Pre-Trial Judge refers to the aforementioned findings that, in the context of their respective groups, Messrs *Thaçi*, *Fazliu*, *Smakaj*, and *Kilaj* participated in a joint endeavour to unlawfully influence the testimony of the Targeted Witnesses in the *Thaçi et al.* trial and, as a result of the aforementioned conduct, said individuals attempted to hinder and/or delay the work of SC/SPO Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings.<sup>573</sup> The Pre-Trial Judge also refers to the aforementioned findings that, in the context of the

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<sup>573</sup> See *supra* paras 195-211.

3 September 2023 Visit, Messrs Thaçi and Kuçi agreed to contact SPO witnesses in order to unlawfully influence their testimony in the *Thaçi et al.* trial.<sup>574</sup> Lastly, the Pre-Trial Judge also recalls her finding that Mr Kuçi failed to obey a final court order, namely the prohibition to contact SPO witnesses outside the terms applied in the Case 06 Contact Protocol.<sup>575</sup> The Pre-Trial Judge therefore concludes that the Suspects have an incentive to obstruct the proceedings and, based on their resolve to unlawfully influence the testimony of the SPO Witnesses and to, thus, interfere with SC proceedings, may commit further similar offences.

308. In light of the above, the Pre-Trial Judge finds that the SPO has demonstrated good cause justifying exceptional circumstances that allow, pursuant to Rule 88(2) of the Rules, the temporary non-disclosure to the public of the SPO Submission of Further Amended Indictment with its annexes (“Related Documents”).<sup>576</sup> The Pre-Trial Judge also finds that the SPO has demonstrated exceptional circumstances, pursuant to Rule 105(1) of the Rules, justifying the interim non-disclosure of the identities of witnesses, as applicable, until appropriate protective measures have been ordered.

309. As a result, the non-disclosure of the Further Amended Indictment, as confirmed in the present case (“Confirmed Indictment”), towards the public<sup>577</sup> shall be maintained until further order of the Pre-Trial Judge, but no later than the initial appearances of Messrs Thaçi, Fazliu, Smakaj, Kilaj and Kuçi, as per Rule 88(2) of the Rules. The Confirmed Indictment, available to the public, may contain redactions, as appropriate.

310. The accused shall be served with the confidential (redacted) Confirmed Indictment pursuant to Rules 87(1) and 105(1) of the Rules. To this end, the Pre-

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<sup>574</sup> See *supra* para. 300.

<sup>575</sup> See *supra*, paras 252-257.

<sup>576</sup> SPO Submission of Further Amended Indictment paras 9, 11, and references therein.

<sup>577</sup> For the purposes of this decision, public shall mean all persons, organisations, entities, Third States, clients, associations and groups, including the media, other than the judges of the Specialist Chambers (and their staff), the Registry, the SPO, and the accused.

Trial Judge orders the SPO to prepare by Monday, 2 December 2024, at 12h00: (i) a strictly confidential and *ex parte* Confirmed Indictment, only available to the SPO and the Pre-Trial Judge; and (ii) a confidential (redacted) Confirmed Indictment for the Registrar to serve it on Messrs Thaçi, Fazliu, Smakaj, Kilaj and Kuçi.

311. Notwithstanding the confidentiality of the Confirmed Indictment, pursuant to Rule 88(3) of the Rules, the SPO or the Registrar may disclose the confidential (redacted) version or parts of the Confirmed Indictment to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

312. The non-disclosure of the Related Documents and supporting material to the Confirmed Indictment shall be maintained until further order of the Pre-Trial Judge, as provided in Rule 88(2) of the Rules. However, the supporting material shall be made available to the accused with redactions, as appropriate, no later than thirty (30) days after their initial appearance, in accordance with Rules 102(1)(a) and 105(1) of the Rules.

#### VIII. DISPOSITION

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

- a. **CONFIRMS** the following charges against Mr Thaçi:
  - i. attempting to obstruct, by common action of a group, official persons, including SPO prosecutors and investigators in performing official duties, between at least 26 June 2023 and 2 November 2023, punishable under Articles 17, 21, 32(1), 35, and 401(2)-(3) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Counts 1, 3-4);
  - ii. violating the secrecy of proceedings, through unauthorised revelation of protected information, between at least 26 June 2023 and 2 November 2023, punishable under Articles 17, 21, and

392(1) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Counts 5-7);

- iii. violating the secrecy of proceedings, through unauthorised revelation of the identity of protected persons, between at least 6 October 2023 and 2 November 2023, punishable under Articles 17, 21, and 392(2) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 8);
- iv. contempt of court, between at least 26 June 2023 and 2 November 2023, punishable under Articles 17, 21, and 393 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Counts 9, 11-12); and
- v. contempt of court, between at least 1 September 2023 and 13 September 2023, punishable under Articles 21, 35, and 393 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 10), as confirmed in this decision;

b. **CONFIRMS** the following charge against Mr Fazliu:

- i. attempting to obstruct, by common action of a group, official persons, including SPO prosecutors and investigators in performing official duties, between at least 26 June 2023 and 18 July 2023, punishable under Articles 17, 21, 33, 35, and 401(2) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 17);
- ii. contempt of court, between at least 26 June 2023 and 18 July 2023, punishable under Articles 21, 33, and 393 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 18);

c. **CONFIRMS** the following charge against Mr Smakaj:

- iii. attempting to obstruct, by common action of a group, official persons, including SPO prosecutors and investigators in

performing official duties, between at least 9 September 2023 and 30 October 2023, punishable under Articles 17, 21, 33, 35 and 401(2) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 13); and

iv. contempt of court, between at least 9 September 2023 and 30 October 2023, punishable under Articles 21, 33, and 393 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 14);

d. **CONFIRMS** the following charge against Mr Kilaj:

i. attempting to obstruct, by common action of a group, official persons, including SPO prosecutors and investigators in performing official duties, between at least 6 October 2023 and 2 November 2023, punishable under Articles 17, 21, 33, 35, and 401(2) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 15); and

ii. contempt of court, between at least 6 October 2023 and 2 November 2023, punishable under Articles 21, 33, and 393 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 16);

e. **CONFIRMS** the following charge against Mr Kuçi:

i. contempt of court, between at least 1 September 2023 and 13 September 2023, punishable under Articles 21, 35, and 393 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 20), as confirmed in the present decision; and

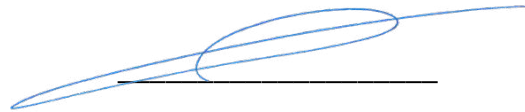
ii. contempt of court, on or about 12 April 2023, punishable under Articles 17, 21 and 393 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 21);

f. **REJECTS** the remainder of the legal and factual allegations contained in the Further Amended Indictment, as set forth in the present decision;

- g. **ORDERS** the SPO to submit, by no later than **Monday, 2 December 2024, at 12h00**, a strictly confidential and *ex parte* Confirmed Indictment, only available to the SPO and the Pre-Trial Judge; and (ii) a confidential (redacted) Confirmed Indictment for the Registrar to be served on Messrs Thaçi, Fazliu, Smakaj, Kilaj and Kuçi;
- h. **AUTHORISES** the SPO to redact any identifying information of witnesses, as applicable, or confidential information from the Related Documents, the Confirmed Indictment, and supporting material, and assign and use provisional pseudonyms to these witnesses and victims, as applicable;
- i. **ORDERS** the Registrar to serve on Messrs Thaçi, Fazliu, Smakaj, Kilaj and Kuçi, in consultation with the SPO, the confidential (redacted) Confirmed Indictment as soon as practicable after the service of the arrest warrants and summons to appear;
- j. **ORDERS** the SPO to submit a public (redacted) version of the Confirmed Indictment as soon as practicable, but no later than the initial appearances of Messrs Thaçi, Fazliu, Smakaj, Kilaj and Kuçi;
- k. **AUTHORISES** the SPO and the Registrar to disclose the confidential (redacted) Confirmed Indictment, or parts thereof, to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution;
- l. **ORDERS** the non-disclosure of the Related Documents and supporting material until further order;
- m. **REQUESTS** the SPO to provide, by **Friday, 13 December 2024**, strictly confidential and *ex parte* written submissions, if any, as to the proposed redactions to be applied to this decision, in order to make it available to the Defence and the public; and



- n. **ORDERS** the SPO to submit a request for protective measures, if any, in relation to victims and witnesses, as applicable, identified in the Confirmed Indictment, Related Documents and supporting material, **within one week** of the initial appearance of Messrs Thaçi, Fazliu, Smakaj, Kilaj and Kuçi.



**Judge Marjorie Masselot**  
**Pre-Trial Judge**

Dated this Friday, 29 November 2024

At The Hague, the Netherlands.