

**In:** KSC-BC-2023-12

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

**Before:** Pre-Trial Judge  
Judge Marjorie Masselot

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi  
Specialist Counsel for Bashkim Smakaj  
Specialist Counsel for Isni Kilaj  
Specialist Counsel for Fadil Fazliu  
Specialist Counsel for Hajredin Kuçi

**Date:** 12 March 2025

**Language:** English

**Classification:** Public

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**Joint Defence Request for Reclassification**

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## I. INTRODUCTION AND PROCEDURAL HISTORY

1. The Defence for Messrs Thaçi, Smakaj, Kilaj, Fazliu and Kuçi ("the Defence") requests the reclassification of filings submitted in the present case as confidential and *ex parte*.
2. During the early stages of the proceedings, a significant number of filings were filed with the classification confidential and *ex parte*.
3. During the status conference of 17 December 2024, the Pre-Trial Judge noted that certain prior filings in Case 12 would be made available, subject to any necessary restrictions, and sought the parties' submissions on the reclassification of filings.<sup>1</sup> The Defence for Mr Thaçi requested<sup>2</sup> to be notified the unredacted or less redacted version of all the filings registered in the case prior to Mr Thaçi's initial appearance, noting that their disclosure was necessary, in particular, to allow the Defence to understand the process which led to the Decision on the Confirmation of the Indictment.<sup>3</sup> The issue of reclassification was equally raised by the Defence for Mr Kilaj.<sup>4</sup>
4. On 14 January 2025, the Pre-Trial Judge issued her Order Regarding (Re)classification of Filings ("Reclassification Order").<sup>5</sup> In it she listed filings made by the Specialist Prosecutor's Office ("SPO") and by the Registry as confidential and *ex parte*, and sought their submissions on the possible reclassification as confidential or public of these filings.<sup>6</sup> The Pre-Trial Judge

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<sup>1</sup> KSC-BC-2023-12, Transcript of 17 December 2024, p. 194.

<sup>2</sup> KSC-BC-2023-12, Transcript of 17 December 2024, p. 195.

<sup>3</sup> KSC-BC-2023-12/F00036/RED, Public Redacted Version of Decision on the Confirmation of the Indictment, 29 November 2024 ("Decision on the Confirmation of the Indictment").

<sup>4</sup> KSC-BC-2023-12/F00083, Kilaj Defence Submissions for First Status Conference, 13 December 2024, confidential (public redacted version filed on 21 January 2025), paras 9-12; KSC-BC-2023-12, Transcript of 17 December 2024, pp 195-196.

<sup>5</sup> KSC-BC-2023-12/F00111, Pre-Trial Judge, Order Regarding (Re)classification of Filings, 14 January 2025, Confidential.

<sup>6</sup> *Ibid.*, paras 9-10.

“inform[ed] the Parties that confidential and/or public redacted versions of the decisions in the case file will, in principle, be issued after the submissions requested in this order.”<sup>7</sup>

5. On 5 February 2025, the SPO filed its submissions pursuant to the Reclassification Order.<sup>8</sup> The SPO requested the Pre-Trial Judge to direct the Registry to reclassify a number of the listed documents from confidential and *ex parte* to confidential or public. The SPO did not seek to maintain the *ex parte* classification of any filing, but only identified five annexed documents for which (or part of which) an *ex parte* classification was sought to be maintained.<sup>9</sup>
6. On 5 February 2025, the Registry also filed its submissions pursuant to the Reclassification Order.<sup>10</sup>
7. At the time, the Defence did not respond to these submissions because it had not been invited to do so and the SPO and Registry had agreed to make (most of) their filings available to the Defence.

## II. APPLICABLE LAW

8. Pursuant to Article 21(2) of the Law,<sup>11</sup> in the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 23 of the Law, Rule 80(1) of the Rules,<sup>12</sup> and any measures ordered by the Specialist Chambers for the protection of victims and witnesses.

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<sup>7</sup> *Ibid.*, para. 14.

<sup>8</sup> KSC-BC-2023-12/F00155/RED, Public redacted version of ‘Prosecution submissions pursuant to the Reclassification Order (F00111) with confidential Annex 1’ (“F00155/RED”), 5 February 2025, Public.

<sup>9</sup> *Ibid.*, paras 10-11.

<sup>10</sup> KSC-BC-2023-12/F00158, Registry Submissions on Reclassification Pursuant to Order F00111, 5 February 2025 (“F00158”), Confidential.

<sup>11</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”)

<sup>12</sup> KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“Rules”).

9. Pursuant to Article 21(4)(c) of the Law, the accused shall be entitled to have adequate time and facilities for the preparation of his/her defence.
10. Pursuant to Rule 82(5) of the Rules, where the basis for a filing's classification no longer exists, it may be reclassified by a Panel on request or *proprio motu*.
11. Pursuant to Rule 84(1) of the Rules, the Panel shall review the classification of records of proceedings and evidence on an ongoing basis and, where applicable, order their reclassification.

### III. SUBMISSIONS

12. In her Reclassification Order, the Pre-Trial Judge acknowledged the principle of publicity of proceedings and that access to filings and decisions are necessary to fulfil the right of the Accused to adequate time and facilities for the preparation of their defence.<sup>13</sup> The Defence respectfully endorses the Pre-Trial Judge's recognition of these principles, and requests their realisation.
13. A significant number of filings in this case file are still classified as confidential and *ex parte*. Of the 35 documents filed prior to the confirmation of the indictment, some 22 remain inaccessible to the Defence. From material set out in the Decision on the Confirmation of the Indictment, the Defence understands that many of them relate to the sufficiency or correctness and subsequent alternation of the proposed indictment initially submitted by the SPO regarding the Accused.<sup>14</sup> They are thus extremely significant to understanding the process which led to the Decision on the Confirmation of the Indictment. Their non-disclosure seriously hampers the Defence's ability to prepare its case,

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<sup>13</sup> KSC-BC-2023-12/F00111, Pre-Trial Judge, Order Regarding (Re)classification of Filings, 14 January 2025, Confidential, paras 7-8.

<sup>14</sup> In particular, F00002, F00004, F00007, F00010, F00011, F00014, F00016, F00017, F00022, F00025.

and particularly to ensure timely preparation of preliminary motions, which could be due within a month or thereabouts.<sup>15</sup>

14. The Defence notes, regarding filings submitted by the SPO and the Registry, that each has made requests for reclassification which are unopposed.<sup>16</sup> The Defence respectfully requests that these filings be reclassified immediately in accordance with the SPO and Registry requests.
15. A number of other filings retain the classification of confidential and *ex parte* and were not listed in the Reclassification Order. Some of these remain unidentified to the Defence, such as F00204 and F00206. Others have been identified in subsequent filings, particularly the Decision on the Confirmation of the Indictment, as orders or decisions of the Pre-Trial Judge related, *a priori*, to the SPO initial Indictment(s), including F00004, F00006, F00011, F00013, F00016, F00022, F00025, and F00027. The Defence has further identified Decisions F00029, F00031, and F00039 as relevant for Defence preparation; F00031 relates to the change of venue to the Host State while F00029 and F00039 relate to the investigations, search and seizure concerning the Accused. Although the Defence is now aware of the titles of these documents, it does not yet have access to their contents. The Defence requests that these orders and decisions, and any other Pre-Trial Judge's filings which no longer warrant an *ex parte* classification, be reclassified as confidential or public (with appropriate redactions if required) as soon as possible.
16. The Defence does not request the reclassification of filings which relate to the legal representation of the Accused, or private circumstances of an Accused, which are not material to the case. Where there is a concern that personal

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<sup>15</sup> KSC-BC-2023-12/F00193, Decision on Joint Defence Request for Further Variation of Time Limits to File Preliminary Motions, 21 February 2025, 21 February 2025, para. 18.

<sup>16</sup> F00155/RED and F000158.

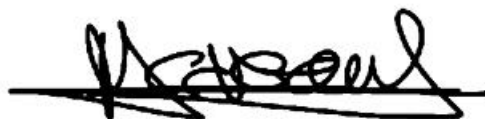
matters may be inappropriately shared, it is submitted that, in the first instance, such filings should be redacted where necessary, having been disclosed solely and initially only to the individual defence team concerned, to allow them the opportunity to make submissions on the redactions or reclassification.

#### IV. CONCLUSION

17. For the above reasons, the Defence respectfully requests the Pre-Trial Judge to:
- (a) Order the Registrar to reclassify the SPO and Registry filings listed in the Reclassification Order in accordance with the SPO and Registry submissions of 5 February 2025;<sup>17</sup> and
  - (b) Order the Registrar to reclassify the Pre-Trial Judge's orders and decisions which no longer require a confidential and *ex parte* classification, including F00004, F00006, F00011, F00013, F00016, F00022, F00025, F00027, F00029, and F00039, as well as the Presidency Decision F00031, and/or notify to the Defence a redacted version of such filings.

[Word count: 1311 words]

Respectfully submitted,  
Wednesday, 12 March 2025



Sophie Menegon  
Counsel for Hashim Thaçi

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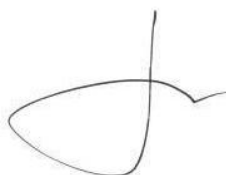
<sup>17</sup> F00155/RED and F000158.



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