



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2023-12

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

Before: Pre-Trial Judge

Judge Marjorie Masselot

Registrar: Fidelma Donlon

Date: 14 April 2025

Language: English

Classification: Public

**Decision Amending the “Decision on the Confirmation of the Indictment” and
Setting a Date for the Submission of Preliminary Motions**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 86 and 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 29 November 2024, the Pre-Trial Judge issued the "Decision on the Confirmation of the Indictment" ("Confirmation Decision"), confirming in part the charges against Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj ("Mr Smakaj"), Isni Kilaj ("Mr Kilaj"), Fadil Fazliu ("Mr Fazliu") and Hajredin Kuçi ("Mr Kuçi") (collectively "Accused").²

2. On 2 December 2024, the Specialist Prosecutor's Office ("SPO") submitted the indictment, as confirmed ("Confirmed Indictment").³

3. On 24 January 2025, upon request of the Defence for Mr Thaçi and Mr Kilaj,⁴ the Pre-Trial Judge varied the time limit for lodging preliminary motions under Rule 97 of the Rules⁵ and extended it to 4 March 2025.⁶

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

² KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, confidential. A public redacted version was filed on 12 February 2025, F00036/RED.

³ KSC-BC-2023-12, F00040, Specialist Prosecutor, *Submission of Confirmed Indictment*, 2 December 2024, strictly confidential, with Annex 1, strictly confidential, containing the Confirmed Indictment. A public redacted version of the Confirmed Indictment was submitted on 6 December 2024, F00055/A01.

⁴ KSC-BC-2023-12, F00122, Defence for Mr Thaçi, *Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions*, 20 January 2025, public; F00125, Defence for Mr Kilaj, *Kilaj Joinder to "Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions"*, 21 January 2025, public.

⁵ On 7 January 2025, the Specialist Prosecutor completed the disclosure of all Rule 102(1)(a) material. Hence, pursuant to Rule 97(2) of the Rules, the time limit for lodging preliminary motions was 6 February 2025.

⁶ KSC-BC-2023-12, F00135, Pre-Trial Judge, *Decision on Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions*, 24 January 2025, public.

4. On 12 February 2025, the SPO appealed, with leave of the Pre-Trial Judge,⁷ the Confirmation Decision.⁸

5. On 21 February 2025, upon request of the Defence of all Accused, the Pre-Trial Judge vacated the time limit for the filing of preliminary motions and decided that she would issue a new scheduling order for the lodging of preliminary motions after the decision of the Court of Appeals Panel is rendered, should the latter not uphold the Confirmation Decision in its entirety.⁹

6. On 3 April 2025, the Court of Appeals Panel issued its “Decision on the Specialist Prosecutor’s Office’s Appeal Against the Decision on the Confirmation of the Indictment”, remanding one matter to the Pre-Trial Judge for further consideration (“Appeal Decision”).¹⁰

II. APPLICABLE LAW

7. 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 and examine the supporting material. 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.

⁷ KSC-BC-2023-12, F00149, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Request for Leave to Appeal the “Decision on the Confirmation of the Indictment”*, 30 January 2025, public.

⁸ KSC-BC-2023-12, IA002/F00002, Specialist Prosecutor, *Prosecution appeal against the “Decision on the Confirmation of the Indictment” (F00036)*, 12 February 2025, confidential, with Annexes 1-2 public. A public redacted version was filed on 14 February 2025, IA002/F00002/RED.

⁹ KSC-BC-2023-12, F00193, Pre-Trial Judge, *Decision on Joint Defence Request for Further Variation of Time Limits to File Preliminary Motions*, 21 February 2025, public.

¹⁰ KSC-BC-2023-12, IA002/F00012, Court of Appeals Panel, *Decision on the Specialist Prosecutor’s Office’s Appeal Against the Decision on the Confirmation of the Indictment*, 3 April 2025, confidential. A public redacted version was filed on the same day, IA002/F00012/RED.

8. Pursuant to Article 39(13) of the Law, the Pre-Trial Judge may, where necessary, at the request of a Party or *proprio motu*, issue any orders as may be necessary for the preparation of a fair and expeditious trial.

9. Pursuant to Article 21(4)(a) of the Law, the Accused shall be entitled to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her. Pursuant to Rule 92(2)(b) of the Rules, the Pre-Trial Judge shall read or have the indictment read to the Accused in a language the Accused understands and speaks, and be satisfied that the Accused understands the indictment.

10. Pursuant to Rule 92(2)(c) of the Rules, the Pre-Trial Judge shall inform the Accused that, within thirty (30) days of the initial appearance, he or she will be called upon to admit guilt or plead not guilty on each charge, or, if the Accused wishes to do so, that he or she may immediately admit guilt or plead not guilty. Pursuant to Rule 92(2)(f) of the Rules, if the Accused fails to admit guilt or plead not guilty at the initial or any further appearance, enter a plea of not guilty on his or her behalf and proceed pursuant to Rule 95 of the Rules.

11. Pursuant to Rule 97(1) of the Rules, the Accused may file preliminary motions before the Pre-Trial Judge in accordance with Article 39(1) of the Law, which (a) challenge the jurisdiction of the Specialist Chambers, (b) allege defects in the form of the indictment, or (c) seek severance of indictments pursuant to Rule 89(2) of the Rules.

12. Pursuant to Rule 97(2) of the Rules, such motions shall be in writing and shall be brought within thirty (30) days from the disclosure of all material and statements referred to in Rule 102(1)(a) of the Rules.

III. DISCUSSION

A. AMENDING THE CONFIRMATION DECISION FOLLOWING THE APPEAL DECISION

13. The Pre-Trial Judge recalls that the SPO had originally charged Mr Thaçi, *inter alia*, with having incited, within the meaning of Article 32(3) of the 2019 Kosovo Criminal Code, Law No. 06/L-074 ("KCC"), Messrs Fazliu, Smakaj and Kilaj (and others) to commit the criminal offence of obstructing official persons in performing official duties by common action of a group (Article 401(2) of the KCC) in its aggravated forms under Article 401(3) and (5) of the KCC¹¹ (Counts 1, 3 and 4 of the indictment submitted for confirmation).¹² Article 32(3) of the KCC penalises incitement when the offence is neither committed nor attempted.¹³

14. In the Confirmation Decision, the Pre-Trial Judge denied to confirm this mode of liability in relation to the aggravated forms of Article 401(2) of the KCC set out in Article 401(3) and (5) of the KCC, noting that Article 32(3) of the KCC is applicable only to offences punishable by imprisonment of "at least five (5) years". As Article 401(3) and (5) of the KCC foresee a punishment of "one (1) to five (5) years", the mode of liability was considered to be inapplicable.¹⁴ Accordingly, the

¹¹ Article 401(3) and (5) of the KCC reads: "3. The leader or organizer of the group which commits the offense provided for in paragraph 2. of this Article shall be punished by imprisonment of one (1) to five (5) years. [...] 5. When the offense provided for in paragraph 1. or 2. of this Article 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". See also Confirmation Decision, paras 49-50.

¹² KSC-BC-2023-12, F00028, Specialist Prosecutor, *Submission of Further Amended Indictment for Confirmation*, 12 November 2024, confidential, with Annexes 1-2, confidential; see Annex 1, paras 37, 45-47. Public redacted versions of the main filing and Annex 2 were filed on 4 February 2025, F00028/RED and F00028/RED/A02/RED. See also Confirmation Decision, para. 265.

¹³ Article 32(3) of the KCC reads: "Whoever intentionally incites another person to commit a criminal offense punishable by imprisonment of at least five (5) years and the offense is not even attempted, the inciter shall be punished for attempt". See also Confirmation Decision, para. 101.

¹⁴ Confirmation Decision, paras 276, 277.

reason for denying to confirm incitement under Article 32(3) of the KCC was purely legal in nature.

15. The Court of Appeals Panel, by majority, interpreted Article 32(3) of the KCC to apply to offences for which the sentencing range includes or exceeds five (5) years, even if five (5) years is not the minimum sentence.¹⁵ According to the majority, this means that this mode of liability applies to the aggravated forms of the offence of obstructing official persons within the meaning of Article 401(3) and (5) of the KCC.¹⁶ Considering that the Pre-Trial Judge had not confirmed this mode of liability in relation to Mr Thaçi (Counts 1, 2 and 3 of the Confirmed Indictment), the Court of Appeals Panel, by majority, remanded the matter to the Pre-Trial Judge for further consideration.¹⁷

16. In what follows, the Pre-Trial Judge will proceed to consider whether, applying the interpretation of the Court of Appeals Panel, there is a well-grounded suspicion that Mr Thaçi incited the attempted obstruction of official persons (Article 401(3) and (5) of the KCC), even if the offence was not attempted, within the meaning of Articles 21, 32(3) of the KCC and Articles 15(2) and 16(3) of the Law (Counts 1, 2 and 3 of the Confirmed Indictment).

17. At the outset, the Pre-Trial Judge clarifies that the present decision must be read together with the Confirmation Decision, in particular the legal interpretation of Articles 21, 32(1)-(2), and 401(2), (3) and (5) of the KCC, save for the interpretation of Article 32(3) of the KCC.¹⁸ The issue, as remanded by the Court of Appeals Panel, concerns only Counts 1, 2 and 3 of the Confirmed Indictment.

18. The Pre-Trial Judge recalls that the offence of obstructing an official person, by common action of a group, within the meaning of Article 401(2) of the KCC, is

¹⁵ Appeal Decision, paras 84-85.

¹⁶ Appeal Decision, paras 87-88.

¹⁷ Appeals Decision, para. 90.

¹⁸ Confirmation Decision, paras 47-58, 98-101.

committed either when the obstruction has occurred, or when it has only been attempted. 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.¹⁹ Article 401(3) of the KCC provides for a more severe punishment when the perpetrator is the (*de facto*) leader or organiser of the group.²⁰ 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.²¹

19. The Pre-Trial Judge does not deem it necessary to re-assess the evidence in support of the factual allegations pertaining to the offence of obstruction of official persons in its aggravated forms (Article 401(2) in conjunction with Article 401(3) and (5) of the KCC). The Pre-Trial Judge's relevant determinations and conclusions, set forth in paragraphs 112-130, 145-155, 156-172, 182-195, 196-209, and 210-211 of the Confirmation Decision remain intact and are hereby incorporated by reference.

20. Regarding the objective elements of the mode of liability of Article 32(3) of the KCC, with respect to obstructing official persons under Counts 1, 2 and 3 of the Confirmed Indictment, the Pre-Trial Judge recalls that, based on the supporting material, there is a well-grounded suspicion that Messrs Smakaj, Kilaj and Fazliu committed *attempted* obstruction through common action of a group.²² The scenario envisaged in Article 32(3) of the KCC, namely that the offence is not even attempted, is logically encompassed by the Pre-Trial Judge's determinations in relation to Article 401(2), (3) and (5) of the KCC.

21. Further, it is recalled that, based on the supporting material, Mr Thaçi, as the leader and main beneficiary of the obstruction efforts, incited, within the meaning of Article 32(1) of the KCC, the commission of these offences by: (i) tasking

¹⁹ Confirmation Decision, para. 51.

²⁰ Confirmation Decision, para. 55.

²¹ Confirmation Decision, para. 53.

²² Confirmation Decision, paras 260, 313(b), (c), (d).

Messrs Smakaj, Kilaj and Fazliu (and others) to approach different witnesses; (ii) repeatedly and purposefully revealing, without authorisation, protected information to Messrs Smakaj, Kilaj and Fazliu, and other visitors, and revealing, without authorisation, the identity of protected persons to Mr Kilaj and another person; and (iii) unmistakably encouraging and urging, Messrs Smakaj, Kilaj and Fazliu, within their respective groups, to receive and memorise his precise instructions and to contact certain witnesses for the purpose of unlawfully influencing the latter's (then) forthcoming testimony before the Specialist Chambers.²³

22. Regarding the subjective elements of this mode of liability, the deliberate acts and encouragement and urging, as detailed in the Confirmation Decision, demonstrate Mr Thaçi's direct intention to incite the commission of attempted obstruction of official persons by Messrs Smakaj, Kilaj and Fazliu (and others).²⁴

23. As a result, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Thaçi incited the attempted obstruction of official persons (Article 401(3) and (5) of the KCC), even if the offence was not attempted, within the meaning of Articles 21 and 32(3) of the KCC, and Articles 15(2) and 16(3) of the Law (Counts 1, 2 and 3 of the Confirmed Indictment).

B. NEW AMENDED CONFIRMED INDICTMENT

24. Having confirmed the additional mode of liability *vis-à-vis* Mr Thaçi under Article 32(3) of the KCC to the existing charges enshrined in Counts 1, 2 and 3 of the Confirmed Indictment, the Pre-Trial Judge orders the Specialist Prosecutor to submit, by no later than **Wednesday, 16 April 2025, at 12h00**, a new amended confirmed indictment as follows: (i) a confidential version of the amended confirmed indictment, for the Registrar to serve on Mr Thaçi and the other Accused

²³ See Confirmation Decision, paras 268-271.

²⁴ See Confirmation Decision, para. 272.

in the present case, in a language which they understand, namely Albanian; and
(ii) a public redacted version.

25. While mindful of the conditions on Mr Kuçi,²⁵ due to the importance of the accusatory document, the Pre-Trial Judge deems it important that the new amended confirmed indictment be served promptly on Mr Kuçi, in Kosovo, as soon as necessary arrangements can be made. In this regard, the Pre-Trial Judge recalls that Mr Kuçi was also served with the Confirmed Indictment in Kosovo.²⁶

C. MR THAÇI'S FURTHER APPEARANCE AND PLEA

26. The Pre-Trial Judge recalls that Mr Thaçi has been informed of all the charges, as set out in the Confirmed Indictment.²⁷ He also pleaded, in writing, not guilty on all charges.²⁸

27. With the present decision no new count is added to the indictment. Rather, a new form of incitement is added in relation to an offence with which Mr Thaçi is charged in Counts 1, 2, and 3 of the Confirmed Indictment, and of which Mr Thaçi has been fully informed. Considering that: (i) the amendment to Counts 1, 2 and 3 of the Confirmed Indictment is minimal, as it consists in adding a mode of liability; (ii) Mr Thaçi has been informed about both the offence and the basic form of incitement, within the meaning of Articles 21, 32(1) and 401(2), (3) and (5) of the KCC, in conjunction with Articles 15(2) and 16(3) of the Law; and (iii) he is legally represented, the Pre-Trial Judge is of the view that, in these specific circumstances,

²⁵ The Pre-Trial Judge emphasises that this decision does not otherwise impact the standing order set forth in KSC-BC-2023-12, F00173, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information and Witness Contacts*, 12 February 2025, confidential, para. 41(b). A public redacted version was filed on 11 March 2025, F00173/RED.

²⁶ KSC-BC-2023-12, F00068, Registrar, *Report on the Service of Summons to Appear on Hajredin Kuçi*, 8 December 2024, confidential and *ex parte*, para. 11, with Annexes 1-3, confidential and *ex parte*. A public redacted version of the report was filed on 11 January 2025, F00068/RED.

²⁷ See KSC-BC-2023-12, Transcript of Hearing, 8 December 2024, public, p. 5, line 24 to p. 8, line 7; p. 12 lines 7-15.

²⁸ KSC-BC-2023-12, F00103, Defence for Mr Thaçi, *Thaçi Defence Notice of Mr Hashim Thaçi's Plea*, 6 January 2025, public, with Annex 1, public.

a further initial appearance, pursuant to Rules 87(6) and 92 of the Rules, is not necessary. In the Pre-Trial Judge's estimation, the present decision and the soon-to-be-submitted amended confirmed indictment satisfies the right of Mr Thaçi to be informed of the charges, as foreseen in Article 21(4)(a) of the Law.

28. Mr Thaçi's position in relation to the added mode of liability must be formally recorded. The Pre-Trial Judge therefore considers that he must be invited to enter a plea on the record on the additional form of incitement, as provided in Rule 92(2)(c) of the Rules. Mindful of (i) the limited nature of the amendment, (ii) the fact that the amendment only concerns Mr Thaçi, and (iii) the fact that he has submitted his plea in writing on the charges set out in the Confirmed Indictment,²⁹ the Pre-Trial Judge orders Mr Thaçi, if he so wishes, to admit guilt or plead not guilty in written form by **Thursday, 24 April 2025, at 16h00**. Should Mr Thaçi decide not to avail himself of this right, the Pre-Trial Judge will enter a plea of not guilty on his behalf, as provided in Rule 92(2)(f) of the Rules.

29. Should Mr Thaçi wish to be informed in open court of the additional form of incitement to the existing count, he may submit a request to this effect by no later than **Thursday, 24 April 2025, at 16h00**.

D. PRELIMINARY MOTIONS

30. Considering that (i) the amendments to the Confirmed Indictment are minimal, (ii) Mr Thaçi may enter a plea on Thursday, 24 April 2025, should he agree with the course of action set forth in paragraph 27 above, and (iii) the Accused have had ample time to decide whether to file, and if so to prepare any preliminary motions, the Pre-Trial Judge sets the date for lodging any preliminary motions, if the Accused so wish, to **Thursday, 8 May 2025**.

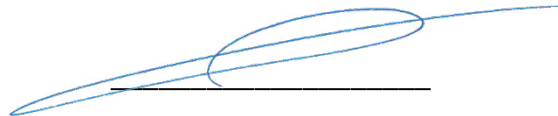
²⁹ See above para. 26 and footnote 28.

IV. DISPOSITION

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

- a) **CONFIRMS** the charge against Mr Thaçi of attempting to obstruct, by common action, official persons, including SPO prosecutors and investigators, in performing official duties, between at least 26 June 2023 and 2 November 2023, punishable under Articles 21, 32(3) and 401(3) and (5) of the KCC (in conjunction with Article 401(2) of the KCC), by virtue of Articles 15(2) and 16(3) of the Law (Counts 1, 2 and 3 of the Confirmed Indictment);
- b) **ORDERS** the SPO to submit, by no later than **Wednesday, 16 April 2025 at 12h00**: (i) a confidential amended confirmed indictment, reflecting the changes as a consequence of this decision *vis-à-vis* Mr Thaçi, for the Registrar to serve on the Accused; and (ii) a public redacted version thereof;
- c) **ORDERS** the Registrar to serve immediately the new amended confirmed indictment on Messrs Thaçi, Fazliu, Smakaj and Kilaj, in a language they understand, namely Albanian;
- d) **ORDERS** the Registrar to promptly serve the new amended confirmed indictment on Mr Kuçi, in a language he understands, namely Albanian, as set forth in paragraph 25 of this decision;
- e) **DETERMINES** that Mr Thaçi is sufficiently informed of the new amendments to the Confirmed Indictment by way of this decision and the soon-to-be-filed amended confirmed indictment;
- f) **INVITES** Mr Thaçi, if he so wishes, to admit guilt or plead not guilty on the additional form of incitement hereby confirmed and **ORDERS** him to do so in written form by **Thursday, 24 April 2025, at 16h00**;

- g) **ORDERS** Mr Thaçi, should he wish to be informed in open court of the additional form of incitement to the existing count, to submit a request to this effect by no later than **Thursday, 24 April 2025, at 16h00**; and
- h) **DETERMINES** that the date for lodging preliminary motions by the Accused, if they so wish, is **Thursday, 8 May 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Monday, 14 April 2025

At The Hague, the Netherlands.