



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

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

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 29 May 2025

**Language:** English

**Classification:** Public

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**Consolidated Prosecution response to preliminary motions alleging defects in the  
form of the indictment**

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## I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby responds to the motions of THAÇI and FAZLIU<sup>1</sup> alleging defects in the form of the Indictment.<sup>2</sup>

2. The Preliminary Motions should be dismissed. The Indictment sufficiently pleads the material facts in the particular circumstances of this case, enabling the Accused to understand the charges and prepare a defence.

## II. SUBMISSIONS

3. The law with respect to what an indictment must contain is well settled. At its core, an indictment must plead the facts underpinning the charges clearly and sufficiently, such that the accused's ability to prepare a defence is not impaired.<sup>3</sup> Further, and as to the purported absence of particulars,<sup>4</sup> an indictment need not set out the evidence underlying the material facts, which is a matter for trial.<sup>5</sup> The

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<sup>1</sup> Thaçi Defence Motion on Defects in the Indictment, KSC-BC-2023-12/F00288, 8 May 2025 ('THAÇI Motion'); Fazliu Defence Challenge to the Form of the Indictment, KSC-BC-2023-12/F00289, 8 May 2025 ('FAZLIU Motion'). Collectively, the 'Preliminary Motions'.

<sup>2</sup> Public Redacted Amended Confirmed Indictment, KSC-BC-2023-12/F00264/A02, 16 April 2025 ('Indictment'). SMAKAJ, KILAJ, and KUÇI did not file motions on the form of the Indictment. *See also* Decision on "Prosecution Request for Extension of Time on Preliminary Motions Responses", KSC-BC-2023-12/F00306, 15 May 2025.

<sup>3</sup> *See for example Specialist Prosecutor v. Thaçi et al.*, Decision on Motion Alleging Defects in the Form of the Amended Indictment, KSC-BC-2020-06/F00895, 22 July 2022, para.19; *Specialist Prosecutor v. Pjetër Shala*, Public Redacted Version of Decision on Pjetër Shala's Appeal against Decision on Motion Challenging the Form of the Indictment, KSC-BC-2020-04/IA004/F00008/RED, 22 February 2022, para.15; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413/RED ('Case 6 Defects Decision'), 22 July 2021, para.40; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Appeals Against Decision on Preliminary Motions, KSC-BC-2020-07/IA004/F00007, 23 June 2021, para.38; *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Defence Preliminary Motions, KSC-BC-2020-07/F00147/RED, 8 March 2021 ('Case 7 Preliminary Motions Decision'), para.46. *See also* THAÇI Motion, KSC-BC-2023-12/F00288, para.6; Article 21(4)(a) of the Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Article 38(4) of the Law; Rule 86(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('KSC'), KSC-BD-03/Rev3/2020, 2 June 2020.

<sup>4</sup> *See* THAÇI Motion, KSC-BC-2023-12/F00288; FAZLIU Motion, KSC-BC-2023-12/F00289.

<sup>5</sup> *See* Case 6 Defects Decision, KSC-BC-2020-06/F00413/RED, para.29; Case 7 Preliminary Motions Decision, KSC-BC-2020-07/F00147/RED, para.40; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Defence Appeals Against Decision on Motion Alleging Defects in the Form of

Indictment complies with the law, and the Preliminary Motions fail to establish otherwise.

4. The Indictment describes in detail the context, timing, and circumstances surrounding efforts of the Accused to unlawfully influence the testimony of and/or contact SPO witnesses in the *Thaçi et al.* case (KSC-BC-2020-06, 'Case 6'),<sup>6</sup> including with respect to the offence of obstructing an official person in performing official duties pursuant to Article 401(2) of the Kosovo Criminal Code.<sup>7</sup> The suggestion otherwise, in the Preliminary Motions, is based on selective and fragmented portions of non-binding case law which are unpersuasive and inapposite.

#### A. THE THAÇI MOTION

5. The THAÇI Motion's arguments that the Indictment lacks specificity regarding the crime of attempted obstruction of official persons,<sup>8</sup> and that he is consequently prevented from understanding the nature of the charges against him,<sup>9</sup> are misplaced on all fronts.

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the Indictment, KSC-BC-2020-06/IA012/F00015, 22 August 2022 ('Case 6 Appeals Defects Decision'), para.55.

<sup>6</sup> Indictment, KSC-BC-2023-12/F00264/A02, paras 7-34.

<sup>7</sup> 2019 Kosovo Criminal Code, Law No. 06/L-074 ('KCC'). The offence of obstructing an official person in performing official duties, within the meaning of Article 401(2) of the KCC, is committed: (i) through participation in a group of persons which by common action; (ii) obstructs or attempts to obstruct an official person in performing official duties (*See* Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036/RED, 29 November 2024 ('Confirmation Decision'), para.53. *See also* *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074/RED, 11 December 2020 ('Case 7 Confirmation Decision'), para.74; *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022 ('Case 7 Trial Judgment'), para.158; *Specialist Prosecutor v. Januzi and Bahtijari*, Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED ('Case 10 Confirmation Decision'), 2 October 2023, para.48; *Specialist Prosecutor v. Haxhi Shala*, Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005/RED, 4 December 2023 ('Case 11 Confirmation Decision'), para.48.).

<sup>8</sup> THAÇI Motion, KSC-BC-2023-12/F00288, paras 1-2, 13-25.

<sup>9</sup> THAÇI Motion, KSC-BC-2023-12/F00288, paras 2, 26.

6. As clearly pled in the Indictment, the attempted obstruction by THAÇI was committed in the context of his ongoing trial in Case 6, coordinating the targeting of witnesses with the intention of compromising the KSC/SPO's ability to effectively investigate and prosecute crimes.<sup>10</sup>

7. First, within the context of specific criminal proceedings, the identification by category of the official persons obstructed – namely judges, prosecutors, court officials, prosecution officers and other persons authorised by the court or prosecution office<sup>11</sup> – is more than sufficient to enable THAÇI to understand the charges. The SPO's case does not relate to one individual official, a fact which is underscored by the nature of the attempted obstruction at issue: that is, the broad pattern of conduct, and targeting of multiple witnesses, as led by THAÇI.<sup>12</sup> In attempting to claim otherwise, THAÇI presents selective and misleading jurisprudence, simply ignoring cases from this and other courts which undermine his position.<sup>13</sup>

8. Indeed, within the KSC legal framework, an 'official person' is *any person* authorised to act on behalf of the KSC or the SPO, including a judge, a prosecutor, an investigator or any other KSC or SPO official ('KSC/SPO Official(s)').<sup>14</sup> Consequently, in confirming the charges as framed, the Confirmation Decision correctly found that

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<sup>10</sup> Indictment, KSC-BC-2023-12/F00264/A02, paras 6-8, 9, 13, 16, 21, 23, 25.

<sup>11</sup> Indictment, KSC-BC-2023-12/F00264/A02, para.23.

<sup>12</sup> Indictment, KSC-BC-2023-12/F00264/A02, paras 7-10, 13-14, 16-18, 20-27.

<sup>13</sup> See for example Case 7 Confirmation Decision, KSC-BC-2020-07/F00074/RED, paras 122-125 (which broadly found that obstructive common action was directed at the work of KSC/SPO Officials, including SPO prosecutors, investigators and KSC staff members, with no individuals being identified); Case 7 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.638 (which broadly framed the assessment of obstruction by verifying whether 'any person' authorised to act on behalf of the KSC/SPO in 'the performance of any responsibility or work' had been impacted, with no persons being named); Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, paras 102, 120 (which broadly assessed obstruction with reference to the work of KSC/SPO Officials, in particular SPO prosecutors and investigators, without identifying specific individuals); Kosovo, Court of Appeals, *M.I. et al.*, Appeal Judgment, PAKR 513/2013, 28 May 2014 (which broadly refers to UN police officers and KFOR soldiers, *vis-à-vis* obstruction, without naming any individuals).

<sup>14</sup> Confirmation Decision, KSC-BC-2023-12/F00036/RED, para.53 (emphasis added). See also Case 7 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.69; Case 7 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.146; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.41; Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.41.

THAÇI, FAZLIU, SMAKAJ, and KILAJ's participation in the common action of a group could, in principle, result in obstruction of the work of KSC/SPO Officials, 'in particular SPO prosecutors and investigators.'<sup>15</sup>

9. Second, the THAÇI Motion incorrectly suggests that further particulars regarding the 'official duties' that were obstructed must be provided.<sup>16</sup> Pursuant to Article 401(2) of the KCC and within the KSC legal framework, the 'official duties' of a KSC/SPO Official relate to any responsibility or work within the context of official proceedings of the KSC, including SPO investigations ('KSC Proceedings').<sup>17</sup> The Indictment – both broadly and on a granular level – properly identifies the official duties that were obstructed by way of the Accused's efforts to unlawfully influence the testimony of and/or contact SPO witnesses in Case 6, specifying *inter alia* the 'ability to effectively investigate and prosecute crimes, including the KSC/SPO's ability to obtain and secure relevant witness evidence'.<sup>18</sup>

10. Third, the THAÇI Motion claims that it is not explained how influencing witnesses would have obstructed the official duties of a KSC/SPO Official.<sup>19</sup> This lacks seriousness. In the context of KSC Proceedings, obstruction entails impeding, hindering, or delaying the work of KSC/SPO Officials,<sup>20</sup> and the Indictment clearly alleges that the efforts to unlawfully influence witnesses were aimed at obstructing Case 6 and compromising the KSC/SPO's ability to effectively investigate and

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<sup>15</sup> Confirmation Decision, KSC-BC-2023-12/F00036/RED, para.193. *See also*, Confirmation Decision, KSC-BC-2023-12/F00036/RED, paras 189, 194, 209-211.

<sup>16</sup> THAÇI Motion, KSC-BC-2023-12/F00288, paras 19-20.

<sup>17</sup> Confirmation Decision, KSC-BC-2023-12/F00036/RED, para.53. *See also* Case 7 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.69; Case 7 Trial Judgment, KSC-BC-2020-07/F00611/RED, paras 147, 164; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.41; Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.41.

<sup>18</sup> Indictment, KSC-BC-2023-12/F00264/A02, para.25. *See also* Indictment, KSC-BC-2023-12/F00264/A02, paras 6-27.

<sup>19</sup> THAÇI Motion, KSC-BC-2023-12/F00288, paras 21-22.

<sup>20</sup> Confirmation Decision, KSC-BC-2023-12/F00036/RED, para.54. *See also* Case 7 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.70; Case 7 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.145; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.42; Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.42.

prosecute crimes.<sup>21</sup> As KSC/SPO Officials are inherently involved in KSC Proceedings, efforts to unlawfully influence witness testimony and/or contact SPO witnesses would necessarily have potential to impede, hinder, and/or delay their official duties.

11. Finally, THAÇI contends that there is no explanation as to the conduct of the Accused – or, the three groups – that results in the ‘common action’ to obstruct.<sup>22</sup> This claim ignores that ‘common action’ may include any activity jointly undertaken by group members, without limitation as to form,<sup>23</sup> and the Indictment explicitly identifies the conduct of the Accused within the FAZLIU, SMAKAJ and KILAJ Groups<sup>24</sup> – all of which was aimed at obstructing Case 6.

#### B. THE FAZLIU MOTION

12. The FAZLIU Motion misreads, misinterprets, and/or ignores the content of the Indictment.

13. First, and as to the supposed ‘blurred’ contour of common action<sup>25</sup> and the purported ‘inter-group assistance,’<sup>26</sup> the Indictment does not charge any acts related to coordination among or between FAZLIU, SMAKAJ, KILAJ, and KUÇI, nor between or among the FAZLIU, SMAKAJ, and KILAJ Groups. The manner in which the Indictment frames the charged visits between THAÇI and his co-Accused<sup>27</sup> – respectively, FAZLIU for 2 July 2023; KUÇI for 3 September 2023; SMAKAJ for 9 September and 7 October 2023; and KILAJ for 6 October 2023 – alongside appropriate qualifying language, such as ‘within and among their respective

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<sup>21</sup> Indictment, KSC-BC-2023-12/F00264/A02, paras 6-8, 23-27.

<sup>22</sup> THAÇI Motion, KSC-BC-2023-12/F00288, paras 23-25.

<sup>23</sup> Confirmation Decision, KSC-BC-2023-12/F00036/RED, para.52. *See also* Case 7 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.75; Case 7 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.162; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.49; Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.49.

<sup>24</sup> Indictment, KSC-BC-2023-12/F00264/A02, paras 7, 9-10, 16-18, 20-27.

<sup>25</sup> FAZLIU Motion, KSC-BC-2023-12/F00289, paras 12-14.

<sup>26</sup> FAZLIU Motion, KSC-BC-2023-12/F00289, paras 17-18.

<sup>27</sup> Indictment, KSC-BC-2023-12/F00264/A02, paras 8-22.



groups’,<sup>28</sup> clearly articulates the charges against the Accused and distinguishes the respective Groups to which each Accused belonged. Notwithstanding FAZLIU’s claims, there is no ambiguity in this regard. The matters FAZLIU identifies as not having been pled, are absent because they are not charged.

14. Second, FAZLIU complains that his actions are not identified with a sufficient degree of specificity, attempting to focus in particular on his meetings with Witness 1.<sup>29</sup> This is not so. With respect to the 2 July 2023 visit, the Indictment explicitly alleges that: (i) THAÇI ‘provided confidential information about SPO witnesses in the *Thaçi et al.* case and provided detailed instructions that Fadil FAZLIU was to convey’ to Witness 1; and (ii) THAÇI and FAZLIU ‘discussed the means by which THAÇI’s instructions should be given’, agreeing that FAZLIU’s son Fahri ‘would contact Witness 1 to set up a meeting.’<sup>30</sup> The intention to obstruct Case 6 by instructing Witness 1 is further evidenced by the fact that FAZLIU met with Witness 1 immediately before the 2 July 2023 visit, on 29 June 2023, while FAZLIU’s son Fahri exchanged messages with Witness 1 on 3 July 2023 to arrange a meeting for the same day, to include himself, Witness 1, and FAZLIU.<sup>31</sup> This level of specificity cannot reasonably be described as vague, and led to the finding in the Confirmation Decision 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>32</sup> The SPO has pled the material facts underlying the charges in the manner required.<sup>33</sup>

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<sup>28</sup> Indictment, KSC-BC-2023-12/F00264/A02, para.44. *See also* Indictment, KSC-BC-2023-12/F00264/A02, paras 24, 40.

<sup>29</sup> FAZLIU Motion, KSC-BC-2023-12/F00289, paras 9-10.

<sup>30</sup> Indictment, KSC-BC-2023-12/F00264/A02, paras 9-10.

<sup>31</sup> Indictment, KSC-BC-2023-12/F00264/A02, para.10.

<sup>32</sup> Confirmation Decision, KSC-BC-2023-12/F00036/RED, para.185.

<sup>33</sup> *Contra* FAZLIU Motion, KSC-BC-2023-12/F00289, para.11 (and consistent with the standard set out in the jurisprudence cited therein, at fn.15).

15. Similarly, FAZLIU's argument that it is unclear 'how the conducts fell short of a full commission' is misplaced.<sup>34</sup> What is required is for the SPO to plead the material facts underlying the attempted obstruction; it is not required to plead how those facts do or do not satisfy the requirements of other crimes or other modes of liability.<sup>35</sup> Nor does this create any impediment to FAZLIU in raising whatever defences he deems appropriate to the offence and mode of liability as charged.<sup>36</sup> As is made clear in the Indictment, THAÇI and FAZLIU each participated in the common action of a group, which could result in obstruction of the work of KSC/SPO Officials.

16. Finally, FAZLIU's claim that the phrase, 'committed the crime of attempted obstruction of official persons', should be reformulated as, 'attempted, within the meaning of KCC Article 28, the commission of the crime of obstructing official persons',<sup>37</sup> is misplaced as it does not actually allege a defect in the form of the Indictment. Rather, FAZLIU's position amounts to a challenge to the constitutive elements of attempted obstruction, 'which is a matter to be litigated at trial and addressed by a trial panel'.<sup>38</sup> Additionally, the Case 7 Trial Judgment does not support the position FAZLIU advances,<sup>39</sup> as it found that the accused participated in a common action which amounted to attempted obstruction under Article 401(2) of the KCC, with related convictions being entered<sup>40</sup> – notably absent is reference to Article 28 of the KCC, as suggested by FAZLIU. Attempted obstruction of official persons, pursuant to KCC Article 401(2), is clearly being charged<sup>41</sup> and the explicit language of this provision indicates that the offence can be committed either when the obstruction

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<sup>34</sup> FAZLIU Motion, KSC-BC-2023-12/F00289, para.15.

<sup>35</sup> In the Confirmation Decision it was found that, in the absence of concrete evidence establishing an actual impediment or hinderance to KSC Proceedings, it was appropriate to confirm only a charge of attempted obstruction (Confirmation Decision, KSC-BC-2023-12/F00036/RED, paras 189-194).

<sup>36</sup> *Contra* FAZLIU Motion, KSC-BC-2023-12/F00289, para.15.

<sup>37</sup> FAZLIU Motion, KSC-BC-2023-12/F00289, para.16.

<sup>38</sup> *See Specialist Prosecutor v. Januzi et al.*, Public Redacted Version of Decision on Preliminary Motions and Related Requests, KSC-BC-2023-10/F00433/RED, 12 August 2024, para.43.

<sup>39</sup> *Contra* FAZLIU Motion, KSC-BC-2023-12/F00289, para.16, fn.23.

<sup>40</sup> *See* Case 7 Trial Judgment, KSC-BC-2020-07/F00611/RED, paras 694-696, 1012, 1015.

<sup>41</sup> *See* Indictment, KSC-BC-2023-12/F00264/A02, paras 25-27, 36, 46-49.

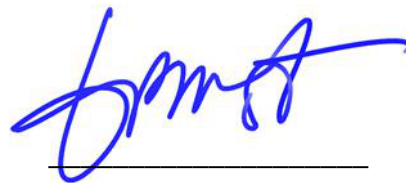


has occurred or when it has only been attempted.<sup>42</sup> Accordingly, this allegation against FAZLIU is properly pled and he is able to effectively prepare his defence based on the clear language of the Indictment.

### III. CONCLUSION

17. As detailed above, the Indictment pleads the material facts necessary to support the charges with sufficient specificity to enable THAÇI and FAZLIU to understand the case against them and to prepare a defence. The Preliminary Motions therefore fail to establish any defects in the confirmed Indictment and should be dismissed in their entirety.

**Word count: 2,555**



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Thursday, 29 May 2025

At The Hague, the Netherlands

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<sup>42</sup> See Case 7 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.158.