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
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Consolidated Prosecution response to severance motions (F00285 and F00286)

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I. INTRODUCTION

1. The Thaçi Motion[1] seeking severance of the Indictment[2] and adjournment of the present proceedings until the close of the *Thaçi et al.* case (KSC-BC-2020-06, 'Case 06') is wholly unjustified and should be denied. Similarly, the Joint Defence Motion[3] seeking severance of the Indictment should be denied. The underlying facts and Accused are overlapping, and the acts and conduct charged in the Indictment are closely connected and interwoven, forming a series of related crimes, such that the Accused should be tried jointly, as appropriately found in the Confirmation Decision.[4] And, as detailed herein, there is no legitimate basis for severance here.

2. Proceeding with Case 12 in accordance with the Law[5] and Rules[6] will not violate THAÇI's rights, nor impact his ability to prepare a (currently hypothetical) defence case in Case 06. The primary concern raised by THAÇI, and from which all other concerns flow, is that because his Specialist Counsel are working across two cases, this results in inadequate representation. If Specialist Counsel believe they cannot adequately represent THAÇI in both cases, the solution is clear: Counsel should adhere to their professional obligations and withdraw from one case. An accused does not enjoy a right to the same counsel in two distinct cases, and the parallel representation demanded is not warranted. Moreover, while Case 12 concerns

[1] Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings concerning Mr Thaçi, KSC-BC-2023-12/F00285, 7 May 2025 ('Thaçi Motion').
[2] Public Redacted Amended Confirmed Indictment, KSC-BC-2023-12/F00264/A02, 16 April 2025 ('Indictment').
[3] Joint Defence Preliminary Motion Pursuant to Rule 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BC-2023-12/F00286, 7 May 2025 ('Joint Defence Motion').
[4] *See generally* Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036/RED, 29 November 2024 ('Confirmation Decision'). Notably, the Confirmation Decision refers to 'coordinated and concerted efforts' between THAÇI and the Co-Accused, and found that supporting material evidences that THAÇI 'played a central role in the conception, design and implementation of the strategy to interfere with witnesses.' (*See* Confirmation Decision, KSC-BC-2023-12/F00036/RED, paras 200, 202, 204, 206, 262.)
[5] Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.
[6] Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('KSC'), KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules.

the obstruction of Case 06, the parties, charges and evidence in these two proceedings are highly distinguishable – consequently, the principles of *res judicata* and *non bis in idem* are inapplicable.

3. As alluded to above, and given that a broad pattern of obstructive conduct and the targeting of multiple witnesses is alleged, as led by THAÇI,[7] trying the Co-Accused before the leader would not serve the interests of justice.[8] Indeed, separate Case 12 trials would be highly inefficient, resulting in duplicative litigation and superfluous appearance of witnesses. It would also significantly complicate legal and evidentiary matters, and may adversely impact the integrity of the proceedings. THAÇI's pervasive involvement in Case 12 is not practical to sever into a separate proceeding, with all relevant factors weighing strongly against it. The Thaçi Motion and the Joint Defence Motion should therefore be denied.

II. SUBMISSIONS

A. PROCEEDING WITH CASE 12 DOES NOT VIOLATE THAÇI'S FAIR TRIAL RIGHTS

4. At the outset, the Specialist Prosecutor's Office ('SPO') notes that the bulk of the fair trial submissions in the Thaçi Motion are abstract in nature, speculative, and based on the hypothetical possibility that Thaçi *may* run a defence case in Case 06. Not one of them provides a sound basis to justify severance.

5. First, Case 06 proceedings will shortly commence Rule 130 litigation. THAÇI has already indicated that it is only after these proceedings are finalised that he will be in a position to decide whether, and to what extent, he will run a defence case.[9] If severance is granted in Case 12 now to facilitate THAÇI's preparation for a

[7] Indictment, KSC-BC-2023-12/F00264/A02, paras 7-10, 13-14, 16-18, 20-27.
[8] *See* Confirmation Decision, KSC-BC-2023-12/F00036/RED, paras 207-208, 268, referring to THAÇI as the 'leader' and 'main beneficiary' of the obstruction efforts.
[9] *See for example Specialist Prosecutor v. Thaçi et al.*, Joint Defence Notification Pursuant to Rule 130(1), KSC-BC-2020-06/F03123, para.3; Case 06 Transcript of Status Conference dated 23 April 2025, T.26163-26164.

hypothetical defence case in Case 06, and he subsequently elects not to run a case (or a very limited one) – which is entirely possible[10] – that would undermine the proper administration of justice in Case 12. THAÇI's own acknowledgement that he has not yet decided whether to run a defence case[11] renders all such submissions speculative.

6. Moreover, THAÇI's concern about effectively participating in both trials and his ability to meet with and instruct Specialist Counsel[12] is likewise abstract and hypothetical, given that it is not yet known to what extent, and for what duration, Trial Panel II will sit in the second half of 2025. However, should this issue arise *in concreto*, it can be readily dealt with by ensuring appropriate accommodations are made. It is not a sufficient reason to justify severance of Case 12 now – a wholly disproportionate remedy for a currently non-existent problem.

7. From this hypothetical starting point, it follows that the caselaw relied upon by THAÇI to argue against concurrent trials becomes inapposite and is otherwise distinguishable on the facts. In *Bemba*, the trial decision referred to by THAÇI turned not on the possibility that concurrent proceedings may occur (or would be legally improper), but rather that the obstruction material sought for admission was not relevant in the main case.[13] Moreover, read carefully, the *Bemba* Trial Chamber's concern regarding 'parallel proceedings', referred to by THAÇI,[14] was to avoid ruling on issues that substantively fell within the competence of the *Bemba et al.* contempt

[10] The indications that have been given by the THAÇI defence in Case 06 are that, if it presents a defence case at all, it will comprise only of 10 or less witnesses (*see* Case 06 Transcript of Status Conference dated 23 April 2025, T.26163-26164).
[11] Thaçi Motion, KSC-BC-2023-12/F00285, paras 23, 37 ('This work will only intensify during the preparation and presentation of a defence case, **if one occurs**.' Emphasis added.); Case 06 Transcript of Status Conference dated 23 April 2025, T.26163-26164.
[12] Thaçi Motion, KSC-BC-2023-12/F00285, para.38.
[13] *See* ICC, Trial Chamber, *Prosecutor v. Bemba*, Decision on Prosecution's Application to Submit Additional Evidence, ICC-01/05-01/08-3029, 2 April 2014, paras 30-31. *See also* ICC, Trial Chamber, *Prosecutor v. Bemba*, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343, 21 March 2016, paras 259-260.
[14] Thaçi Motion, KSC-BC-2023-12/F00285, para.29.

case, namely witness interference. It was not a concern around the legality or practicalities of running trials in tandem.

8. Furthermore, THAÇI's assertion that concurrent proceedings are 'unprecedented'[15] is factually incorrect. The latter phase of the *Bemba* main case, including closing arguments and the subsequent appeal phase, entirely overlapped with the pre-trial, trial, and appeal phase of the *Bemba et al.* contempt case.[16] No judicial concern was raised around the legal propriety of doing so, nor was there any finding that Jean-Pierre Bemba's rights, or his ability to fully participate, were in any way impacted by efficiently proceeding with both cases.

9. In *Simić*, it is notable that the decision to proceed with the contempt case against Milan Simić and his counsel was taken in circumstances where the main trial had not yet begun. The *Simić* Trial Chamber's decision to resolve the contempt issue first – particularly given that it concerned witness harassment that came to light before the start of trial – was a matter within its own discretion.[17] The case is not authority for the proposition that concurrent proceedings are inherently unfair to the accused – indeed, the *Simić* Trial Chamber says nothing about that issue.[18]

10. Likewise, the decision of the *Šešelj* Trial Chamber to pause the main case to deal with witness interference allegations was not based on a risk of potential unfairness to the accused, but to ensure the security of pending witnesses and to preserve the integrity of their testimony.[19] During the second *Šešelj* contempt case, trial proceedings

[15] Thaçi Motion, KSC-BC-2023-12/F00285, paras 28, 32.
[16] Closing arguments in the *Bemba* main case were held in November 2014, with the Appeal Judgement rendered in June 2018. The *Bemba et al.* contempt pre-trial proceedings began in November 2013, with the Appeal Judgement ultimately rendered in March 2018.
[17] *See* ICTY, Trial Chamber, *Prosecutor v. Simić et al.*, Case No. IT-95-9-R77, Judgment in the Matter of Contempt Allegations against an Accused and his Counsel, 30 June 2000, paras 3-4.
[18] A further distinguishing feature in the *Simić* case, which was relevant to the interests of justice there, included the fact that the contempt allegations also concerned the accused's counsel.
[19] ICTY, Trial Chamber, *Prosecutor v. Šešelj*, Case No. IT-04-74-T, Decision on Prosecution motion for adjournment with Dissenting Opinion of Judge Antonetti, 11 February 2009, p.3. Indeed, the dissenting opinion in that case favoured the continuation of proceedings, precisely for reasons of fairness and expeditiousness.

continued in the ordinary course in the *Šešelj* main case, with the equivalent of Rule 130 submissions being made in March 2011 while the contempt case was ongoing.

11. Furthermore, THAÇI's reliance on caselaw that considered dividing one very large case into two smaller cases is also inapposite. In *Mladić*, the Trial Chamber declined to sever two distinct portions of the indictment 'and the conducting of two trials', which it considered would have overburdened the accused.[20] No such circumstance exists here. The confined scope of allegations in Case 12, a fact acknowledged by THAÇI,[21] cannot be compared to a complex and evidence-heavy war crimes and crimes against humanity case across a multi-year period in Bosnia.[22] Similarly, at the ECCC, severance of the indictment in Case 002 was due to the accused's old age and infirmity,[23] a circumstance also inapplicable to THAÇI.

B. SPECIALIST COUNSEL'S ROLE IN CASE 06 DOES NOT JUSTIFY SEVERANCE OF CASE 12

12. A common thread in the Thaçi Motion is the claimed logistical and workload difficulties posed by his Specialist Counsel's dual appointment to Case 06 and Case 12. THAÇI submits that the litigation in Case 06 has consumed the defence team which is now 'fully occupied with the preparation of a Rule 130 submission.'[24] Thereafter, the Case 06 defence team 'will be focused on reviewing the voluminous evidence of the case in order to draft the final brief.'[25] It is argued that THACI 'requires involvement of counsel [in Case 12] familiar with Case 06', and that 'it would be

[20] ICTY, Trial Chamber, *Prosecutor v. Mladić*, Case No. IT-09-92-PT, Decision on consolidated Prosecution motion to sever the indictment, conduct separate trials and to amend the indictment, 13 October 2011 ('*Mladić* Decision'), para.31. In this case, the Prosecution requested that the Srebrenica component of the indictment be tried separately from the Sarajevo and related municipalities part of the indictment.
[21] Thaçi Motion, KSC-BC-2023-12/F00285, para.25.
[22] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, para.37.
[23] ECCC, Supreme Court Chamber, *Co-Prosecutors v. Nuon Chea & Khieu Samphân*, Decision on immediate appeals against Trial Chamber's decision on severance of Case 002, Case 002/19-09-2007-ECCC-TC/SC(28), Doc. E284/4/8, 25 November 2013, paras 51-52.
[24] Thaçi Motion, KSC-BC-2023-12/F00285, paras 21-22, 27.
[25] Thaçi Motion, KSC-BC-2023-12/F00285, para.24.

extremely difficult for Mr Thaçi and his Counsel to litigate two trials at the same time.'[26] These submissions are without merit.

13. THAÇI has a right to a fair trial[27] within a reasonable time,[28] and to have adequate time to prepare a defence with Specialist Counsel of his choosing.[29] However, THAÇI does *not* have a right to the *same* Specialist Counsel in circumstances where he faces two separate and very different proceedings. There is no such right in the KSC's legal texts, the Constitution of the Republic of Kosovo, or the European Convention of Human Rights, and THAÇI provides no legal authority for his position. The only jurisprudence argued as supportive is the *Mladić* case.[30] However, and as noted above, the case-specific context in *Mladić* was wholly distinguishable to the present scenario, where – rather than the prospect of there being two large war crimes cases run in tandem – the start of a narrow obstruction case potentially overlaps with a currently hypothetical (and potentially limited) defence case in Case 06.

14. More generally, however, if THAÇI's Specialist Counsel have formed the view that they cannot suitably spend time with, legally advise, and adequately represent their client in two separate proceedings because of the workload pressure this creates – a situation acknowledged as 'unsustainable'[31] – their professional obligation requires them to withdraw.[32]

15. While Case 12 concerns the obstruction of Case 06, it does not follow that a Case 12 Accused *must* be represented by Specialist Counsel with prior involvement in Case

[26] Thaçi Motion, KSC-BC-2023-12/F00285, paras 49-50.
[27] Article 21(2); Article 6, European Convention of Human Rights (1953); Article 31, Constitution of the Republic of Kosovo (2008).
[28] Article 21(4)(d).
[29] Article 21(4)(c).
[30] Thaçi Motion, KSC-BC-2023-12/F00285, para.36, *referring to Mladić* Decision, para.31.
[31] Thaçi Motion, KSC-BC-2023-12/F00285, para.49.
[32] Article 19(1)(d), Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers, KSC-BD-07-Rev1, 28 April 2021. *See also* ICC, Appeals Chamber, *Prosecutor v. Bemba*, ICC-01/05-01/08-3413, Decision on request for leave to withdraw, 25 July 2016, para.3.

06.[33] Case 12 concerns discrete obstructive conduct carried out in 2023. An intimate knowledge of Case 06 is not required of Specialist Counsel to advise and defend against the Case 12 charges. Taken to its logical conclusion, and if THAÇI is correct on this point, then his Case 12 Co-Accused, SMAKAJ, KILAJ, FAZLIU and KUÇI, are currently receiving inadequate representation because their Specialist Counsel have no prior involvement in Case 06. That is not so. Plainly, THAÇI's rationale for his insistence on retaining the same Specialist Counsel in both cases is untenable, as is the baseless claim that SPO staff enjoy a 'tactical advantage' by simply performing their lawful duties.[34] It also bears noting that Mr Bemba was represented by different counsel in the two separate ICC proceedings – the main case and the contempt case – which further undermines THAÇI's position that he requires a legal team in Case 12 which is familiar with Case 06.[35]

16. Appointing separate Specialist Counsel to Case 12 would not present insurmountable legal obstacles in the representation of THAÇI. Given that Specialist Counsel must demonstrate high standards of competence and experience to join the KSC list of counsel, coordinating on matters of common concern that may arise, such as detention and compassionate release,[36] should be well within their scope of ability. Alternatively, the withdrawal of one Specialist Counsel from Case 06 to focus exclusively on Case 12 is also a viable avenue. Separately, if THAÇI does not have the funds to appoint a second legal team,[37] which is stated as being beyond his private means,[38] the appropriate course is to approach the Registrar with a request for legal aid. The KSC's Legal Aid Regulations facilitate requests from persons who may be

[33] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, paras 41-44, 47-50.
[34] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, para.43.
[35] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, paras 41-44.
[36] *See* Thaçi Motion, KSC-BC-2023-12/F00285, para.44.
[37] *See* Thaçi Motion, KSC-BC-2023-12/F00285, para.46.
[38] Thaçi Motion, KSC-BC-2023-12/F00285, para.51.

indigent, or only 'partially indigent'.[39] Reasonable and pragmatic options should be preferred over the drastic and unnecessary severing of the Indictment.

C. SUBMISSIONS PERTAINING TO CASE 06 ARE OUTSIDE THE PRE-TRIAL JUDGE'S PURVIEW

17. THAÇI's submission that, without severance, the rights of the other co-accused in Case 06 would be violated,[40] is likewise abstract and hypothetical. As noted above, it is currently unknown for what duration Trial Panel II will sit in the second half of 2025, as the impending Rule 130 litigation will determine to what extent the Case 06 accused will run defence cases, if at all. More generally, however, it is inappropriate for THAÇI to make submissions on behalf of his co-accused in Case 06, who fall under the jurisdiction of Trial Panel II, as such matters are outside the purview of the Pre-Trial Judge in Case 12 ('PTJ').[41]

D. *RES JUDICATA* IS NOT APPLICABLE

18. The principle of *res judicata* is not applicable here. The three traditional conditions of *res judicata* require: (1) the same parties; (2) the same issues; and (3) a final determination on those issues by a court competent to decide them.[42] Even if the PTJ were to consider that, because THAÇI is an accused in both cases, such dual status somehow fulfils 'the same party' criterion – which it does not[43] – the two cases concern manifestly different issues (international crimes committed in 1998-99 versus obstruction offences committed in 2023). Further, there has been no final judgement in Case 06.

[39] Registry Practice Direction, Legal Aid Regulations, KSC-BD-25-Rev1, 22 February 2024, Regulation 6(1).
[40] Thaçi Motion, KSC-BC-2023-12/F00285, para.57.
[41] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, paras 56-59.
[42] IRMCT, Appeals Chamber, *Prosecutor v. Unwinkindi*, Case No. MICT-12-25-AR14.1, Decision on an Appeal concerning a request for revocation of a referral, 4 October 2016, para.29.
[43] The other accused in Case 06 (Rexhep Selimi, Kadri Veseli and Jakup Krasniqi) are not parties to Case 12.

19. Moreover, the proposed admission of certain obstruction material to the Case 06 evidentiary record must be viewed in context. The proposed admission of that material is to contextualise the testimony of Case 06 witnesses subjected to interference, the *mens rea* of the accused (in respect of the crimes charged in Case 06, not Case 12) and for sentencing purposes,[44] and *not* with a view to making any adverse findings of fact against THAÇI in respect of the alleged witness interference.[45] Any such findings would be outside the competence of Trial Panel II.[46] THAÇI's assertion that both cases concern 'the same questions of fact *sub judice*' is manifestly incorrect.[47]

20. Finally, given that Trial Panel II has not yet made any findings in relation to the obstruction material in a final judgement, THAÇI's submissions are openly hypothetical and speculative.[48]

E. *NON BIS IN IDEM* IS NOT APPLICABLE

21. Under Article 17 of the Law, *non bis in idem* only attaches before the KSC when a person has 'been tried' by a court of Kosovo or the ICTY. In the caselaw cited by THAÇI, the European Court for Human Rights ('ECtHR') noted that this principle, as enshrined in Article 4 of Protocol 7 to the Convention, 'prohibits the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same.'[49] As repeatedly noted above, Case 12 concerns the prosecution of entirely distinguishable offences to Case 06.

[44] *Specialist Prosecutor v. Thaçi et al.*, Prosecution motion for admission of obstruction related materials with confidential Annexes 1-3, KSC-BC-2020-06/F03120, 15 April 2025, paras 3-6.
[45] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, para.61.
[46] *See Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Prosecution Request to Amend the Exhibit List (F02279) and on Thaçi Defence Motion for Exclusion of Materials *in Limine*, KSC-BC-2020-06/F02501/RED, 22 August 2024, para.35 ('The Panel's mandate does not extend to determining whether any person has committed any offences other than those charged in the Indictment in the present case.')
[47] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, para.68.
[48] *See for example* Thaçi Motion, KSC-BC-2023-12/F00285, para.66 ('**Depending** on the scope and content of Trial Panel II's findings, this **may** have a considerable impact […].' Emphasis added).
[49] Thaçi Motion, KSC-BC-2023-12/F00285, para.72, *citing to* ECtHR, Grand Chamber, *Zolotukhin v. Russia*, Application no. 14939/03, Judgment, 10 February 2009, para.82.

22. The *Gradinger* case relied upon by THAÇI is inapposite, and assumes future hypothetical findings in the Case 06 judgement.[50] In *Gradinger*, violations were alleged by an applicant who was 'finally acquitted or convicted' within the meaning of Article 4 of Protocol 7. THAÇI has not yet been 'convicted or acquitted' in relation to the charges he faces in Case 06 – thus, the principle of *non bis in idem* is inapplicable.

F. SEVERANCE WOULD NOT SERVE THE ADMINISTRATION OF JUSTICE

23. All relevant factors militate in favour of this case proceeding concurrently and jointly against all charged Accused. In considering whether to sever a case pursuant to Rule 89(2)(b), the PTJ has held that she 'must strike a fair balance between the need to ensure the proper administration of justice and respecting the rights of the accused to a fair and expeditious trial.'[51] THAÇI's rights must therefore be assessed in parallel with the same rights of his Co-Accused in Case 12.[52] Guided by the jurisprudence of the ECtHR, the PTJ has held that the 'reasonableness of the length of proceedings is to be determined in light of the circumstances of the case, which calls for an overall assessment, having regard to: (i) the complexity of the case; (ii) the applicant's conduct and that of the relevant administrative and judicial authorities; and (iii) what is at stake for the applicant in the dispute.'[53]

24. THAÇI makes no express submissions on these factors, while the Joint Defence Motion addresses them only to a limited extent. Ultimately, the submissions are entirely premised on the hypothetical *assumption* that THAÇI's request to adjourn the start of Case 12 will be granted, thus *possibly* causing an unreasonable delay for the

[50] Thaçi Motion, KSC-BC-2023-12/F00285, para.73, *citing to* ECtHR, Court (Chamber), *Gradinger v. Austria*, Application no. 15963/90, Judgment, 23 October 1995, paras 48, 55.
[51] *Specialist Prosecutor v. Januzi et al.*, Decision on Application for Severance, KSC-BC-2023-10/F00452, 27 August 2024 ('*Shala* Severance Decision'), para.40.
[52] *Shala* Severance Decision, KSC-BC-2023-10/F00452, para.40.
[53] *Shala* Severance Decision, KSC-BC-2023-10/F00452, para.41.

other Accused.[54] If THAÇI's request for adjournment is rejected – and for the reasons advanced above, it should be – the Joint Defence Motion is moot. In any event, the submissions touching upon these factors ignore what is at the core of this case, namely the inherent connection between the crimes charged. The essence of this case precludes the relief sought by the Accused.

1. Complexity of the case

25. As to complexity, the anticipated evidence in these proceedings includes a small number of live witnesses, documentary evidence, and the Accused's electronic devices and extracted communications. The scope of the charges is factually and temporally limited, and straightforward. Ultimately, the nature of this case clearly militates *against* severance, given that the SPO alleges that THAÇI orchestrated a coordinated scheme of obstruction by instructing the Co-Accused to interfere with and/or contact Case 06 witnesses, and repeatedly revealed confidential information during in-person visits with his Co-Accused. THAÇI participated in and led each of the Groups as charged, making it highly impractical to sever the Indictment. Indeed, severance could significantly increase the complexity of the proceedings, as the first Case 12 Panel would effectively have to avoid making any findings that would potentially prejudice a later trial of THAÇI alone. Thus, trying the other Accused before trying the leader of the alleged conduct, given the fact pattern at hand, would be highly unsuitable and inefficient.[55]

[54] Joint Defence Motion, KSC-BC-2023-12/F00286, para.14 ('In assessing whether any delay in the start of proceedings in Case 12 for the Accused, **were Mr Thaçi's adjournment application to be granted**, would amount to an unreasonable delay.' Emphasis added).
[55] *See* ICTR, Trial Chamber, *Prosecutor v. Bagosora et al.*, Decision on Motions by Ntabakuze for Severance and to Establish a Reasonable Schedule for the Presentation of Prosecution Witnesses, Case No. ICTR-98-41-T, 9 September 2003, para.21.

2. Conduct of the authorities and the accused

26. THAÇI does not expressly address this limb, and the Joint Defence Motion takes no issue with the conduct of the SPO, the PTJ, or the length of pre-trial proceedings to date.[56] Again, however, the Joint Defence Motion offers submissions grounded on speculation, and *presume* that *if* THAÇI's requested adjournment is granted, this *may* cause unreasonable delay, through no fault of the Co-Accused.[57] The few examples at the ICTY, referred to separately by THAÇI, where the staggered prosecution of co-perpetrators was conducted separately for similar conduct, was due to the various accused evading arrest over time – a circumstance that does not apply here.[58] This is not a credible basis to seek severance of these proceedings.

3. What is at stake for the accused

27. As above, submissions on this point in the Joint Defence Motion are premised on a request for adjournment being hypothetically granted,[59] and invite speculation that the right to be tried without undue delay may be violated at a future date.[60] The solution is clear: Case 12 should proceed jointly without any undue or unreasonable delay that would be caused either by severance or an unnecessary adjournment. The concerns outlined in the Joint Defence Motion would therefore fall away.

4. Administration of justice considerations

28. More generally, two separate trials would result in extensive duplication of evidence in factually overlapping cases, to the inconvenience of witnesses, who would be forced to testify in two separate trials, undermining the efficient administration of

[56] Joint Defence Motion, KSC-BC-2023-12/F00286, para.17.
[57] Joint Defence Motion, KSC-BC-2023-12/F00286, paras 18-19.
[58] *Contra* Thaçi Motion, KSC-BC-2023-12/F00285, para.81.
[59] Joint Defence Motion, KSC-BC-2023-12/F00286, paras 20-21.
[60] *See* ICTR, Trial Chamber, *Prosecutor v. Bizimungu et al.*, Decision on Justin Mugenzi's Motion Alleging Undue Delay and Seeking Severance, Case No. ICTR-99-50-T, 14 June 2007, para.14.

justice in the KSC.[61] THAÇI's inextricable involvement in all elements of the Case 12 charges is such that an entire, almost identical trial, would have to be run twice, consecutively, with all the legal, administrative, resource, and evidential complications that would entail. It would, for example, lead to possible inconsistencies in treatment of evidence, sentencing, or other matters that could arise from presenting the same evidence in a bifurcated manner. These factors were of central importance when denying severance in *Januzi et al.*,[62] and they are equally applicable here. In the totality of the circumstances, severance of the Indictment is not a viable approach to this case. Due to the intrinsic links between the acts and conduct of the Accused, this case exemplifies why it is appropriate – in certain circumstances, such as these – to try persons jointly, as was correctly held in the Confirmation Decision.

III. CONCLUSION

29. For the foregoing reasons, the Thaçi Motion and the Joint Defence Motion should be denied.

Word count: 4,446

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Friday, 30 May 2025

At The Hague, the Netherlands.

[61] *See similarly* ICTR, Trial Chamber, *Prosecutor v. Bagosora et al.*, Decision on Defence Request for Severance of Three Accused, Case No. ICTR-98-41-T, 27 March 2006, para.3; ICTY, Trial Chamber, *Prosecutor v. Karadžić*, Decision on Accused's Motions to Sever Count One and for Suspension of Defence Case, Case No. IT-95-5/18-T, 2 August 2013, para.17.

[62] *Shala* Severance Decision, KSC-BC-2023-10/F00452, para.57. *See also* ICTR, Appeals Chamber, *Prosecutor v. Bagosora et al.*, Decision on Aloys Ntabakuze's Motion for Severance, Retention of the Briefing Schedule and Judicial Bar to the Untimely Filing of the Prosecution's Response Brief, Case No. ICTR-98-41-A, 24 July 2009, para.25; ICTY, Appeals Chamber, *Prosecutor v. Tolimir et al.*, Decision on Radivoje Miletić's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused, Case No. IT-04-80-AR73.1, 27 January 2006, para.8.