



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: 13 June 2025

Language: English

Classification: Public

Public redacted version of 'SPO Submissions on FAZLIU's request for review'

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby provides its observations on Fadil FAZLIU's request to overturn the Registrar's Decision,¹ which declined to assign Mr Artan Qerkini ('Qerkini') as Co-Counsel.

2. The Registrar's Decision is properly grounded on Article 28(3)(a) of the Code of Conduct,² and found that a (potential) conflict of interest bars Qerkini's assignment as Co-Counsel, as he 'advised, represented or acted on Mr Smakaj's behalf [one of FAZLIU's Co-Accused in this case] during a search and seizure operation in October 2023'.³ It reflects an appropriate interpretation and application of the Code of Conduct.⁴

II. SUBMISSIONS

3. In addition to the sound basis of the Registrar's Decision – which is enough to reject the requested assignment, *ab initio* – the following matters are relevant to a determination of the FAZLIU Request:

- a. A conflict under Article 28(3)(a) – which was correctly determined to be present in the Registrar's Decision – cannot be waived.⁵ Indeed, any representation resulting in a conflict of interest under this provision should be terminated pursuant to Article 28(4)(a), read in conjunction with Article 23(2)(b) and Section

¹ See Annex 1 to Transmission of Mr. Fazliu's Request for a Review of the Registrar's Decision on Mr. Qerkini, KSC-BC-2023-12/F00322/A01, Confidential, 3 June 2025 ('FAZLIU Request'); Annex 2 to Transmission of Mr. Fazliu's Request for a Review of the Registrar's Decision on Mr. Qerkini, KSC-BC-2023-12/F00322/A02, Confidential, 3 June 2025 ('Registrar's Decision').

² Code of Professional Conduct – for Counsel and Prosecutors Before the Kosovo Specialist Chambers, KSC-BD-07/Rev1/2021, 28 April 2021 ('Code of Conduct'). All references to 'Article' or 'Articles' herein refer to articles of the Code of Conduct, unless otherwise specified.

³ Registrar's Decision, KSC-BC-2023-12/F00322/A02, p.2

⁴ *Contra* FAZLIU Request, KSC-BC-2023-12/F00322/A01, para.1.

⁵ See Article 28(4), which provides potential remedies for identified conflicts of interest, under Articles 28(3)(b) through 28(3)(e). Notably absent is a remedy for Article 28(3)(a).

- 16 of the Directive.⁶ The Registrar's Decision appropriately avoids this scenario, by rejecting a request that would result in an immediate and non-waivable conflict;
- b. The conflict under Article 28(3)(a) notwithstanding, the absence of an objection to the requested assignment from SMAKAJ's Specialist Counsel and any waiver that may be signed by SMAKAJ⁷ remain irrelevant in these circumstances. As acknowledged by the FAZLIU Request, Qerkini was present at a search and seizure operation related to this specific case where he represented SMAKAJ,⁸ challenging aspects of said search. This is a live issue in these proceedings, and Qerkini could be required to appear as a witness. The likelihood of such testimony – conceded by the FAZLIU Request⁹ – is a bar to Qerkini serving as Co-Counsel to FAZLIU, pursuant to Article 6(2).¹⁰ This bright line prohibition cannot be overcome by agreement from SMAKAJ's Specialist Counsel nor a waiver from SMAKAJ;
- c. Qerkini also represents and/or represented Fahri Fazliu¹¹ – FAZLIU's son and a member of the FAZLIU Group¹² – who may be required to appear as a witness in this case. Accordingly, Qerkini's potential dual representation of Fahri Fazliu and FAZLIU is ripe for a further conflict of interest, which could require forsaking the duty of loyalty to one in favour of the other, a prospect which runs

⁶ Directive on Counsel, 22 February 2024, KSC-BD-04-Rev2 ('Directive').

⁷ See FAZLIU Request, KSC-BC-2023-12/F00322/A01, para.7.

⁸ See FAZLIU Request, KSC-BC-2023-12/F00322/A01, para.12.

⁹ See FAZLIU Request, KSC-BC-2023-12/F00322/A01, para.7.

¹⁰ Code of Conduct, KSC-BD-07/Rev1/2021, Article 6(2) states: 'Counsel and Prosecutors shall not act in their respective roles in proceedings where they are likely to appear as a witness, except when the testimony relates to: a. an uncontested issue; or b. the nature and value of legal services rendered in the case.'

¹¹ As confirmed to the SPO in writing by Qerkini, in March 2024.

¹² See Submission of Amended Confirmed Indictment, KSC-BC-2023-12/F00264/A01, Confidential, 16 April 2025 ('Indictment'), paras 10, 23.

contrary to Article 28(1).¹³ The prospect that Qerkini could simultaneously represent FAZLIU and FAZLIU's son is self-evidently untenable, considering that FAZLIU is an Accused and his son is an uncharged co-perpetrator; and

d. Qerkini's professional link to numerous persons featuring as a part of, or tangential to, this case is additionally problematic. These associations are at least potential conflicts, and may ripen into live conflicts depending on future developments. Notably, Qerkini represents and/or has represented:

- i. [REDACTED] Witness 5), a targeted witness in this case,¹⁴ during (a) a search and seizure operation in this case; and (b) his testimony in [REDACTED];¹⁵
- ii. [REDACTED], a targeted witness in this case,¹⁶ during his testimony in [REDACTED];¹⁷ and
- iii. Multiple other persons of interest in this proceeding, including Artan Behrami, Blerim Shala, and Ismail Sylja.¹⁸

4. The above circumstances are not speculative concerns. Rather, Qerkini's existing or former representation of numerous persons who are inextricably linked to this case raise clear and insurmountable conflicts. As the Code of Conduct is intended to regulate professional behaviour to ensure the integrity of proceedings and the fair and

¹³ Such a scenario would also lead to a violation of the *Basic Professional Standards* for Counsel before the Kosovo Specialist Chambers' ('KSC'), outlined in Article 6. Notably, a 'Client' is defined as '[a] suspect, an Accused, a witness, [...] and any other person entitled to legal representation pursuant to the Law, the Rules or an order of the Panel, which has been appointed or assigned Counsel in accordance with the Directive' (*See* Code of Conduct, KSC-BD-07/Rev1/2021, Article 2).

¹⁴ *See* Indictment, KSC-BC-2023-12/F00264/A01, paras 13-14.

¹⁵ [REDACTED].

¹⁶ *See* Annex 2 to Submission of Further Amended Indictment for confirmation, KSC-BC-2023-12/F00028/A02, 12 November 2024, Confidential, fn. 45, 71.

¹⁷ [REDACTED].

¹⁸ These client relationships are as confirmed to the SPO in writing by Qerkini, in March 2024. [REDACTED].

proper administration of justice,¹⁹ its conflict of interest provisions cannot be dispensed with merely to accommodate the notion of familiarity between an Accused and a prospective Specialist Counsel.²⁰

5. Assuming *arguendo* that FAZLIU requires a Co-Counsel, the List of Counsel maintained by the Registry has approximately two hundred viable options which can be considered, excluding Qerkini.²¹

III. CLASSIFICATION

6. This filing is classified as confidential because it contains sensitive and confidential information. A public redacted version will be filed.

Word count: 1,160



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Specialist Prosecutor

Friday, 13 June 2025

At The Hague, the Netherlands

¹⁹ See Code of Conduct, KSC-BD-07/Rev1/2021, Article 1.

²⁰ *Contra* FAZLIU Request, KSC-BC-2023-12/F00322/A01, para.16.

²¹ The List of Counsel is available on the KSC website, was last consulted on the date of this submission, and includes two hundred forty-four names. When eliminating Specialist Counsel only listed for purposes of representing Victims, and removing those who are otherwise engaged before the KSC, a substantial amount remain available for assignment to FAZLIU.