



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: 20 June 2025

Language: English

Classification: Public

Decision on Request for Reclassification

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 27 January 2025, the Single Judge ordered, *inter alia*: (i) the Registry to copy and cross-file certain relevant filings from the KSC-BC-2018-01 file to a sub-folder within the KSC-BC-2023-12 case file ("Case 12"); and (ii) the Registry and the Parties in Case 12 to prepare, to the extent possible, redacted versions of such filings, or to request their reclassification, in order to make them accessible to the Accused in Case 12.²

2. On 29 April 2025, the Defence for Isni Kilaj ("Kilaj Defence") submitted a request seeking the reclassification of certain filings, listed in the annex thereto, relating to investigative measures executed in the Detention Facilities of the Specialist Chambers ("Selected Filings" and "Reclassification Request").³ The Kilaj Defence submits that having access to the Selected Filings will enable it to challenge the legality of the investigative measures authorised therein and seek the exclusion of any evidence obtained as a result thereof.⁴ The Kilaj Defence also argues that the *ex parte* classification of the Selected Filings is no longer warranted, since the Pre-Trial Judge has confirmed a final version of the indictment and the Specialist

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

² KSC-BC-2023-12, INV/F00003, Single Judge, [Order for Transfer of Documents](#), 27 January 2025, public.

³ KSC-BC-2023-12, F00276, Kilaj Defence, *Kilaj Request for Reclassification of Filings Relating to Monitoring and Recording of Non-Privileged Visits*, 29 April 2025, public, paras 1, 11, with Annex 1, confidential. A corrected version of the main filing was filed on 30 April 2025, F00276/COR.

⁴ Reclassification Request, para. 9.

Prosecutor's Office ("SPO") has largely completed the disclosure of evidence in its possession.⁵

3. On 12 May 2025, the SPO responded to the Reclassification Request, informing the Pre-Trial Judge that, following *inter partes* discussions, the issues raised in the Reclassification Request have been resolved and no further judicial action is required.⁶ In particular, the SPO submits that: (i) the Kilaj Defence has agreed to withdraw, at this stage, its Reclassification Request in respect of certain Selected Filings, including some for which it had received, via Legal Workflow, (lesser) confidential redacted versions;⁷ and (ii) the SPO has already requested that the remaining Selected Filings issued by the SPO be made available to all the Accused in Case 12, and such request is pending with the Court Management Unit.⁸ Lastly, the SPO indicates that it does not object to the reclassification of the judicial decisions/orders identified in Annex 1 to the Reclassification Request, insofar as these: (i) correspond to the SPO filings in relation to which the Reclassification Request has not been withdrawn; and (ii) maintain the appropriate corresponding redactions.⁹

4. On 19 May 2025, the SPO notified the Pre-Trial Judge that, following further *inter partes* discussions, the Kilaj Defence agreed to withdraw the Reclassification Request with regard to decision KSC-BC-2018-01/F00339 and any related SPO request.¹⁰

⁵ Reclassification Request, para. 10.

⁶ KSC-BC-2023-12, F00297, Specialist Prosecutor, *Prosecution Response to Kilaj Reclassification Request (F00276)* ("SPO Response"), 12 May 2025, public, paras 1-2.

⁷ SPO Response, paras 3-4, footnotes 4-5.

⁸ SPO Response, para. 5, footnote 7.

⁹ SPO Response, para. 6.

¹⁰ KSC-BC-2023-12, CRSPD78, *Email from SPO to CMU on Response to the Pre-Trial Judge Regarding Instruction Re Filing KSC-BC-2018-01_F00339*, 19 May 2025, confidential.

II. APPLICABLE LAW

5. Pursuant to Article 21(2) of the Law, 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 and any measures ordered by the Specialist Chambers for the protection of victims and witnesses.

6. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

7. Pursuant to Rule 82(5) of the Rules, where the basis for a classification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

III. DISCUSSION

8. At the outset, the Pre-Trial Judge takes note of the *inter partes* discussions between the SPO and the Kilaj Defence, and the subsequent withdrawal of the Reclassification Request in relation to the following Selected Filings: (i) SPO filings KSC-BC-2018-01/F00385, F00409 and F00422;¹¹ and (ii) Single Judge decisions KSC-BC-2018-01/F00339 and F00429.¹²

9. Likewise, the Pre-Trial Judge notes that the Kilaj Defence also withdrew its Reclassification Request with regard to any Selected Filings constituting: (i) decisions or orders corresponding to the withdrawn SPO filings,¹³ which the

¹¹ See above para. 3.

¹² See above paras 3-4.

¹³ See above paras 3, 8(i).

Pre-Trial Judge identifies as KSC-BC-2018-01/F00355, F00377, F00394 and F00425; and (ii) any SPO request related to decision KSC-BC-2018-01/F00339.¹⁴

10. Furthermore, the Pre-Trial Judge takes note of the withdrawal of the Reclassification Request in relation to the following filings, which have been cross-filed from the KSC-BC-2018-01 file to a sub-folder within the Case 12 case file, and for which the Kilaj Defence has received, via Legal Workflow, confidential redacted and/or lesser confidential redacted versions: KSC- BC- 2018-01/F00340, F00344, F00358, F00361, F00364, F00380/COR2 and F00435.¹⁵

11. Lastly, the Pre-Trial Judge observes that the remaining Selected Filings, namely: (i) SPO filings KSC-BC-2018-01/F00321, F00326, F00349 and F00479;¹⁶ and (ii) Single Judge's decisions/orders KSC-BC-2018-01/F00324, F00330, F00343, F00346, F00350/COR, F00360, F00363, F00384, F00443 and F00518,¹⁷ have been made available to the Kilaj Defence, as either their reclassification and the lifting of the *ex parte* marking have already been granted and implemented, or (lesser) confidential redacted versions thereof have been made available to all Accused in Case 12.

12. Therefore, the Pre-Trial Judge considers that no further judicial action is warranted with respect to the Reclassification Request.

¹⁴ See *above* paras 4, 8(ii). The Pre-Trial Judge observes that no such SPO request is listed in Annex 1 to the Reclassification Request.

¹⁵ See *above* para. 3. Corresponding to KSC-BC-2023-12/INV-F00009, INV-F00011, INV-F00016, INV-F00018, INV-F00021, INV-F00023/COR2 and INV-F00027, respectively. The Pre-Trial Judge notes that filing KSC-BC-2018-01/F00344 (corresponding to KSC-BC-2023-12/INV-F00011) is not a Selected Filing listed in Annex 1 of the Reclassification Request and, as such, no reclassification has been requested in relation thereto.

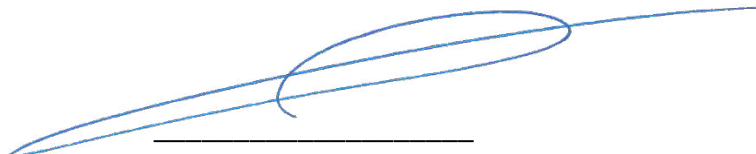
¹⁶ See *above* para. 3. Corresponding to KSC-BC-2023-12/INV-F00004, INV-F00006, INV-F00013 and INV-F00034, respectively.

¹⁷ Corresponding to KSC-BC-2023-12/INV-F00005, INV-F00007, INV-F00010, INV-F00012, INV-F00014/COR, INV-F00017, INV-F00020, INV-F00025, INV-F00028 and INV-F00057, respectively.

IV. DISPOSITION

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

- a. **FINDS** the Reclassification Request moot.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Friday, 20 June 2025

At The Hague, the Netherlands.