



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

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Decision on Preliminary Motions Alleging Defects in the Indictment

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(4), 38(4), and 39(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 86(3), 95(2)(f), 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 confirmed, in part, the indictment against Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj ("Mr Smakaj"), Isni Kilaj ("Mr Kilaj"), Fadil Fazliu ("Mr Fazliu") and Hajredin Kuçi ("Mr Kuçi") (collectively "Accused") for offences against the administration of justice and public order – specifically, attempted obstruction of official persons in performing official duties, violating the secrecy of proceedings and/or contempt of court ("Confirmation Decision").²

2. On 12 February 2025, the Specialist Prosecutor's Office ("SPO") appealed the Confirmation Decision,³ with leave of the Pre-Trial Judge,⁴ and on 3 April 2025, the Court of Appeals Panel rendered its decision on the SPO's appeal and remanded one matter to the Pre-Trial Judge for further consideration.⁵

3. On 14 April 2025, the Pre-Trial Judge amended the Confirmation Decision following the decision of the Court of Appeals Panel, ordered the SPO to file an

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, para. 313. A public redacted version was filed on 12 February 2025, [F00036/RED](#).

³ 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 and 2, public. A public redacted version of the main filing was submitted on 14 February 2025, IA002/F00002/RED.

⁴ 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.

⁵ 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 the same day, [IA002/F00012/RED](#).

amended confirmed indictment and set the date for the Defence to lodge preliminary motions.⁶

4. On 16 April 2025, the SPO filed the amended confirmed indictment (“Amended Confirmed Indictment”).⁷

5. On 8 May 2025, the Defence for Mr Thaçi (“Thaçi Defence”) filed, among others, the “Thaçi Defence Motion on Defects in the Indictment” (“Thaçi Defence Motion”).⁸

6. On the same day, the Defence for Mr Fazliu (“Fazliu Defence”) filed, among others, the “Fazliu Defence Challenge to the Form of the Indictment” (“Fazliu Defence Motion”).⁹

7. On 29 May 2025, having been granted an extension of the time limit,¹⁰ the SPO filed a consolidated response to the Thaçi Defence Motion and Fazliu Defence Motion (“SPO Response”).¹¹

8. On 3 June 2025, the Thaçi Defence replied to the SPO Response (“Thaçi Reply”).¹²

⁶ KSC-BC-2023-12, F00260, Pre-Trial Judge, [Decision Amending the “Decision on the Confirmation of the Indictment” and Setting a Date for the Submission of Preliminary Motions](#), 14 April 2025, public.

⁷ KSC-BC-2023-12, F00264, Specialist Prosecutor, [Submission of Amended Confirmed Indictment](#), 16 April 2025, public, with Annex 1, confidential (containing the confidential version of the Amended Confirmed Indictment), and [Annex 2](#), public (containing the public redacted version of the Amended Confirmed Indictment).

⁸ KSC-BC-2023-12, F00288, Thaçi Defence, [Thaçi Defence Motion on Defects in the Indictment](#), 8 May 2025, public.

⁹ KSC-BC-2023-12, F00289, Fazliu Defence, [Fazliu Defence Challenge to the Form of the Indictment](#), 8 May 2025, public.

¹⁰ KSC-BC-2023-12, F00306, Pre-Trial Judge, [Decision on “Prosecution Request for Extension of Time on Preliminary Motions Responses”](#), 15 May 2025, public.

¹¹ KSC-BC-2023-12, F00313, Specialist Prosecutor, [Consolidated Prosecution Response to Preliminary Motions Alleging Defects in the Form of the Indictment](#), 29 May 2025, public.

¹² KSC-BC-2023-12, F00321, Thaçi Defence, [Thaçi Defence Reply to SPO Response to Preliminary Motion on Defects in the Indictment](#), 3 June 2025, public.

II. SUBMISSIONS

A. THAÇI DEFENCE MOTION

9. The Thaçi Defence submits that the Amended Confirmed Indictment is defective for lack of particularity as regards the crime of attempted obstruction of public officials, as alleged under Counts 1 to 3, and requests an order to the SPO to amend or remove the charge from the indictment.¹³ The Thaçi Defence avers that, as a result, it is impossible for Mr Thaçi to understand and answer these charges.¹⁴

10. First, the Thaçi Defence asserts that the Amended Confirmed Indictment fails to plead with particularity the identity of the public official(s), or at least the types of officials, who have allegedly been obstructed in their duties. In the Thaçi Defence's view, reference to the institution in general or the material elements of the offence within the meaning of Article 401(2) and (5) of the 2019 Kosovo Criminal Code, Law No. 06/L-074 ("KCC"), are inadequate.¹⁵

11. Second, the Thaçi Defence asserts that the Amended Confirmed Indictment lacks particularity with regard to the specific official duties that the official(s) were allegedly obstructed from performing, but merely refers to general objectives or outcomes that the SPO may seek to achieve through its work.¹⁶

12. Third, the Thaçi Defence asserts that the Amended Confirmed Indictment is vague with regard to the alleged attempted obstructive conduct, by only stating that the Accused "coordinated to influence witnesses", without explaining how

¹³ Thaçi Defence Motion, paras 1-2, 9-12, 26-27.

¹⁴ Thaçi Defence Motion, paras 2, 26.

¹⁵ Thaçi Defence Motion, paras 13-18, *referring to* paras 23 and 25 of the Amended Confirmed Indictment.

¹⁶ Thaçi Defence Motion, paras 19-20, *referring to* paras 25 of the Amended Confirmed Indictment.

such conduct would “prevent, impede, hinder or delay” official persons in the performance of their duties.¹⁷

13. Lastly, the Thaçi Defence asserts that the Amended Confirmed Indictment identifies three groups alleged to have acted through “common action” under Article 401(2) of the KCC, but does not explain what conduct of the Accused amounts to such common action.¹⁸

B. FAZLIU DEFENCE MOTION

14. The Fazliu Defence submits that the Amended Confirmed Indictment is impermissibly vague and fails to sufficiently particularise the charges against Mr Fazliu and the material facts underpinning them, with the consequence that Mr Fazliu is unable to meaningfully prepare his defence.¹⁹ The Fazliu Defence requests an order to the SPO to amend the Amended Confirmed Indictment to provide greater specificity, particularity and clarity in relation to each of the following defects.²⁰

15. First, the Fazliu Defence argues that, as Mr Fazliu is accused of being directly involved in attempting to interfere with Witness 1, the SPO fails to clearly state the factual allegations against Mr Fazliu vis-à-vis Witness 1, in particular Mr Fazliu’s: (i) conduct during the meeting on 29 June 2023; (ii) presence at the meeting on 3 July 2023, together with Fahri Fazliu and Witness 1; and (iii) conduct during the meeting on 3 July 2023.²¹

16. Second, the Fazliu Defence asserts that the contours of the “common action” of a group alleged pursuant to Article 401(2) of the KCC are blurred where

¹⁷ Thaçi Defence Motion, paras 21-22.

¹⁸ Thaçi Defence Motion, paras 23-25.

¹⁹ Fazliu Defence Motion, paras 1-2, 11.

²⁰ Fazliu Defence Motion, paras 2, 19.

²¹ Fazliu Defence Motion, paras 9-11.

Messrs Fazliu, Smakaj, Kilaj and Kuçi are concerned. In the Fazliu Defence's view the formulation of the Amended Confirmed Indictment could be interpreted as alleging a broader coordination between all members of the identified groups, and not just between Mr Fazliu and Mr Thaçi, and that such ambiguity is not resolved through pre-trial discovery.²²

17. Third, the Fazliu Defence asserts that the SPO fails to plead with specificity the charge of *attempted* obstruction, and in particular, which perpetrator is alleged to have begun to execute which material elements, and how such conduct falls short of full commission.²³ Relatedly, the Fazliu Defence argues that the Amended Confirmed Indictment does not include Article 28 of the KCC.²⁴

18. Lastly, the Fazliu Defence asserts that, under Count 16, insofar as the SPO alleges inter-group assistance among the respective groups, the SPO fails to indicate any communications or activities between the groups.²⁵ The Fazliu Defence argues that the SPO must clearly identify the particular acts or course of conduct alleged against Mr Fazliu, including the time, place and means by which the alleged inter-group assistance was rendered.²⁶

C. SPO RESPONSE

19. The SPO responds that the Amended Confirmed Indictment sufficiently pleads the material facts in the particular circumstances of this case, enabling the Accused to understand the charges and prepare a defence. As a result, the SPO proposes that the preliminary motions of Mr Thaçi and Mr Fazliu be dismissed in their entirety.²⁷

²² Fazliu Defence Motion, paras 12-14.

²³ Fazliu Defence Motion, para. 15.

²⁴ Fazliu Defence Motion, para. 16.

²⁵ Fazliu Defence Motion, paras 17-18.

²⁶ Fazliu Defence Motion, para. 18.

²⁷ SPO Response, paras 2, 17.

20. As regards the Thaçi Defence's contention that the SPO fails to plead the identity of the public official(s), the SPO recalls that the SPO's case does not relate to one individual official. According to the SPO, reference to the category of the official persons obstructed – namely judges, prosecutors, court officials, prosecution officers and other persons authorised by the Specialist Chambers ("SC") or SPO – is sufficient to enable Mr Thaçi to understand the charges.²⁸

21. As regards the Thaçi Defence's contention that the SPO fails to plead the nature of the official duties, the SPO maintains that the Amended Confirmed Indictment properly identifies the officials' duties as "the ability to effectively investigate and prosecute crimes, including the [SC]/SPO's ability to obtain and secure relevant witness evidence".²⁹

22. As regards the Thaçi Defence's allegation that the SPO fails to plead with precision the obstruction of official duties, the SPO responds that the Amended Confirmed Indictment "clearly alleges that the efforts to unlawfully influence witnesses were aimed at obstructing Case 6 and compromising the [SC]/SPO's ability to effectively investigate and prosecute crimes".³⁰

23. As regards the Thaçi Defence's claim that the SPO fails to plead with precision the Accused's conduct that results in the common action to obstruct, the SPO avers that the Amended Confirmed Indictment identifies the conduct of all Accused within their respective groups. Moreover, in the SPO's view, such interpretation ignores that "common action" may include any activity jointly undertaken by group members, without limitation as to form.³¹

24. As regards the Fazliu Defence's reference to "blurred contours of common action" or "inter-group assistance", the SPO clarifies at the outset that the Amended

²⁸ SPO Response, paras 6-8.

²⁹ SPO Response, para. 9.

³⁰ SPO Response, para. 10.

³¹ SPO Response, para. 11.

Confirmed Indictment does not charge any acts related to coordination among or between the various groups, but clearly articulates the charges against the Accused and distinguishes the respective groups to which each Accused belonged.³²

25. As regards the Fazliu Defence's claim that the SPO fails to plead with precision Mr Fazliu's actions involving Witness 1, the SPO argues that the Amended Confirmed Indictment includes the material facts underlying the charges in the manner required and summarises the facts described.³³

26. As regards the Fazliu Defence's allegation that the SPO fails to plead with precision the facts underlying the *attempted* obstruction, the SPO avers that it is not required to plead how the facts underpinning the charge concerned do or do not satisfy the requirements of other crimes or other modes of liability.³⁴ As regards the Amended Confirmed Indictment's purported omission of Article 28 of the KCC in the context of attempted obstruction, the SPO responds that this claim amounts to a challenge to the constitutive elements of attempted obstruction, which is a matter to be litigated at trial.³⁵

D. THAÇI DEFENCE REPLY

27. The Thaçi Defence replies that the SPO merely responds by either referencing large portions of the Amended Confirmed Indictment, or by submitting explanations or definitions of the (argued) elements of the crimes.³⁶ Specifically, as concerns the identification of official persons, the Thaçi Defence maintains that the SPO does not narrow down the officials the present case relates to.³⁷ Relatedly, the Thaçi Defence contends that, if the SPO's case is that the alleged obstruction was

³² SPO Response, para. 13.

³³ SPO Response, para. 14.

³⁴ SPO Response, para. 15.

³⁵ SPO Response, para. 16.

³⁶ Thaçi Reply, paras 2-3.

³⁷ Thaçi Reply, paras 6-7.

committed more generally against the administration of justice rather than any particular official, Mr Thaçi wishes to be heard separately on whether the SPO has brought charges under the wrong provision of the KCC.³⁸ As concerns the specification of official duties, the Thaçi Defence maintains that this is not adequately described in the Amended Confirmed Indictment.³⁹ As concerns the particulars of the alleged obstruction, the Thaçi Defence insists that the Amended Confirmed Indictment does not contain any specifics and contends that it must know how the SPO says that the alleged conduct in this case would have caused obstruction of SPO or SC officials.⁴⁰ Therefore, the Thaçi Defence maintains its request that, in light of the defects, the Pre-Trial Judge order the SPO to amend the Amended Confirmed Indictment or to remove the charges of obstruction of official persons.⁴¹

III. APPLICABLE LAW

28. Pursuant to Article 39(1) of the Law, the Pre-Trial Judge shall have the power to rule on any preliminary motions, including challenges to the indictment.

29. Pursuant to Rule 97(1)(b) of the Rules, the Accused may file preliminary motions before the Pre-Trial Judge in accordance with Article 39(1) of the Law, which allege defects in the form of the indictment.

30. Pursuant to Rule 95(2)(f) of the Rules, the Pre-Trial Judge shall, *inter alia*, decide on preliminary motions filed pursuant to Rule 97 of the Rules before the transmission of the case file to the Trial Panel.

³⁸ Thaçi Reply, para. 16.

³⁹ Thaçi Reply, paras 10-11.

⁴⁰ Thaçi Reply, paras 12-15.

⁴¹ Thaçi Reply, para. 17.

31. Pursuant to Article 21(4)(a) of the Law, the Accused shall be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

32. Pursuant to Article 38(4) of the Law and Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged. The indictment shall be filed together with supporting material, *i.e.* evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

IV. DISCUSSION

A. GENERAL STANDARDS AS TO THE FORM OF THE AMENDED CONFIRMED INDICTMENT

1. Specificity and Clarity

33. The Pre-Trial Judge recalls that, in accordance with Articles 21(4)(a) and 38(4) of the Law, as well as Rule 86(3) of the Rules, an indictment must set forth with sufficient specificity and clarity the facts underpinning the charged offences, including the modes of liability charged.⁴² Such specificity and clarity must ensure

⁴² KSC-BC-2023-10, F00221, Pre-Trial Judge, [Public Redacted Version of Decision on Motion Challenging the Form of the Confirmed Indictment](#) ("Case 10 Preliminary Motion Decision"), 19 March 2024, confidential; KSC-BC-2020-06, IA012/F00015/RED, Court of Appeals, [Public Redacted Version of Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment](#) ("Case 06 Appeal Decision"), 22 August 2022, public, para. 17; KSC-BC-2020-04, IA004/F00008/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Motion Challenging the Form of the Indictment](#) ("Case 04 Appeal Decision"), 22 February 2022, public, para. 15; KSC-BC-2020-06, F00413/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment](#) ("Case 06 Preliminary Motion Decision"), 22 July 2021, public, para. 27; KSC-BC-2020-07, IA004/F00007, Court of Appeals Panel, [Decision on the Defence Appeals Against Decision on Preliminary Motions](#) ("Case 07 Appeal Decision"), 23 June 2021,

that the indictment, as a stand-alone document,⁴³ provides an accused with sufficient information to understand clearly and fully the nature and cause of the charges against him, with a view to preparing an adequate defence.⁴⁴ An accused should accordingly not be required to consult other documents in order to understand and piece together the factual allegations underpinning the charges.⁴⁵

34. Whether a fact underpins any particular charge and must accordingly be pleaded in the indictment with specificity cannot be decided in the abstract, but on a case-by-case basis, taking into account, *inter alia*, the nature and scale of the offences charged, the circumstances of the case, the alleged proximity of the accused to the events and the mode of liability charged.⁴⁶ Nonetheless, in some instances, it cannot be excluded that certain details of the case, such as the number and identity of victims,⁴⁷ would remain obscure even after the end of the trial.⁴⁸ In any event, when determining whether an indictment fulfils the above conditions, the indictment must be considered as a whole and select paragraphs or phrases should be read in the context of the entire document.⁴⁹

public, para. 35; F00147, Pre-Trial Judge, [Public Redacted Version of Decision on Preliminary Motions](#) ("Case 07 Preliminary Motion Decision"), 8 March 2021, public, para. 38.

⁴³ KSC-BC-2023-12, F00004/RED, Pre-Trial Judge, [Public Redacted Version of Order to the Specialist Prosecutor Pursuant to Rule 86\(4\) of the Rules](#) ("Rule 86(4) Order"), 22 February 2024, public, para. 13; [Case 07 Preliminary Motion Decision](#), para. 38.

⁴⁴ [Rule 86\(4\) Order](#), para. 12. See also [Case 07 Appeal Decision](#), para. 36; [Case 06 Preliminary Motion Decision](#), para. 27; [Case 10 Preliminary Motion Decision](#), para. 24.

⁴⁵ [Rule 86\(4\) Order](#), para. 13. See also [Case 07 Appeal Decision](#), para. 49; [Case 07 Preliminary Motion Decision](#), para. 38; [Case 06 Preliminary Motion Decision](#), para. 27; [Case 06 Appeal Decision](#), para. 17; [Case 10 Preliminary Motion Decision](#), para. 24.

⁴⁶ [Case 07 Appeal Decision](#), paras 38, 42; [Case 07 Preliminary Motion Decision](#), para. 39; [Case 06 Preliminary Motion Decision](#), para. 28 and references cited therein; [Case 06 Appeal Decision](#), para. 20; [Case 10 Preliminary Motion Decision](#), para. 25.

⁴⁷ [Case 06 Preliminary Motion Decision](#), para. 28 and references cited therein.

⁴⁸ [Case 07 Preliminary Motion Decision](#), para. 39; [Case 06 Preliminary Motion Decision](#), para. 28 and references cited therein; [Case 10 Preliminary Motion Decision](#), para. 25.

⁴⁹ [Case 07 Appeal Decision](#), para. 56; [Case 07 Preliminary Motion Decision](#), para. 39; [Case 06 Preliminary Motion Decision](#), para. 28 and references cited therein; [Case 06 Appeal Decision](#), para. 17; [Case 10 Preliminary Motion Decision](#), para. 25.

Furthermore, a clear difference must be drawn between facts underpinning the charges, which must be pleaded as provided above, and evidence proffered to prove them.⁵⁰ The indictment need not set out the evidence by which the facts underpinning the charges are to be proven.⁵¹ Such evidence will be disclosed according to the relevant provisions. Any disputes as to issues of fact are for determination at trial and not via preliminary motions relating to the form of the indictment.⁵² At any rate, the SC legal framework ensures that, in addition to the disclosure process, further evidentiary details are provided early on to the accused in the Rule 86(3)(b) Outline, the Confirmation Decision, and the submissions under Rule 95(4) of the Rules.⁵³

35. Lastly, challenges concerning the legal elements of an offence or a mode of liability do not constitute challenges to the form of the indictment, but are matters to be addressed at trial.⁵⁴

2. Particulars

36. When alleging that the accused personally carried out the acts underlying the offence(s) charged, it is necessary to set out, as far as possible, and with “the greatest precision”:⁵⁵ (i) the identity of the victim(s); (ii) the place and approximate date of

⁵⁰ [Case 07 Appeal Decision](#), para. 38; [Case 07 Preliminary Motion Decision](#), para. 40; [Case 06 Preliminary Motion Decision](#), para. 29 and references cited therein; [Case 06 Appeal Decision](#), para. 20; [Case 10 Preliminary Motion Decision](#), para. 26.

⁵¹ [Case 07 Appeal Decision](#), para. 38; [Case 07 Preliminary Motion Decision](#), para. 40; [Case 06 Preliminary Motion Decision](#), para. 29 and references cited therein; [Case 06 Appeal Decision](#), para. 20; [Case 10 Preliminary Motion Decision](#), para. 26.

⁵² [Case 07 Preliminary Motion Decision](#), para. 40; [Case 06 Preliminary Motion Decision](#), para. 29 and references cited therein; [Case 10 Preliminary Motion Decision](#), para. 26.

⁵³ [Case 07 Preliminary Motion Decision](#), para. 40; [Case 06 Preliminary Motion Decision](#), para. 29 and references cited therein; [Case 10 Preliminary Motion Decision](#), para. 26.

⁵⁴ [Case 06 Preliminary Motion Decision](#), para. 30 and references cited therein; [Case 10 Preliminary Motion Decision](#), para. 27.

⁵⁵ [Case 06 Preliminary Motion Decision](#), para. 31 and references cited therein; [Case 10 Preliminary Motion Decision](#), para. 29. Similarly, ICTY, *Prosecutor v. Šainović et al.*, IT-05-87-PT, Trial Chamber III, *Decision on Ojdanic’s Motion Challenging Jurisdiction: Indirect Co-Perpetration*, 22 March 2006, para. 23; *Prosecutor v. Mucić et al.*, IT-96-21, Appeals Chamber, *Decision on Application for Leave to Appeal by Hazim Delic (Defects in the Form of the Indictment)*, 6 December 1996, p. 8.

the alleged acts; (iii) the manner and means by which they were committed; and (iv) the related mental element.⁵⁶

37. On the other hand, where an accused is not alleged to have directly carried out the offence or where, by their nature, the offences are directed against a group or collectivity of people, the accused must be provided with as much detailed information as possible regarding: (i) the places, times, and approximate number of victims (the latter if applicable); (ii) the necessary particulars to make out the elements of the offences, such as the accused's alleged conduct giving rise to criminal responsibility, including *inter alia* the accused's contribution thereto; (iii) the related mental element; and (iv) the identities of any alleged co-perpetrators, if known.⁵⁷

38. Open-ended statements in respect of the facts underpinning the charges (such as "including, but not limited to") are not permitted,⁵⁸ unless they are exceptionally necessary given the circumstances of the case or the nature and scale of the offences and they do not create ambiguity as regards the charged offences. The information must be set out with precision and comprehensively, without diffusion.⁵⁹ Moreover, when a certain category pertaining to the facts underpinning the charges is defined, and the word "including" is used to provide a list of non-exhaustive examples falling within such category, the use of the word "including" is permitted.⁶⁰ Where, however, a certain category is not defined, and only refers to a list of non-exhaustive

⁵⁶ [Case 06 Preliminary Motion Decision](#), para. 31 and references cited therein; [Case 10 Preliminary Motion Decision](#), para. 29.

⁵⁷ [Case 07 Appeal Decision](#), para. 45; [Case 07 Preliminary Motion Decision](#), para. 41; [Case 06 Preliminary Motion Decision](#), para. 32 and references cited therein; [Case 10 Preliminary Motion Decision](#), para. 29.

⁵⁸ [Case 06 Appeal Decision](#), para. 185; [Case 06 Preliminary Motion Decision](#), para. 39, with further references; [Case 07 Appeal Decision](#), para. 84; [Case 07 Preliminary Motion Decision](#), para. 44; [Case 10 Preliminary Motion Decision](#), para. 30.

⁵⁹ [Case 06 Preliminary Motion Decision](#), para. 39, with further references; [Case 10 Preliminary Motion Decision](#), para. 30.

⁶⁰ [Case 06 Appeal Decision](#), para. 185; [Case 06 Preliminary Motions Decision](#), para. 39; [Case 10 Preliminary Motion Decision](#), para. 30.

examples falling within such category, preceded by the word “including”, such use of the word “including” is not permitted, as it would impermissibly allow the scope of the corresponding category to be expanded at trial.⁶¹

39. Alternative formulations such as “and/or” are permitted as long as they pertain to evidentiary material to be determined at trial,⁶² and do not create ambiguity as regards the charged offences or modes of liability.⁶³

3. Defective Indictment

40. An indictment is defective when it fails to plead the facts underpinning the charges or it does so in an insufficient or unclear manner, creating ambiguity as regards the pleaded charges, including the modes of liability, and thus impairing the Defence’s ability to prepare.⁶⁴

41. The Pre-Trial Judge accordingly notes that the aforementioned findings will inform and guide the ensuing assessment of the alleged concrete deficiencies of the Amended Confirmed Indictment.

B. CHALLENGES TO THE FORM OF THE AMENDED CONFIRMED INDICTMENT

1. Correct Reading of Amended Confirmed Indictment

42. The Fazliu Defence argues that in the Amended Confirmed Indictment the formulation of the common action is ambiguous as the contours of the common action within the meaning of Article 401(2) of the KCC are blurred, allowing for the

⁶¹ [Case 06 Preliminary Motion Decision](#), para. 39; [Case 10 Preliminary Motion Decision](#), para. 30.

⁶² [Case 07 Preliminary Motion Decision](#), para. 45, with further references; [Case 10 Preliminary Motion Decision](#), para. 31.

⁶³ [Case 07 Preliminary Motion Decision](#), para. 45, with further references; [Case 10 Preliminary Motion Decision](#), para. 31.

⁶⁴ [Case 04 Appeal Decision](#), para. 15; [Case 07 Appeal Decision](#), para. 38; [Case 07 Preliminary Motion Decision](#), para. 46; [Case 06 Preliminary Motion Decision](#), para. 40 and references cited therein; KSC-BC-2020-06, F00895, Pre-Trial Judge, [Decision on Motion Alleging Defects in the Form of the Amended Indictment](#), 22 July 2022, public, para. 19 and references cited therein; [Case 06 Appeal Decision](#), paras 18-19; [Case 10 Preliminary Motion Decision](#), para. 32.

interpretation that all members of the identified groups, including Messrs Fazliu, Smakaj, Kilaj and Kuçi, coordinated amongst themselves.

43. Before all else, the Pre-Trial Judge recalls that, in determining whether the Accused are adequately put on notice of the nature and cause of the charges against them, the Amended Confirmed Indictment must be considered as a whole and select paragraphs read in the context of the entire document.⁶⁵

44. The Pre-Trial Judge finds that Mr Fazliu incorrectly reads the Amended Confirmed Indictment.⁶⁶ The Amended Confirmed Indictment stipulates that Mr Thaçi individually and by common action in groups he belonged to – including, amongst other, with Mr Fazliu (“Fazliu Group”) – has led efforts to, and engaged in a pattern of conduct to obstruct official persons in performing official duties, through non-privileged visits at the SC Detention Facilities, while he was detained in the context of the proceedings of *The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* (“Case 06”).⁶⁷ The facts involving Mr Fazliu are clearly set out in paragraphs 9-12 of the Amended Confirmed Indictment covering the period between at least 26 June and 18 July 2023.⁶⁸ Count 16 of the Amended Confirmed Indictment clearly and unambiguously incorporates by reference the facts between at least 26 June 2023 and 18 July 2023, which pertain exclusively to Mr Fazliu. Conversely, the statements of fact involving the other Accused pertain to different time periods, locations and members of each respective group. Further, the Pre-Trial Judge recalls that, on this specific point, the SPO changed the framing of the original charges pertaining to the obstruction of official

⁶⁵ See [Case 04 Appeal Decision](#), para. 18; [Case 07 Appeal Decision](#), para. 56 and references cited therein; [Case 10 Preliminary Motion Decision](#), paras 25, 39.

⁶⁶ The Pre-Trial Judge also notes that the Fazliu Defence includes Mr Kuçi when arguing defects of the indictment involving the offence of obstruction. The Pre-Trial Judge wishes to clarify that, contrary to what the Fazliu Defence suggests (Fazliu Defence Motion, paras 12-14), Mr Kuçi has not been charged with the offence of attempted obstruction within the meaning of Article 401(2) and (5) of the KCC. See also Amended Confirmed Indictment, para. 23.

⁶⁷ Amended Confirmed Indictment, para. 23.

⁶⁸ See also Confirmation Decision, paras 114, 126.

persons following judicial intervention of the Pre-Trial Judge,⁶⁹ and charged Messrs Thaçi, Fazliu, Smakaj, and Kilaj in the revised indictment for their conduct within their respective groups.⁷⁰ Therefore, in light of the above, Mr Fazliu's argument is dismissed.

45. Likewise, insofar as the Fazliu Defence argues that for "inter-group assistance" the Amended Confirmed Indictment fails to indicate any communications or activities between the groups, the Pre-Trial Judge finds that the Fazliu Defence's argumentation is based on an erroneous reading of the accusatory document.⁷¹ No such requirements must be set out because the SPO does not charge any acts related to coordination between Messrs Fazliu, Smakaj, and Kilaj or between their respective groups. Therefore, in light of the above, Mr Fazliu's argument is dismissed.

2. Pleading of Official Persons

46. The Thaçi Defence complains that the Amended Confirmed Indictment does not identify the individual officials, or the types/categories of officials (such as the Case 06 investigation team), as having been obstructed in the performance of their official duties.

⁶⁹ [Rule 86\(4\) Order](#), para. 21 ("Alternatively, the SPO is requested to review the Indictment with the aim to ensure legal accuracy or greater clarity in the presentation of the charges. In particular, the SPO is requested to consider whether the material facts and evidentiary material underlying, and related to, each of the Thaçi Visits rather support charging Mr Thaçi with three distinct counts of obstruction or attempted obstruction, i.e. each Thaçi Visits giving rise to a distinct joint action led by Mr Thaçi, pursuant to Article 401(2)-(3) and (5) of the KCC").

⁷⁰ Compare KSC-BC-2023-12, F00002/A01, Specialist Prosecutor, *Annex 1 to Submission of Indictment for Confirmation and Related Request*, 15 December 2023, confidential, para. 20 and KSC-BC-2023-12, F00007/A01, Specialist Prosecutor, *Annex 1 to Submission of Revised Indictment for Confirmation*, 11 March 2024, confidential, para. 20.

⁷¹ This is also self-evident from a reading of paragraph 43 of the Amended Confirmed Indictment, as regards the mode of liability of assistance under Article 33 of the KCC ("Finally, through one or more of the acts described at paragraphs 9-12 and 16-22 above, [Mr Smakaj, Mr Kilaj, and Mr Fazliu] provided assistance *within and among their respective groups and to* [Mr Thaçi] in the commission of the crimes of attempted obstruction of official persons and contempt of court, pursuant to KCC Article 3" [emphasis added]).

47. The Pre-Trial Judge recalls that in paragraph 23 of the Amended Confirmed Indictment, the SPO alleges that Messrs Thaçi, Fazliu, Smakaj, and Kilaj “engaged in a pattern of conduct to obstruct official persons, that is, a judge, a prosecutor, an official of a court, prosecution officer or a person authorised by the court and prosecution office, in performing official duties”. No names are provided. It is also recalled that an indictment must be read as a whole and select paragraphs or phrases should be read in the context of the entire document.

48. Mindful of the nature of the offence of obstructing official persons in performing official duties, as well as the fact that the SPO charges Messrs Thaçi, Fazliu, Smakaj, and Kilaj with attempted obstruction in the context of Case 06,⁷² the Pre-Trial Judge does not consider that the identification of unnamed official persons of the SC and the SPO, as described in paragraph 23 of the Amended Confirmed Indictment, is impermissibly vague. The SPO is permitted to refer to the category of potentially affected SPO or SC officials,⁷³ and in the view of the Pre-Trial Judge, specific names must not be included in the Amended Confirmed Indictment.⁷⁴ Moreover, it is worth recalling that the Amended Confirmed Indictment does not charge Messrs Thaçi, Fazliu, Smakaj, and Kilaj with discrete incidents which purportedly impeded, hindered and/or delayed the work of identifiable SC or SPO officials, such as investigators or teams of investigators. This is actually why the alleged conduct of Messrs Thaçi, Fazliu, Smakaj, and Kilaj fell short of the full commission of obstruction and is characterised as *attempted* obstruction.⁷⁵ In these particular circumstances, the Pre-Trial Judge finds that the relevant information

⁷² See, for example, Amended Confirmed Indictment, paras 7-8; Confirmation Decision, paras 113-115, 131, 132, 135, 138, 143, 145, 150, 156, 183.

⁷³ This approach has been accepted for information pertaining to physical perpetrators and victims. See also [Case 06 Preliminary Motion Decision](#), para. 34; [Case 07 Appeal Decision](#), para. 45; [Case 04 Appeal Decision](#), para. 16; [Case 06 Appeal Decision](#), paras 72, 106.

⁷⁴ Having been informed about the specific context of the allegations and the category of official persons, the Pre-Trial Judge is not persuaded by the Thaçi Defence argument that it cannot investigate and submit relevant evidence (Thaçi Reply, para. 15).

⁷⁵ See also Confirmation Decision, paras 189-194.

contained in the Amended Confirmed Indictment, coupled with the specific particulars pertaining to Mr Thaçi's conduct during specific visits in the SC Detention Facilities, is sufficiently specific to provide adequate notice to Mr Thaçi in that respect. Therefore, in light of the above, Mr Thaçi's argument is without merit.

49. Lastly, the Pre-Trial Judge finds that the Amended Confirmed Indictment clearly charges Mr Thaçi with attempted obstruction of official persons within the meaning of Article 401(2) and (5) of the KCC. Whether the facts of the case satisfy the legal requirements of Article 401(2) and (5) of the KCC (or that of another legal provision), is a matter to be discussed at trial based on the evidence. Therefore, the Pre-Trial Judge does not consider it necessary to hear Mr Thaçi on the question of legal characterisation of facts at this stage.

3. Pleading of Official Duties

50. The Thaçi Defence complains that the Amended Confirmed Indictment does not identify the specific duties allegedly obstructed.

51. The Pre-Trial Judge notes that the Amended Confirmed Indictment specifies in paragraph 25 that Messrs Thaçi, Fazliu, Smakaj, and Kilaj through their actions attempted to compromise the "[SC]/SPO's ability to effectively investigate and prosecute crimes, including the [SC]/SPO's ability to obtain and secure relevant witness evidence". Contrary to what the Thaçi Defence alleges, this sentence does not describe merely an objective, but actually the duties of SPO and SC officials whose performance was attempted to be obstructed in the context of Case 06.⁷⁶ The Thaçi Defence's suggestion to include information as to the official's specific tasks at a given time⁷⁷ is overly rigorous, even more so considering that Messrs Thaçi, Fazliu, Smakaj, and Kilaj are charged with *attempted* obstruction.⁷⁸ In the view of the

⁷⁶ See *supra* paras 34, 47-48.

⁷⁷ Thaçi Reply, para. 11.

⁷⁸ See *supra* paras 48-48.

Pre-Trial Judge, the Amended Confirmed Indictment sufficiently pleads the duties of the official persons acting for and on behalf of the SC and the SPO and thus provides adequate notice to Mr Thaçi. Any further information is a matter to be developed at trial. Therefore, in light of the above, Mr Thaçi's argument is without merit.

4. Pleading of the Alleged Obstructive Acts

52. The Thaçi Defence claims that the Amended Confirmed Indictment is vague regarding the obstruction as it does not explain how influencing witnesses would have caused the obstruction of a public official. In its reply, the Thaçi Defence adds that the SPO's position appears to be that "*any* unlawful contact with witnesses would *necessarily* obstruct investigations and prosecutions, and that it is therefore unnecessary to provide any details in the Indictment".⁷⁹ As an example, it maintains that an accused could contact a known SPO witness for a personal matter, entirely unrelated to the proceedings.⁸⁰

53. There are two aspects to Mr Thaçi's argumentation which must be clarified. They are addressed in turn below.

54. First, the Pre-Trial Judge observes that Mr Thaçi has been informed fully and in detail about the time of non-privileged visits in the SC Detention Facilities, the persons present, and the contents of the discussions. Notably, he has been fully informed that, in each such non-privileged visit, he is alleged to have provided to the relevant co-accused instructions to be conveyed to Case 06 (protected) SPO witnesses on how to testify.⁸¹ Contrary to what the Thaçi Defence argues, the Amended Confirmed Indictment concerns Mr Thaçi's *unlawful* contacts with witnesses, not lawful contacts. It is clearly set out in the Amended Confirmed

⁷⁹ Thaçi Reply, para. 13.

⁸⁰ Thaçi Reply, para. 13.

⁸¹ See Amended Confirmed Indictment, paras 9, 16-17, 21, 26.

Indictment that Mr Thaçi sought to convey messages to witnesses regarding their upcoming testimonies before the SC, not on “personal matters entirely unrelated to the proceedings”.⁸² As a consequence, the Pre-Trial Judge is unpersuaded that Mr Thaçi does not understand *which* unlawful contact forms part of the charges.

55. Second, it appears that Mr Thaçi requests to know *how* his conduct would prevent or impede the SC/SPO officials in their duties.⁸³ The Pre-Trial Judge recalls that Mr Thaçi is charged with *attempted* obstruction of SC/SPO officials in the context of Case 06,⁸⁴ which entails that the offence of obstruction is not fulfilled. As a consequence, the SPO clearly does not need to demonstrate how Mr Thaçi’s actions *actually* impeded or prevented the performance of duties of (specific) SC/SPO officials.⁸⁵

56. In sum, what matters to satisfy the notice requirements is that the Amended Confirmed Indictment contains the factual allegations concerning Messrs Thaçi’s, Fazliu’s, Smakaj’s, and Kilaj’s conduct, as described in the accusatory document in paragraphs 9-12, and 16-22, through which they attempted to obstruct the performance of duties of official persons in the context of Case 06. This is the case. Therefore, in light of the above, Mr Thaçi’s argument is without merit.

⁸² Thaçi Reply, para. 13.

⁸³ See Thaçi Defence Motion, paras 21-22.

⁸⁴ See *supra*, para. 48.

⁸⁵ The Thaçi Defence also appears to misconstrue the Confirmation Decision in arguing that the “Pre-Trial Judge was forced ... to speculate about the means of obstruction which were *possible*” (see Thaçi Reply, para. 14). This is incorrect. At the time, the Pre-Trial Judge found the SPO submissions on evidence to be insufficient to find that Mr Thaçi’s and the co-Accused’s actions had *obstructed* the work of SC/SPO officials in the context of SC proceeding (Confirmation Decision, para. 192). That being said, the Pre-Trial Judge underlined that their actions “in principle, could result in the obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings” (Confirmation Decision, para. 193) and confirmed attempted obstruction. The use of the words “in principle” was specifically meant to underline the *attempted* nature of the Accused’s actions.

5. Pleading of Common Action

57. The Thaçi Defence complains that the Amended Confirmed Indictment does not explain what conduct of the Accused, or the three groups, amounted to “common action” by which obstruction was attempted.

58. The Pre-Trial Judge recalls that “common action may include any activity jointly undertaken by the group members. Crucially, Article 401(2) of the KCC penalises any conduct of the perpetrator, who partakes in the group, that contributes to or enables in some other form the common action; it does not require that the actions of *each* participant in the group contribute directly to the obstructive purpose”.⁸⁶

59. Similar to the pleading of obstructive acts, the Pre-Trial Judge observes that the Thaçi Defence has been informed fully and in detail about the time of the non-privileged visits in the SC Detention Facilities, the persons present, and the contents of the discussions. Whether or not the contributions of Messrs Thaçi, Fazliu, Smakaj, and Kilaj fulfil the legal requirement of “common action” is a matter to be discussed at trial based on the evidence. What matters to satisfy the notice requirements is that the Amended Confirmed Indictment contains the factual allegations concerning Messrs Thaçi’s, Fazliu’s, Smakaj’s, and Kilaj’s conduct, as described in the accusatory document in paragraphs 9-12, and 16-22, that may amount to “common action”. This is the case. Therefore, in light of the above, Mr Thaçi’s argument is without merit.

⁸⁶ Confirmation Decision, para. 52. *See also* KSC-BC-2020-07, F00611/RED, Trial Panel II, [Public Redacted Version of Trial Judgment](#), 18 May 2022, public, para. 162 (“Accordingly, ‘common action’ under Article 401(2) of the KCC cannot be limited to ‘crowd’ or ‘mob’ violence but covers in principle any type of collective criminal activity that pursues the relevant obstructive purpose”).

6. Pleading of Mr Fazliu's Conduct

60. The Fazliu Defence complains that the Amended Confirmed Indictment does not specify with clarity Mr Fazliu's actions pertaining to Witness 1, in particular outside of the SC Detention Facilities.

61. The Pre-Trial Judge observes that the Amended Confirmed Indictment in paragraphs 9-12 contains information as to: (i) Mr Fazliu's 2 July 2023 non-privileged visit to Mr Thaçi in the SC Detention Facilities; (ii) Mr Thaçi providing confidential information about SPO witnesses in Case 06 and his instructions to be conveyed to Witness 1; (iii) the scheme how the messages would be conveyed to Witness 1, namely through Mr Fazliu's son; (iv) the timing and circumstances of Witness 1's testimony in Case 06; and (v) Mr Fazliu's actions prior to and after the 2 July 2023 visit to the SC Detention Facilities. The Pre-Trial Judge also notes that Mr Fazliu has received the full transcript of the 2 July 2023 visit which provides further details as to the elements set forth in the Amended Confirmed Indictment. The Pre-Trial Judge also agrees with the Fazliu Defence that Mr Fazliu's actions prior to and after the 2 July 2023 visit are relevant to the allegations of attempted obstruction.⁸⁷ For this reason, they are mentioned in paragraph 10 of the Amended Confirmed Indictment, as further supplemented in the Rule 86(3) Outline, and the evidence disclosed (*inter alia*, transcripts of the 2 July 2023 visit and data extracted from a seized mobile telephone). Whether or not the evidence suffices to hold Mr Fazliu accountable is a matter to be discussed at trial based on the evidence.⁸⁸ What matters to satisfy the notice requirements is that the Amended Confirmed Indictment contains the factual allegations concerning Mr Fazliu's conduct, as described in the accusatory document in paragraphs 9-12.

⁸⁷ See Fazliu Defence Motion, para. 11.

⁸⁸ The Fazliu Defence appears to understand its argument to relate to the evidence when stating that the SPO "may not rely on the *weaknesses of its own investigation* in order to mould the case against Mr. Fazliu as the trial progresses" (emphasis added); see Fazliu Defence Motion, para. 11.

This is the case and, based on this information, Mr Fazliu can meaningfully prepare his defence. Therefore, in light of the above, Mr Fazliu's argument is without merit.

7. Attempted Obstruction: Adequate Notice to Mr Fazliu and Relevant Legal Provisions

62. The Fazliu Defence claims that the Amended Confirmed Indictment does not plead with specificity which perpetrator is alleged to have begun to execute which material elements, and how the conduct fell short of a full commission. It alleges that Mr Fazliu should not be expected to engage in guesswork to ascertain the nature and the cause of the charges against him, or to prepare alternative lines of defence.⁸⁹ It also claims that Article 28 of the KCC should have been included in the Amended Confirmed Indictment, thus dispelling ambiguity around the relevance of legal provisions and allowing Mr Fazliu to prepare his defence both in terms of evidence and the law.⁹⁰

63. As regards the argument that Mr Fazliu has not been sufficiently put on notice how he, his son and Mr Thaçi have contributed to the *attempted* obstruction, the Pre-Trial Judge observes that all necessary information, demonstrating their actions *towards* the commission of an offence without fulfilling its elements, is included in paragraphs 9-12 of the Amended Confirmed Indictment, as supplemented by the Rule 86(3) Outline and the evidence disclosed. That being said, it is unclear how the Fazliu Defence can claim that it is compelled to engage in guesswork as far as the nature and the cause of the charges against Mr Fazliu are concerned. What matters to satisfy the notice requirements is that the Amended Confirmed Indictment contains the factual allegations concerning Mr Fazliu's conduct, as described in the accusatory document in paragraphs 9-12. This is the case and, based on this information, Mr Fazliu can meaningfully prepare his defence in terms of evidence. Notably, it is the responsibility of counsel to develop the defence strategy.

⁸⁹ Fazliu Defence Motion, para. 15.

⁹⁰ Fazliu Defence Motion, para. 16.

64. As regards the argument that Article 28 of the KCC should be included in the Amended Confirmed Indictment in conjunction with Article 401(2) of the KCC, the Pre-Trial Judge recalls that this matter has been discussed and adjudged in the Confirmation Decision.⁹¹ The wording of Article 401(2) of the KCC (“obstructs or attempts to obstruct”) indicates that the offence can be committed *either* when the obstruction has occurred, *or* when it has only been attempted. Therefore, in the context of Article 401(2) of the KCC, “attempts to obstruct” is a form of commission. To add Article 28 of the KCC to Article 401(2) of the KCC would mean to plead an *attempt* of the *attempted* obstruction. This interpretation is legally untenable. In the view of the Pre-Trial Judge, and contrary to what the Fazliu Defence requests, the wording of the Amended Confirmed Indictment is legally clear and unambiguous, and does not need to be changed. Should Mr Fazliu wish to further challenge the interpretation of Article 401(2) of the KCC, the Pre-Trial Judge recalls that challenges concerning the legal elements of an offence do not constitute challenges to the form of the indictment, but are matters to be addressed at trial.⁹² Therefore, in light of the above, Mr Fazliu’s argument is without merit.

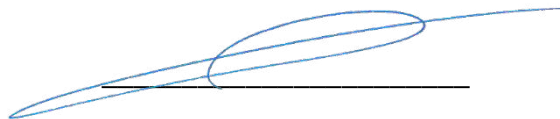
⁹¹ Confirmation Decision, paras 51 (with further references cited therein), 260, 304.

⁹² See *supra* para. 35.

V. DISPOSITION

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

- a. **REJECTS** the Thaçi Defence Motion;
- b. **REJECTS** the Fazliu Defence Motion; and
- c. **RECALLS** that the procedure envisaged in Article 45(2) of the Law and Rule 77 of the Rules applies to the present decision.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Tuesday, 24 June 2025

At The Hague, the Netherlands.