



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: 7 May 2025

Language: English

Classification: Public

Public Redacted Version of Decision Appointing Independent Counsel

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 35(2) and 39(1) and (3) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 23(8), 31(3) and 111(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chamber ("Rules"), hereby renders the following decision.

I. PROCEDURAL BACKGROUND

1. On 21 February 2024, following a request by the Specialist Prosecutor's Office ("SPO"),² the Single Judge authorised, *inter alia*, the seizure of any and all mobile telephones, including SIM cards, of Hajredin Kuçi ("Mr Kuçi") and the search of his person for the purpose of seizing any such devices ("First Search and Seizure Decision").³ Noting the potential privileged nature of the material contained on Mr Kuçi's mobile device(s),⁴ the Single Judge stressed that the SPO was not authorised to retain, copy or search the contents of the seized device(s), until further order.⁵
2. On 7 March 2024, the SPO seized from Mr Kuçi one (1) [REDACTED], pursuant to the First Search and Seizure Decision ("Kuçi Phone").⁶
3. [REDACTED].⁷

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

² KSC-BC-2023-12, INV/F00082/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution Request for Orders'*, 13 February 2024 (date of the confidential redacted version is 20 February 2025), confidential. A public redacted version was filed on 27 February 2025, INV/F00082/RED.

³ KSC-BC-2023-12, INV/F00089/CONF/RED, Single Judge, *Confidential Redacted Version of Decision Authorising Search and Seizure and Special Investigative Measures*, 21 February 2024 (date of confidential redacted version is 21 March 2025), confidential, para. 108(d), with Annexes 1-3, strictly confidential and *ex parte*, and Annex 4, confidential. A public redacted version of the decision was issued on 23 March 2025, INV/F00089/RED.

⁴ Mr Kuçi was a member of the Defence team representing Kadri Veseli in the case of *The Specialist Prosecutor v. Hashim Thaçi et al.* from at least 3 April 2023 to 29 November 2023. See KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* ("Confirmation Decision"), 29 November 2024, confidential, para. 131. A public redacted version was issued on 12 February 2025, [F00036/RED](#).

⁵ First Search and Seizure Decision, paras 65, 108(d)(iv).

⁶ KSC-BC-2023-12, INV/F00100, Specialist Prosecutor, *Request in Response to F00598*, 7 March 2024, confidential, para. 2, with Annex 1, strictly confidential and *ex parte*. A public redacted version of the main filing was filed on 28 February 2025, INV/F00100/RED.

⁷ [REDACTED].

4. [REDACTED],⁸[REDACTED].⁹

5. On 29 November 2024, further to the confirmation of an indictment against Mr Kuçi and others,¹⁰ the Pre-Trial Judge authorised the search of the residence(s), office(s), vehicle(s) and person of Mr Kuçi, for the purpose of seizing any and all electronic devices belonging to and/or used by him (“Second Search and Seizure Decision”).¹¹

6. In this context, the Pre-Trial Judge also requested the assistance and cooperation of the [REDACTED], *inter alia*, to: (i) create forensic images of the electronic devices seized from Mr Kuçi; and (ii) generate corresponding Cellebrite reports for each forensic image, as applicable, within sixty (60) days from the date of the [REDACTED] receipt of the devices [REDACTED].¹²

7. On 5 December 2024, the SPO seized multiple electronic devices from the residence and office of Mr Kuçi, pursuant to the Second Search and Seizure Decision,¹³ which were [REDACTED] and transferred by the Registry to the [REDACTED] (“Kuçi Electronic Devices”).¹⁴

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ Confirmation Decision, para. 313(e).

¹¹ KSC-BC-2023-12, F00039, Pre-Trial Judge, *Decision Authorising Search and Seizure and Related Matters*, 29 November 2024, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the decision were filed on 7 March 2025 and 17 March 2025 respectively, F00039/CONF/RED and [F00039/RED](#).

¹² Second Search and Seizure Decision, paras 64-73, 74(k); Annex 2 to Second Search and Seizure Decision.

¹³ KSC-BC-2023-12, F00096, Specialist Prosecutor, *Prosecution Report Pursuant to Decisions F00039 and F00073*, strictly confidential and *ex parte*, with Annexes 1-4, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the main filing were filed on 20 December 2024 and 4 February 2025 respectively, F00096/CONF/RED and [F00096/RED](#).

¹⁴ KSC-BC-2023-12, F00078, Registrar, *Submissions in Advance of Status Conference Pursuant to Order F00072*, 12 December 2024, confidential, paras 6-7, with Annex 1, confidential, and Annex 2, strictly confidential and *ex parte*. A public redacted version of the main filing was filed on 5 February 2025, [F00078/RED](#).

8. On 10 December 2024, further to a request by the SPO,¹⁵ the Pre-Trial Judge authorised the SPO's seizure of a set of documents found during the SPO's search of Mr Kuçi's residence conducted on 5 December 2024 ("Kuçi Documents"), which fell outside the scope of the Second Search and Seizure Decision. ("Rule 38 Seizure Decision").¹⁶ The Pre-Trial Judge ordered, *inter alia*: (i) the Registry to take custody of the Kuçi Documents and retain them until further order; and (ii) the SPO to request authorisation to search the Kuçi Documents, if it so wished, within three (3) months from their seizure.¹⁷ The Registry took custody of the Kuçi Documents on 11 December 2024.¹⁸

9. On 5 March 2025, the SPO requested the Pre-Trial Judge's authorisation to access the Kuçi Documents for the purpose of assessing their relevance.¹⁹ The Defence for Mr Kuçi ("Kuçi Defence") did not respond.

10. On 17 March 2025, the SPO filed a request before the Pre-Trial Judge seeking the appointment of an independent counsel for the review of potentially privileged material in the [REDACTED] and Kuçi Electronic Devices ("Request").²⁰ The Kuçi Defence did not respond to the Request.

11. [REDACTED].²¹

12. On the same day, the Pre-Trial Judge issued an order, instructing the Registrar to submit [REDACTED]: (i) a list of three (3) legal professionals [REDACTED] to

¹⁵ KSC-BC-2023-12, F00054, Specialist Prosecutor, *Urgent Rule 38 Request*, 6 December 2024, confidential. A public redacted version was filed on 3 February 2025, [F00054/RED](#).

¹⁶ KSC-BC-2023-12, F00073, Pre-Trial Judge, *Decision on Prosecution Request for Approval of Search and Seizure Measure Pursuant to Rule 38 of the Rules*, 10 December 2024, confidential. A public redacted version was issued on 17 March 2025, [F00073/RED](#).

¹⁷ Rule 38 Seizure Decision, paras 43-44, 46(e)-(f).

¹⁸ KSC-BC-2023-12, F00077, Registrar, *Notification Pursuant to Decision F00073*, 11 December 2024, public. See also [REDACTED].

¹⁹ KSC-BC-2023-12, F00203, Specialist Prosecutor, *Prosecution Request for an Order*, 5 March 2025, confidential.

²⁰ KSC-BC-2023-12, F00222, Specialist Prosecutor, *Prosecution Request for Appointment of Independent Counsel*, 17 March 2025, confidential.

²¹ [REDACTED].

undertake a review of [REDACTED] for privileged information; and (ii) any other relevant practical and/or logistical information regarding the independent review process.²² The Pre-Trial Judge further instructed the SPO and the Kuçi Defence to respond to the Registrar's proposals, and invited them to make submissions regarding the modalities to be adopted for the independent review of the [REDACTED].²³

13. [REDACTED]²⁴ [REDACTED],²⁵ [REDACTED].²⁶

14. On the same day, the Registrar [REDACTED] made submissions regarding the appointment of independent counsel ("Registrar Submissions").²⁷

15. On 29 April 2025, pursuant to the Pre-Trial Judge's instruction,²⁸ and following agreement with the Kuçi Defence, the SPO made submissions providing the Parties' ranked order of preference for the selection of an independent counsel, and proposing modalities for the independent counsel's review of the [REDACTED].²⁹

16. [REDACTED].³⁰

²² KSC-BC-2023-12, F00259, Pre-Trial Judge, *Order for Submissions Regarding the Appointment of Independent Counsel* ("Order for Submissions"), 11 April 2025, confidential, paras 19, 22(a).

²³ Order for Submissions, paras 20, 22(b).

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ KSC-BC-2023-12, F00267, Registrar, *Registry Report and Submissions Regarding Appointment of Independent Counsel*, 22 April 2025, confidential, with Annex 1, confidential.

²⁸ See *supra* para. 12.

²⁹ KSC-BC-2023-12, F00273, Specialist Prosecutor, *Submissions on Independent Counsel Selection and Review Modalities* ("SPO Response"), 29 April 2025, confidential, para. 1. A public redacted version was filed on 5 May 2025, F00273/RED.

³⁰ [REDACTED].

II. SUBMISSIONS

A. REGISTRAR

17. As regards [REDACTED],³¹ the Registrar reports that: [REDACTED],³² and [REDACTED].³³

18. As regards the appointment of an independent counsel, the Registrar submits that she has conducted a careful review of the legal professionals on the Specialist Chambers ("SC") Lists of Counsel³⁴ and has identified for the Pre-Trial Judge's consideration the following three (3) legal professionals [REDACTED]: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].³⁵

19. Turning to the practical and/or logistical considerations for the independent review process, the Registrar indicates that [REDACTED].³⁶ Moreover, the Registrar highlights that [REDACTED],³⁷ [REDACTED].³⁸ Lastly, the Registrar submits that [REDACTED].³⁹

B. SPO AND KUÇI DEFENCE

20. The SPO submits that, through *inter partes* discussions, the Kuçi Defence and the SPO have agreed on the following ranked order of preference for the selection of an independent counsel: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].⁴⁰ The SPO submits that neither party is aware of any conflict of interest that would

³¹ Registrar Submissions, para. 16. [REDACTED].

³² Registrar Submissions, para. 17. [REDACTED].

³³ Registrar Submissions, para. 18.

³⁴ The Lists of Counsel contain the names of legal practitioners who are eligible to practice before the SC as Counsel and Co-Counsel.

³⁵ Registrar Submissions, paras 20-21.

³⁶ Registrar Submissions, para. 22.

³⁷ *See supra* para. 16.

³⁸ Registrar Submissions, para. 23.

³⁹ Registrar Submissions, para. 24.

⁴⁰ SPO Response, para. 2.

prevent any of the identified legal professionals from performing the role of independent counsel in this case.⁴¹

21. As regards the modalities for the review,⁴² the SPO submits that the Parties have agreed on the following. First, the Parties propose that the Pre-Trial Judge request the assistance of the [REDACTED] for the use of [REDACTED] digital review platform ("Platform").⁴³ In this regard, the SPO specifies that the [REDACTED] would upload the contents of the Kuçi Electronic Devices⁴⁴ onto the Platform and provide the Independent Counsel, through the Registry, with secure remote access to the Platform.⁴⁵ Second, the Parties agree that the use of the Platform will: (i) obviate the need for the Registry to securely transfer forensic copies of the Kuçi Electronic Devices to the Independent Counsel, or to another third party data host; (ii) allow for fast and efficient searches, saving both time and resources and hastening completion of the Independent Counsel's review;⁴⁶ and (iii) better ensure the security of any potentially privileged data.⁴⁷

22. Moreover, the SPO submits that the [REDACTED] anticipates that the contents of the forensically copied Kuçi Electronic Devices can be uploaded to the Platform and readied for the Independent Counsel's review within a matter of days or weeks from a request.⁴⁸

⁴¹ SPO Response, para. 3.

⁴² The Pre-Trial Judge notes that the proposed modalities of review only concern the Kuçi Electronic Devices, and not [REDACTED] or Kuçi Documents. *See* SPO Response, para. 6.

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ SPO Response, para. 6.

⁴⁶ The SPO specifies that the Platform includes training modules on its use in conducting searches and extracting/exporting relevant data. *See* SPO Response, para. 8.

⁴⁷ SPO Response, para. 7.

⁴⁸ SPO Response, para. 9. In this regard, the SPO adds that it understands the cost for the service to be [REDACTED], and while it does not know the total combined volume of the Kuçi Electronic Devices, it estimates the total volume is likely less than two (2) terabytes, and possibly less than one (1) terabyte. *See* SPO Response, footnote 6.

23. Alternatively, should the Pre-Trial Judge elect not to request the use of the Platform and/or should the [REDACTED] be unable to accept the request, the Parties propose that the Pre-Trial Judge order the Registry to engage another appropriate third-party digital review/e-discovery platform to securely host the data and provide access to the Independent Counsel, in order to facilitate the expeditious execution of the review.⁴⁹

III. APPLICABLE LAW

24. Pursuant to Article 35(2) of the Law, the SPO has the authority to conduct criminal investigations within the subject matter jurisdiction of the SC. Pursuant to Article 35(2)(b) of the Law, such authority includes the collection and examination of information and evidence.

25. Pursuant to Article 39(1) and (3) of the Law, the Pre-Trial Judge may, at the request of the Specialist Prosecutor, issue any orders and decisions as may be required for the conduct of the investigation and for the preparation of a fair and expeditious trial, including orders pertaining to special investigative measures.

26. Pursuant to Rule 23(8) of the Rules, the Registrar shall take all measures within her responsibility to ensure that decisions of the SC are executed.

27. Pursuant to Rule 31(3) of the Rules, information deriving from a professional relationship between a person and his or her Specialist Counsel as provided for in Rule 111(1) of the Rules, shall be regarded as privileged and shall not be subject to investigative measures, unless the privilege is abused to perpetrate a crime within the jurisdiction of the SC and the evidence sought was in furtherance of that crime.

⁴⁹ SPO Response, para. 10.

IV. DISCUSSION

28. At the outset, the Pre-Trial Judge observes that there are three sets of material seized from Mr Kuçi that will necessitate a review for privileged information: (i) the Kuçi Phone, seized from Mr Kuçi on 7 March 2024, pursuant to the First Search and Seizure Decision; (ii) the Kuçi Electronic Devices, seized from Mr Kuçi's residence and office on 5 December 2024, pursuant to the Second Search and Seizure Decision; and (iii) the Kuçi Documents, also seized from Mr Kuçi's residence on 5 December 2024, as authorised in the Rule 38 Seizure Decision.

29. [REDACTED].⁵⁰ Moreover, the Pre-Trial Judge takes note of the submissions by the SPO and the Kuçi Defence regarding the necessity of a specialised software for the review of the Kuçi Electronic Devices,⁵¹ which would necessitate additional procedural steps before the appointed independent counsel may begin his/her review of the devices.

30. In view of the foregoing, the Pre-Trial Judge decides, in the interests of expediency, to proceed with the immediate appointment of an independent counsel for the review of the [REDACTED], and the adoption of modalities for the review of the [REDACTED] and the Kuçi Documents, so that the process may begin without any further delay. The modalities for the review of the Kuçi Electronic Devices will be determined in due course.

A. APPOINTMENT OF INDEPENDENT COUNSEL

31. The Pre-Trial Judge recalls that, having regard to the potentially privileged nature of the material on the devices and documents seized from Mr Kuçi due to his membership on the Defence team representing Kadri Veseli ("Mr Veseli") in the case of *The Specialist Prosecutor v. Thaçi et al.* (KSC-BC-2020-06) ("Case 06") from at least 3 April 2023 to 29 November 2023, the appointment of an independent counsel was

⁵⁰ See *supra* para. 19.

⁵¹ See *supra* para. 21.

found to be necessary, in order to review the seized material with a view to identifying and excluding any privileged information, before authorising the SPO's access to said material.⁵²

32. The Pre-Trial Judge takes note of both the Registrar's proposed list of legal professionals and the SPO and Kuçi Defence's ranked order of preference for the selection of the independent counsel.

33. The Pre-Trial Judge has considered each proposed legal professional's [REDACTED], relevant for the purpose of reviewing the [REDACTED]. The Pre-Trial Judge also pays heed to [REDACTED]. In this regard, the Pre-Trial Judge observes that [REDACTED]. Moreover, the Pre-Trial Judge notes that the Parties did not raise any (potential) conflict of interest in relation to any of the proposed legal professionals.⁵³

34. The Pre-Trial Judge is especially mindful of her responsibility to ensure the efficient and expeditious conduct of the proceedings, and finds it necessary that the operations relating to the review of the [REDACTED] take place without undue delay. In this context, the Pre-Trial Judge recalls that the Kuçi Documents are in the custody of the Registry,⁵⁴ and [REDACTED].⁵⁵ Accordingly, there is no or minimal delay for the receipt of said material, and its review could begin immediately.

35. For the above reasons, the Pre-Trial Judge decides to appoint, through the Registrar, [REDACTED] as Independent Counsel tasked with reviewing the [REDACTED]. Independent Counsel shall review said material with a view to identifying and excluding privileged information stemming from Mr Kuçi's representation of Mr Veseli in the context of the proceedings in Case 06. In this regard, the Pre-Trial Judge importantly recalls that, pursuant to Rule 31(3) of the Rules,

⁵² See First Search and Seizure Decision, para. 65; Second Search and Seizure Decision, para. 47; Rule 38 Seizure Decision, para. 36.

⁵³ See *supra* para. 20.

⁵⁴ See *supra* para. 8.

⁵⁵ See Annex 1 to Registrar Submissions, p. 7.

information deriving from the professional relationship between Mr Kuçi and Mr Veseli is no longer regarded as privileged and can be subject to investigative measures if the privilege was abused to perpetrate a crime within the jurisdiction of the SC, and the material is evidence in furtherance of that crime.

36. Accordingly, the Pre-Trial Judge instructs the Registrar to make all necessary arrangements for the immediate appointment of [REDACTED] as Independent Counsel and the expeditious implementation of the independent review process, as soon as possible following notification of the present decision. The Pre-Trial Judge emphasises that it is of utmost necessity that the review process begin without undue delay.

B. MODALITIES OF REVIEW

37. The Pre-Trial Judge adopts the following modalities for the review of the [REDACTED] and the Kuçi Documents by the Independent Counsel:

- a. The review shall take place in a secure and dedicated location within the SC, to be designated by the Registrar, and at a date and time agreed upon between the Independent Counsel and the Registrar;
- b. In order to assist the Independent Counsel in [REDACTED] review of the [REDACTED] and the Kuçi Documents, the Registrar is instructed to provide the Independent Counsel with access to: (i) the Amended Confirmed Indictment (F00264 and its annexes); (ii) the unredacted Decision on the Confirmation of the Indictment (F00036, confidential); (iii) the Decision Amending the “Decision on the Confirmation of the Indictment” and Setting a Date for the Submission of Preliminary Motions (F00260, public); (iv) the First Search and Seizure Decision in confidential redacted form (INV/F00089/CONF/RED) and the Second Search and Seizure Decision in confidential redacted form (F00039/CONF/RED);

- (v) the present decision; and (vi) the composition of the Veseli Defence team during the time period Mr Kuçi was a member thereof;
- c. The Registrar shall designate one or more focal points within the Registry for communications with the Independent Counsel;
 - d. The Registrar, through her designated focal point(s), may directly address any questions of a technical nature by the Independent Counsel;
 - e. The Registrar shall promptly communicate to the Pre-Trial Judge any other questions or issues raised by the Independent Counsel during the course of the independent review process;
 - f. The designated Registry representative shall, in the presence of the Independent Counsel, unseal at the start of each review day the evidence bag(s) containing the Kuçi Documents, and provide the Kuçi Documents to the Independent Counsel. [REDACTED];
 - g. The review of the [REDACTED] shall be conducted on a designated computer, provided by the Registry, with the necessary software and/or program(s) for the purpose of accessing and reviewing the material, and drafting a report;
 - h. The Independent Counsel is prohibited from using personal electronic devices in the dedicated location during [REDACTED] review of the material and preparation of the report, and shall rely solely on the computer provided by the Registry;
 - i. The Independent Counsel shall not remove any material relating to the review from the dedicated location, including any notes taken by the Independent Counsel and the designated Registry computer;
 - j. The designated Registry computer, [REDACTED], any material provided to the Independent Counsel to assist during the review, as well as any notes taken by the Independent Counsel and/or other material produced during the review process, shall be securely stored during the pendency of the

independent review process. The Independent Counsel shall follow any instructions of the Registrar in this regard;

- k. The Parties shall not communicate, directly or indirectly, with the Independent Counsel;
- l. The Independent Counsel shall maintain strict confidentiality in the handling of the material and execution of the review, in accordance with the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers;⁵⁶
- m. The Registrar shall take any other necessary measures to ensure that the Independent Counsel is able to carry out the ordered review without undue delay, including the assistance of an Albanian interpreter, if necessary;
- n. Following the completion of the review by Independent Counsel, the Registry dedicated computer, [REDACTED], any notes taken by the Independent Counsel and any other material produced during the review process, shall remain in the custody of the Registrar who shall retain them for preservation until further instruction of the Pre-Trial Judge. The Kuçi Documents shall be [REDACTED];
- o. Following [REDACTED] review of the [REDACTED] and Kuçi Documents, the Independent Counsel shall file on the case record, following the Practice Direction on Files and Filings before the Kosovo Specialist Chambers,⁵⁷ a strictly confidential and *ex parte* report, accessible only to the Pre-Trial Judge, detailing the results of the aforementioned review, in accordance with the instructions outlined below;
- p. The Independent Counsel shall complete [REDACTED] review of the [REDACTED] and Kuçi Documents, and submit [REDACTED] report to

⁵⁶ KSC-BD-07/Rev1, Registrar, [Registry Practice Direction: Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers](#), 28 April 2021, public.

⁵⁷ KSC-BD-15, Registrar, [Registry Practice Direction: Files and Filings Before the Kosovo Specialist Chambers](#), 17 May 2019, public.

the Pre-Trial Judge within three (3) weeks of [REDACTED] appointment by the Registrar;

- q. The Independent Counsel shall not retain any material received or produced during the review process, including the drafting of the report, and shall return such material to the designated focal point of the Registry;⁵⁸
- r. The Registrar shall report on the execution of the Independent Counsel's review within ten (10) days following the filing of the Independent Counsel's final report, including details on the duration of the review, any issues encountered during the review process, and any precautionary measures adopted for the storage and protection of all review-related material; and
- s. Following the filing of the final report by the Independent Counsel, the Pre-Trial Judge will issue further orders, as appropriate, authorising the SPO access to non-privileged material, and providing further instructions as to the handling of any privileged material, as identified by the Independent Counsel.

C. REPORT BY INDEPENDENT COUNSEL

38. The report by Independent Counsel shall conform to the following guidelines:
- a. The report shall be drafted solely on the designated computer provided by the Registry;
 - b. The report shall briefly describe the date, time and duration of the review and any relevant factors or considerations;
 - c. The report shall describe, in general terms: (i) the total number of reviewed items, (ii) the nature of each item (*i.e.* handwritten notes, typed documents,

⁵⁸ See further *supra* para. 37(n).

- newspaper articles, pictures, phone calls, etc.), and (iii) its size/volume (*i.e.* number of pages, duration of phone call, etc.);
- d. For each item identified under sub-point (c) above, the report shall indicate whether it contains any privileged information, and if so, whether the privileged information could be redacted with a view to making the item available to the SPO;
 - e. The report shall also identify whether any item containing privileged information should no longer be regarded as privileged by virtue of the legal professional privilege having been used to perpetrate a crime with the jurisdiction of the SC;⁵⁹ and
 - f. For any material determined not to contain privileged information, the report shall identify whether the material is clearly irrelevant or may contain relevant non-privileged information.

D. FURTHER INSTRUCTIONS TO THE PARTIES AND THE REGISTRAR

39. Should the SPO and the Kuçi Defence wish to propose any additional information or material to be shared with the Independent Counsel for the purpose of assisting [REDACTED] review, including any additional relevant filings or a list of key words, the Pre-Trial Judge instructs them to do so by no later than **16h00 on Thursday, 8 May 2025**.

40. The Pre-Trial Judge instructs the Registrar to request the [REDACTED] from the [REDACTED], and to take all necessary precautions for its transfer, storage and protection. The Pre-Trial Judge further instructs the Registrar to report on the transfer of the [REDACTED], providing details regarding the date, time and circumstances of the transfer, the state of the material, as well as any precautionary measures taken for its storage and protection. The Registrar may file such report jointly with the report

⁵⁹ See Rule 31(3) of the Rules.

on the execution of the Independent Counsel's review of the [REDACTED] and Kuçi Documents, as provided above.

41. Lastly, with a view to advancing the independent review process in relation to the Kuçi Electronic Devices, the Pre-Trial Judge orders the Registrar to:

- a. Inquire with the [REDACTED] whether it can make the [REDACTED] Platform available to the SC, in order to assist the Independent Counsel in reviewing the contents of the Kuçi Electronic Devices;
- b. Inquire with the [REDACTED] how much time it would require to load the contents of the Kuçi Electronic Devices onto the Platform and provide the Independent Counsel with secure remote access to said Platform;
- c. Explore the possibility of engaging another appropriate third-party digital review/e-discovery platform, should the [REDACTED] not be in a position to make the [REDACTED] Platform available to the SC;
- d. Provide an estimate as to how much time the Registry would require to obtain the forensic copies of the Kuçi Electronic Devices from the [REDACTED] and transfer them to another third-party data host; and
- e. Make any other submissions the Registrar deems relevant regarding the Parties' proposed modalities for the review of the Kuçi Electronic Devices.

42. The Registrar shall file her submissions on the above within fourteen (14) days from notification of the present decision.

43. Furthermore, taking note of the Registrar's submissions in the Registry Update, the Pre-Trial Judge orders the Registrar to:

- a. [REDACTED];⁶⁰ and
- b. [REDACTED].

⁶⁰ See *supra* para. 16.

44. The Registrar is authorised to disclose any information regarding the nature and volume of the concerned electronic devices, as may be necessary for purposes of obtaining the above information.

V. DISPOSITION

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

- a. **GRANTS**, in part, the Request;
- b. **INSTRUCTS** the Registrar to immediately appoint [REDACTED] as Independent Counsel, as set forth in paragraphs 35-36 of the present decision;
- c. **ADOPTS** the modalities of review and reporting guidelines outlined in paragraphs 37-38 of the present decision;
- d. **ORDERS** the Registrar to make all necessary arrangements for the expeditious implementation of the independent review process, as soon as possible following notification of the present decision;
- e. **INSTRUCTS** the Registrar to request the [REDACTED] to transfer the [REDACTED] to the Registry;
- f. **ORDERS** the Registrar to report on the transfer of the [REDACTED], as set forth in paragraph 40 of the present decision;
- g. **INSTRUCTS** the SPO and the Kuçi Defence, if they so wish, to submit any additional information or material to be shared with the Independent Counsel, as set forth in paragraph 39 of the present decision, by no later than **16h00 on Thursday, 8 May 2025**;
- h. **DEFERS** the adoption of the modalities for the review of the Kuçi Electronic Devices, as set forth in paragraph 30 of the present decision;

- i. **ORDERS** the Registrar to make submissions in relation to the Kuçi Electronic Devices, as set forth in paragraphs 41-44 of the present decision; and
- j. **ORDERS** the Registrar to file a public redacted version of the Registrar Submissions (F00267) by no later than **Wednesday, 14 May 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Wednesday, 7 May 2025
At The Hague, the Netherlands.