



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: 30 June 2025

Language: English

Classification: PUBLIC

**Public Redacted Version of Decision on Preliminary Motions for Adjournment
and Severance of the Proceedings**

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(4) and 39 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 9(5)(a), 89, 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 "Case 12 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 ("Case 12" and "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

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](#).

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 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 7 May 2025, the Defence for Mr Thaçi (“Thaçi Defence”) filed the “Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings concerning Mr Thaçi” (“Thaçi Motion”).⁸
6. On the same day, the Defence for Mr Smakaj, Mr Kilaj, Mr Fazliu, and Mr Kuçi (collectively “Case 12 Co-Accused” and “Smakaj, Kilaj, Fazliu, and Kuçi Defence”) filed the “Joint Defence Preliminary Motion Pursuant to Rule 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers” (“Joint Motion”, and together with the Thaçi Motion “Motions”).⁹
7. On 30 May 2025, following an extension of the time limit,¹⁰ the SPO filed a consolidated response to the Thaçi Motion and Joint Motion (“SPO Consolidated Response”).¹¹

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, F00285, Thaçi Defence, [Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings Concerning Mr Thaçi](#), 7 May 2025, public, with Annex 1, public.

⁹ KSC-BC-2023-12, F00286, Smakaj, Kilaj, Fazliu, and Kuçi Defence, [Joint Defence Preliminary Motion Pursuant to Rule 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers](#), 7 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, F00317, Specialist Prosecutor, [Consolidated Prosecution Response to Severance Motions \(F00285 and F00286\)](#), 30 May 2025, public.

8. On 30 May 2025, the Thaçi Defence replied to the SPO Consolidated Response (“Thaçi Reply”).¹² The Smakaj, Kilaj, Fazliu, and Kuçi Defence did not submit a reply.

II. SUBMISSIONS

A. THAÇI MOTION

9. The Thaçi Defence submits that the primary concern for Mr Thaçi is that he may face at the same time the most critical periods of proceedings in the present case and the case of *The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* (“Case 06” and “Case 06 Co-Accused”) – cases which, it argues, are fundamentally interrelated.¹³ For this reason, the Thaçi Defence seeks the severance of the Amended Confirmed Indictment and the adjournment of the proceedings against Mr Thaçi until after the closure of Case 06 pursuant to Rule 136 of the Rules.¹⁴ The Thaçi Defence bases its request mainly on four grounds, as set out below.

10. On the first ground, the Thaçi Defence submits that holding two concurrent substantive trials against a single accused places a severely prejudicial burden on an accused.¹⁵ The Thaçi Defence anticipates that concurrent trials in the present case and Case 06 would infringe upon the Accused’s right to effectively and personally participate in both sets of proceedings. This right, it submits, entails: (i) the ability to be physically present, to hear and follow the proceedings, and to actively engage by providing instructions to counsel; and (ii) adequate time to review material filed or disclosed, and instruct his counsel

¹² KSC-BC-2023-12, F00332, Thaçi Defence, *Thaçi Defence Reply to SPO Response to Preliminary Motion on Severance*, 10 June 2025, confidential and *ex parte*, with Annexes 1-3, confidential and *ex parte*.

¹³ Thaçi Motion, paras 2, 20-26, 41. *See also* Thaçi Reply, paras 1, 3-6.

¹⁴ Thaçi Motion, paras 1-3, 17-19, 52-55, 59, 70, 75, 83.

¹⁵ Thaçi Motion, paras 2, 27, 28-32. *See also* Thaçi Reply, paras 1, 14-16.

on such material.¹⁶ Moreover, the Thaçi Defence submits that Mr Thaçi's right to effective legal representation cannot be ensured in simultaneous trials because: (i) he lacks the financial means to retain and fund two separate legal teams; and, in any event, (ii) effective representation in this case and equality of arms require the Thaçi Defence to be familiar with Case 06 and the present case, but their availability is limited while the Case 06 trial is ongoing.¹⁷ Lastly, the Thaçi Defence contends that concurrent trials would violate the rights of the Case 06 Co-Accused, as it would slow down the pace of the proceedings and cause undue delay – estimated at several months – in the delivery of the trial judgment in Case 06.¹⁸

11. On the second ground, the Thaçi Defence submits that, should Trial Panel II grant the SPO's request to admit what the SPO refers to as "obstruction related materials" into evidence in Case 06, said Panel may in its forthcoming judgment: (i) make findings of fact on whether Mr Thaçi was involved in conduct likely to influence witness testimony, and/or findings of fact regarding Mr Thaçi's knowledge and intent regarding that conduct; and (ii) impose a sentence on Mr Thaçi which is in part attributable to those factual findings.¹⁹ This, the Thaçi Defence submits, might engage the principle of *res judicata*, given the overlap between Case 12 and Case 06.²⁰ More specifically, the Thaçi Defence asserts that, should the Case 06 judgment precede the Case 12 judgment and include findings on any matter which fall within the Amended Confirmed

¹⁶ Thaçi Motion, paras 35-38. *See also* Thaçi Reply, paras 6, 12.

¹⁷ Thaçi Motion, paras 40-51. *See also* Thaçi Reply, paras 8, 10-11.

¹⁸ Thaçi Motion, paras 2, 56-59.

¹⁹ Thaçi Motion, paras 60-61 referring to KSC-BC-2020-06, F03120, Specialist Prosecutor, [Prosecution Motion for Admission of Obstruction Related Materials](#), 15 April 2025, public, with Annexes 1-3, confidential.

²⁰ Thaçi Motion, paras 62-68. The Thaçi Motion also contains submissions on the principle of *ne bis in idem*, but those are not replicated here as they were since withdrawn in the Thaçi Reply (*see* Thaçi Reply, para. 19 referring to Thaçi Motion, paras 71-74). *See also* SPO Consolidated Response, paras 21-22.

Indictment, those matters may become *res judicata* as between the SPO and Mr Thaçi. According to the Thaçi Defence, the right of the defence to expeditious proceedings and judicial economy, along with inconvenience to witnesses, would militate against holding trial proceedings on matters on which the Trial Panel in Case 12 may find itself already bound.²¹ The Thaçi Defence also argues that, should Case 06 and Case 12 proceed in parallel with the same questions of fact *sub judice* in both cases, a risk would arise of conflicting judicial rulings in the two cases, which would not only violate Mr Thaçi's right to legal certainty, but also undermine the credibility of the SC.²² Thus, the Thaçi Defence posits that: (i) given that Case 06 has been underway already for more than two years, with multiple accused in detention, it should be given priority and allowed to finish; and (ii) Trial Panel II is also the panel best placed to rule on any question of whether Case 06 witness testimony did change due to alleged interference, given its high level of familiarity with the details in that evidence and how it is relevant to the Case 06 charges.²³

12. On the third ground, the Thaçi Defence submits that adjournment of the present proceedings may cause unacceptable delays for the Case 12 Co-Accused.²⁴

13. On the fourth ground, the Thaçi Defence contends that, although there is an evident preference for joinder where charges are interrelated, Mr Thaçi is uniquely constrained by circumstances that prevent him from proceeding with the trial at the pace

14. required by the other accused. The Thaçi Defence further argues that, should severance be granted in the present case, it is likely that only a limited number of witnesses would need to be recalled, and, given the nature and scope

²¹ Thaçi Motion, para. 66.

²² Thaçi Motion, paras 67-68.

²³ Thaçi Motion, para. 69.

²⁴ Thaçi Motion, paras 75-77.

of the case at hand, their testimony would likely be brief. Furthermore, according to the Thaçi Defence, any inconvenience caused to the witnesses, who would be asked to testify twice as a result of the severance, is clearly proportionate when weighed against the prejudice to Mr Thaçi from facing concurrent trials, or to the Case 12 Co-Accused from a delayed trial.²⁵

B. JOINT MOTION

15. The Smakaj, Kilaj, Fazliu, and Kuçi Defence submit that they fully support the Thaçi Motion and the reasons therein provided, namely that the present case be adjourned until the conclusion of the trial in Case 06, in order to safeguard the fair trial rights of Mr Thaçi and his Case 06 Co-Accused.²⁶ However, the Smakaj, Kilaj, Fazliu, and Kuçi Defence contend that such an adjournment would result in an unreasonable delay, and, thus, infringe upon the Case 12 Co-Accused's rights be tried within a reasonable time.²⁷ Thus, according to the Smakaj, Kilaj, Fazliu, and Kuçi Defence, only by severing the Amended Confirmed Indictment as between the Case 12 Co-Accused and Mr Thaçi, will the fair trial rights of all five accused in Case 12, as well as the rights of the Case 06 Co-Accused, be fully respected.²⁸

16. In support of their request for severance, the Case 12 Co-Accused argue that: (i) the present case is of relative complexity, noting, *inter alia*, the 19-count indictment, and volume of forensically extracted evidence; (ii) while not taking issue with the conduct of the SPO as regards the length of the investigation and the pre-trial proceedings, the proceedings must be adjourned for reasons set out in the Thaçi Motion; (iii) if adjournment is granted, they estimate the trial would be adjourned to late 2025 or early 2026 – a significant delay for which the Case 12

²⁵ Thaçi Motion, paras 75-82.

²⁶ Joint Motion, paras 3, 10, 17.

²⁷ Joint Motion, paras 3, 5-6, 10-11, 22.

²⁸ Joint Motion, paras 3, 10, 13, 17, 22-23.

Co-Accused bear no responsibility; and (iv) Messrs Smakaj, Kilaj, and Fazliu, all middle-aged men of good character, all with established home and family lives in Kosovo, and all benefitting from the presumption of innocence, continue to be detained in the SC Detention Facilities, while Mr Kuçi is on provisional release in Kosovo, subject to onerous conditions.²⁹

C. SPO CONSOLIDATED RESPONSE

17. The SPO responds that the Motions should be denied, because there is no legitimate basis for adjournment and severance.³⁰ It recalls that the underlying facts and Accused are overlapping and the acts and conduct charged in the Amended Confirmed Indictment are closely connected and interwoven forming a series of related crimes, such that the Case 12 Accused should be tried jointly.³¹

18. As regards the Thaçi Defence argument that Specialist Counsel working across two separate proceedings cannot adequately represent Mr Thaçi, the SPO asserts that Specialist Counsel is obliged to withdraw.³² According to the SPO, the bulk of the fair trial submissions in the Thaçi Motion are abstract in nature, speculative, and based on the hypothetical possibility the Thaçi Defence may run a defence case in Case 06. The SPO remarks in this respect that, should this issue arise *in concreto*, it can be addressed by ensuring appropriate accommodations are made.³³

19. The SPO further argues that Mr Thaçi's rights do not entail a right to be represented by the *same* Specialist Counsel in two separate and very different proceedings.³⁴ The SPO maintains that prior involvement or familiarity with

²⁹ Joint Motion, paras 11, 14-21.

³⁰ SPO Consolidated Response, paras 1-3, 29.

³¹ SPO Consolidated Response, paras 1, 3, 28.

³² SPO Consolidated Response, paras 2, 14.

³³ SPO Consolidated Response, paras 4-6, 17, 20.

³⁴ SPO Consolidated Response, para. 13.

Case 06 is further not necessary to effectively advise and defend against the charges in Case 12, which concern discrete obstructive conduct carried out in 2023. In this respect, the SPO submits that if such an argument were valid, it would imply that the Case 12 Co-Accused are receiving inadequate representation, as their Specialist Counsel have no prior connection to Case 06.³⁵ Moreover, the SPO takes issue with the Thaçi Defence's claim that the SPO staff enjoy a "tactical advantage", maintaining that it is simply performing their lawful duty.³⁶ The SPO also posits that coordinating on matters of common concern that may arise across the two cases, such as detention or compassionate release, should be well within the scope of ability of a Specialist Counsel separately appointed to Case 12.³⁷ Furthermore, the SPO avers that, should Mr Thaçi not have the funds to appoint a second legal team, the appropriate course is to approach the Registrar with a request for legal aid.³⁸

20. As regards the Thaçi Defence's submissions on behalf of his Case 06 Co-Accused, the SPO contends that such matters are outside the purview of the Pre-Trial Judge in Case 12.³⁹

21. As regards the Thaçi Defence's submissions related to the principle of *res judicata*, the SPO objects to its relevance in the present instance, since, *inter alia*, Case 12 and Case 06 concern manifestly different issues and there has been no final judgment in Case 06.⁴⁰ The SPO also maintains that the requested admission of the obstruction material as evidence in Case 06 is not aimed at reaching adverse findings of fact against Mr Thaçi in respect of the alleged

³⁵ SPO Consolidated Response, paras 15-16.

³⁶ SPO Consolidated Response, para. 15.

³⁷ SPO Consolidated Response, para. 16.

³⁸ SPO Consolidated Response, para. 16.

³⁹ SPO Consolidated Response, para. 17.

⁴⁰ SPO Consolidated Response, para. 18.

witness interference, since any such findings would be outside the competence of Trial Panel II.⁴¹

22. The SPO submits that all relevant factors militate in favour of this case proceeding concurrently and jointly against all the Case 12 Accused.⁴² The SPO highlights that the Thaçi Defence does not make submissions on the factors relevant to assess the reasonableness of the length of the proceedings and whether severances would serve the administration of justice, while the Case 12 Co-Accused address them only to a limited extent.⁴³ The SPO points out that the Joint Motion is based entirely on the hypothetical assumption that the request for adjournment will be granted – potentially causing an unreasonable delay to the Case 12 Co-Accused – whereas, if the request is denied, the Joint Motion becomes moot.⁴⁴ With regard to the complexity of the case, the SPO contends that the anticipated evidence is limited and that the scope of the charges is factually and temporally limited and straightforward.⁴⁵ With regard to the conduct of the authorities and the Case 12 Accused, the SPO argues that the Case 12 Co-Accused do not offer a credible basis to seek severance.⁴⁶ With regard to what is at stake for the Case 12 Accused, the SPO maintains that their arguments are speculative and that Case 12 proceedings should proceed jointly without any undue or unreasonable delay.⁴⁷ The SPO lastly contends severance would not serve the administration of justice as: (i) two separate trials would result in extensive duplication of evidence in factual overlapping cases, to the inconvenience of witnesses, who would be forced to testify in two separate trials; and (ii) Mr Thaçi's inextricable involvement in all elements of the charges

⁴¹ SPO Consolidated Response, para. 19.

⁴² SPO Consolidated Response, paras 1, 23-28.

⁴³ SPO Consolidated Response, paras 23-24.

⁴⁴ SPO Consolidated Response, para. 24.

⁴⁵ SPO Consolidated Response, para. 25.

⁴⁶ SPO Consolidated Response, para. 26.

⁴⁷ SPO Consolidated Response, para. 27.

in Case 12 is such that an entire, almost identical trial would have to be run twice, consecutively, with all the legal, administrative, resource, and evidential complications that would entail.⁴⁸

D. THAÇI REPLY

23. In its Reply, the Thaçi Defence maintains its motion and reiterates many of its arguments raised in the Thaçi Motion.⁴⁹

24. The Thaçi Defence also replies that the SPO fails to grasp its argument as regards the need for Specialist Counsel familiar with Case 06 proceedings – in light of the fact that, unlike the Case 12 Co-Accused, Mr Thaçi is an Accused in both the present proceedings and Case 06, and the Thaçi Defence must face, as a result, parallel and intertwined litigation.⁵⁰

25. The Thaçi Defence maintains that Mr Thaçi is entitled to a counsel of his choosing and that “[a] delay of six to nine months, to avoid parallel trials, is not “relevant and sufficient grounds” to deny Mr Thaçi his fundamental right to counsel of his choosing.⁵¹

26. The Thaçi Defence further challenges the SPO’s assertion that “appropriate accommodations” could be made to ensure Mr Thaçi’s effective participation in both proceedings, arguing that the SPO has not proposed any such accommodations, and that, in fact, no such accommodations are possible.⁵²

27. The Thaçi Defence disputes the SPO’s assertion that the efficient administration of justice weighs against adjournment and severance, and maintains its submissions that issues of *res judicata* might arise in Case 12.⁵³ In

⁴⁸ SPO Consolidated Response, paras 3, 23, 28.

⁴⁹ See Thaçi Reply, paras 1, 4, 6, 8-12, 14-16, 18, 20, 25-26.

⁵⁰ Thaçi Reply, para. 9.

⁵¹ Thaçi Reply, paras 10-11.

⁵² Thaçi Reply, para. 13.

⁵³ Thaçi Reply, paras 18, 21-22.

this regard, the Thaçi Defence submits that, since the filing of the Thaçi Motion, [REDACTED],⁵⁴ and [REDACTED].⁵⁵ The Thaçi Defence contends that [REDACTED].⁵⁶ Thus, according to the Thaçi Defence, the preferable course is to hold the trials consecutively, so that deliberations in Case 12 occur once the outcome of Case 06 is known.⁵⁷

28. The Thaçi Defence additionally submits that, insofar as the SPO contends that, should severance be granted, the first panel's findings on the case against the Case 12 Co-Accused would bind the second panel on the case against Mr Thaçi, such an argument is misplaced: while *res judicata* operates where the parties in two proceedings are the same, there is otherwise no requirement that different panels reach consistent factual findings.⁵⁸

29. Lastly, the Thaçi Defence contends that the SPO overstates the disadvantages of severance, noting that any inconvenience to witnesses would likely be minimal, given their expected small number.⁵⁹

III. APPLICABLE LAW

30. Pursuant to Article 39(1) of the Law, the Pre-Trial Judge shall have the power to rule on any preliminary motions and make any necessary orders or decisions to ensure the case is prepared properly and expeditiously for trial.

31. Pursuant to Article 39(9) of the Law, upon application from or notice to the Parties, the Pre-Trial Judge (or Trial Panel if seized) may direct that there be joinder or severance in respect of charges against more than one Accused.

⁵⁴ Thaçi Reply, para. 19 referring to KSC-BC-2020-06, F03216, Trial Panel II, *Decision on Prosecution Motion for Admission of Obstruction Related Materials*, 29 May 2025, confidential.

⁵⁵ Thaçi Reply, para. 21 [REDACTED].

⁵⁶ Thaçi Reply, para. 21 [REDACTED].

⁵⁷ Thaçi Reply, para. 22.

⁵⁸ Thaçi Reply, para. 23.

⁵⁹ Thaçi Reply, para. 24.

32. Pursuant to Article 21(4)(c)-(e) of the Law, in the determination of any charge against the Accused pursuant to the Law, the Accused shall be entitled: (i) to have adequate time and facilities for the preparation of his or her defence and to communicate with Specialist Counsel of his or her own choosing; (ii) to be tried within a reasonable time; (iii) to be tried in his or her presence, and to defend himself or herself through Specialist Counsel of his own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have Specialist Counsel assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it.

33. Pursuant to Rule 89(2)(b) of the Rules, at any stage of the proceedings, a Panel, after hearing the Parties, may order that persons charged jointly be tried separately, in the interests of a fair and expeditious trial or to avoid a conflict of interests that may cause serious prejudice to an Accused.

34. 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.

35. Pursuant to Rule 97(1) of the Rules, the Accused may file preliminary motions before the Pre-Trial Judge in accordance with Article 39(1) of the Law, which (a) challenge the jurisdiction of the SC, (b) allege defects in the form of the indictment, or (c) seek severance of indictments pursuant to Rule 89(2) of the Rules.

IV. DISCUSSION

36. The Motions are essentially premised on the argument that, if the proceedings in Case 12 against Mr Thaçi and the Case 12 Co-Accused were to proceed to trial immediately, Case 12 and Case 06 would run concurrently, and,

thus, there is a risk that Mr Thaçi's right to a fair trial would be violated. To guard against such risk, the Motions contend that adjournment of the Case 12 trial until the close of the Case 06 trial as well as severance of the charges in the Amended Confirmed Indictment between Mr Thaçi and his Case 12 Co-Accused are necessary in order to safeguard the rights of the Case 12 Accused.

37. The Pre-Trial Judge notes that, pursuant to Article 39(1) of the Law, she may adjourn proceedings when such a measure is necessary to safeguard the rights of the accused, ensure the fairness and timely conduct of the proceedings, or maintain the proper administration of justice. Likewise, the Pre-Trial Judge notes that, pursuant to Article 39(9) of the Law and Rule 89(2) of the Rules, she is vested with discretionary powers to order that persons charged jointly be tried separately.⁶⁰ According to the first alternative provided in Rule 89(2)(b) of the Rules, the Pre-Trial Judge may order that the accused, charged jointly, be tried separately in the interests of a fair and expeditious trial. Thus, this decision rests on Article 39(1) and (9) and Rule 89(2)(b) of the Rules as its legal basis.

38. The Pre-Trial Judge further recalls that when analysing whether to try co-accused separately, she must assess, as part of the "interests of a fair and expeditious trial" limb within the meaning of Rule 89(2)(b) of the Rules, if the duration of criminal proceedings overall is reasonable. As established by the jurisprudence of the European Court of Human Rights ("ECtHR"), the reasonableness of the length of proceedings is to be determined in light of the circumstances of the case, which calls for an overall assessment, having regard to: (i) the complexity of the case; (ii) the applicant's conduct and that of the relevant administrative and judicial authorities; and (iii) what is at stake for the

⁶⁰ Similarly, KSC-BC-2023-10, F00452, Pre-Trial Judge, [Decision on Application for Severance](#) ("Case 10 Severance Decision"), 27 August 2024, public, para. 38.

applicant in the dispute.⁶¹ The Pre-Trial Judge also recalls that the right to be tried within a reasonable time under Article 21(4)(d) of the Law protects the accused against undue delay, and not against a justified or necessary delay in the proceedings.⁶²

39. The Pre-Trial Judge further considers that, in the exercise of her discretion to adjourn and/or sever a case, she must strike a fair balance between the need to ensure the proper administration of justice and respecting the rights of the accused to a fair and expeditious trial.⁶³ The Pre-Trial Judge underscores that, given that the present case involves five accused, the rights of Mr Taçi must be assessed in light of the same rights of his Case 12 Co-Accused.⁶⁴

40. Considering the two-fold nature of the Motions, namely the request for adjournment and severance, and given that the arguments put forward serve both remedies, the Pre-Trial Judge will proceed to analyse the arguments for the dual purpose of adjournment and severance.

A. CONCURRENT TRIALS BEFORE INTERNATIONAL TRIBUNALS

41. As regards the Taçi Defence's argument that concurrent trials against a single accused are unprecedented before international tribunals,⁶⁵ the Pre-Trial Judge notes, before all else, that the case law presented by the Taçi Defence

⁶¹ Similarly, [Case 10 Severance Decision](#), para. 41 and references therein.

⁶² Similarly, [Case 10 Severance Decision](#), para. 41 and references therein.

⁶³ Similarly, [Case 10 Severance Decision](#), para. 40 and references therein. The Pre-Trial Judge notes that in the ICTY case of *The Prosecutor v. Ratko Mladić*, cited by the Taçi Defence (Taçi Motion, para. 31), while Trial Chamber I considered as a factor against the severance of the case into two trials, the prejudice to the accused, as regards his ability to effectively participate in both proceedings and his right to a trial without undue delay, it likewise considered other "relevant and important" factors, such as rendering the trials less manageable and less efficient, and the risk of unduly burdening witnesses (ICTY, *The Prosecutor v. Ratko Mladić*, IT-09-92-PT, Trial Chamber I, [Decision on Consolidated Prosecution Motion to Sever the Indictment, to Conduct Separate Trials, and to Amend the Indictment](#), 13 October 2011, paras 31-38).

⁶⁴ Similarly, [Case 10 Severance Decision](#), para. 40 and references therein.

⁶⁵ See *supra* para. 10.

stands in contrast to its position to seek the adjournment of the present proceedings – which concern alleged offences against the administration of justice aimed at official proceedings before the Specialist Chambers (“SC”) – as opposed to the main case, i.e. Case 06.

42. As regards the cases of *The Prosecutor v. Jean-Pierre Bemba Gombo* and of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido* (“Bemba Contempt Case”) before the International Criminal Court (“ICC”), Trial Chamber III’s finding as regards the risk of parallel proceedings, cited by the *Thaçi Defence*,⁶⁶ was primarily based on the fact that material which resulted in the charges brought in the Bemba Contempt Case and any matters related to said material which might be central to those charges – should be considered by the chamber seized with that case and, thus, the competent chamber.⁶⁷ Likewise, in the case of *The Prosecutor v. Milan Simić* before the United Nations International Criminal Tribunal for the former Yugoslavia (“ICTY”), cited by the *Thaçi Defence*,⁶⁸ the Trial Chamber vacated the date for the start of the trial in the main case, in order to resolve the contempt allegations against the accused.⁶⁹ Similarly, in the ICTY case of *The Prosecutor v. Vojislav Šešelj*, proceedings in the main case were adjourned while issues of allegations of witness interference by the accused were disposed of by a separate chamber.⁷⁰ Proceedings in the main cases resumed following a request by the accused, in particular noting their time

⁶⁶ *Thaçi Motion*, para. 29.

⁶⁷ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-3029, Trial Chamber III, [Decision on “Prosecution’s Application to Submit Additional Evidence”](#), 2 April 2024, paras 26, 31.

⁶⁸ *Thaçi Motion*, para. 30.

⁶⁹ ICTY, *The Prosecutor v. Milan Simić*, IT-95-9-R77, Trial Chamber, [Judgement in the Matter of Contempt Allegations Against an Accused and his Counsel](#), 30 June 2000.

⁷⁰ ICTY, *The Prosecutor v. Šešelj*, IT-03-67-T, Trial Chamber III, [Decision on Prosecution Motion for Adjournment](#), 11 February 2009, with Annex (Dissenting Opinion of Judge Antonetti in Annex), pp. 3-4; IT-03-67-R77.2, Trial Chamber, [Public Edited Version of “Judgement on Allegations of Contempt” Issued on 24 July 2009](#), 24 July 2009, para. 1; IT-03-67-T, Trial Chamber III, [Annex 2 to Judgement Volume 1](#) (“Annex 2 to Judgement Volume 1”), 31 March 2016, para. 5.

spent in detention.⁷¹ Two subsequent contempt trials against the same accused took place during the main case, albeit after all witnesses had been heard in the main case.⁷²

43. Whichever conclusion the Parties wish to draw from the aforementioned case-law, it is clear that each case was decided on its own merits. As a consequence, and contrary to what the Thači Defence argues, international case-law does not suggest that trials should not be conducted in parallel as a matter of law. In the view of the Pre-Trial Judge, a decision to adjourn proceedings and/or sever a case is within the panel's discretion, as highlighted above, and depends on the specific circumstances of the case. Thus, the Pre-Trial Judge does not regard the Thači Defence's aforementioned precedents to be determinative for the questions before her, but will assess the specific circumstances of the case at hand.

44. In this light, the Pre-Trial Judge finds the Thači Defence's arguments without merit and will not consider them further in her adjudication of the Motions.

B. FAIR TRIAL RIGHTS

45. Before all else, the Pre-Trial Judge will not entertain fair trial considerations raised by the Thači Defence as regards his Case 06 Co-Accused,⁷³ since they do not fall within her competence. These issues may be raised before the

⁷¹ ICTY, *The Prosecutor v. Šešelj*, IT-03-67-T, Trial Chamber III, *Public Version of the "Consolidated Decision on Assignment of Counsel, Adjournment and Prosecution Motion for Additional Time with Separate Opinion of Presiding Judge Antonetti in Annex"*, 24 November 2009, paras 105-107.

⁷² ICTY, *The Prosecutor v. Šešelj*, IT-03-67.R77.3, Trial Chamber, [Public Redacted Version of "Judgement Issued on 31 October 2011"](#), 31 October 2011; IT-03-67.R77.4, Trial Chamber II, [Public Redacted Version of Judgement issued on 28 June 2012](#), 28 June 2012; [Annex 2 to Judgement Volume 1](#), paras 3-10.

⁷³ See *supra* para. 10.

appropriate panel. Thus, the Thaçi Defence's submissions on these issues are dismissed *in limine*.

46. According to the Thaçi Defence, should concurrent trials occur, the Accused's right to a fair trial – and more specifically, (i) his effective participation in the proceedings; (ii) his right to equality of arms; and (iii) his right to legal representation – may be seriously undermined.⁷⁴

47. The Pre-Trial Judges underlines, at the outset, that the aforementioned rights are fundamental guarantees enshrined in Article 21 of the Law.⁷⁵ They constitute cornerstones of the right to a fair trial and play a critical role in safeguarding the interests of the accused, ensuring the proper administration of justice, and upholding the integrity of judicial proceedings.

48. As regards effective participation and equality of arms, the Pre-Trial Judge pays heed, in the first place, to the fact that the charges in Case 12 and the material in support are limited in scope, when compared to the nature and scope of the charges⁷⁶ and the amount of evidence in Case 06.⁷⁷ More specifically, while Mr Thaçi is charged with eleven (11) counts in the Amended Confirmed Indictment, the charges cover the period from 26 June to 2 November 2023, the facts and conduct underlying those charges concern, *inter alia*, five visits to the

⁷⁴ See *supra* para. 10.

⁷⁵ For effective participation, see for instance KSC-CC-PR-2017-01, F00004, Constitutional Court, [*Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19\(5\) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office*](#), 26 April 2017, para. 126 and references therein; for equality of arms, see for instance KSC-CA-2022-01, F00114, Court of Appeals, [*Appeal Judgment*](#), 2 February 2023, para. 50 and references therein; for legal representation, see for instance *Dvorski v. Croatia* ("Dvorski Case"), no. 25703/11, [*Judgment*](#), 20 October 2015, para. 78, *Martin v. Estonia*, no. 35985/09, [*Judgment*](#), 30 May 2013, paras 90-93, *Elif Nazan Şeker v. Turkey*, no. 41954/10, [*Judgment*](#), 8 March 2022, para. 50).

⁷⁶ The Thaçi Defence actually acknowledges that the present case is considerably more confined in scope than Case 06, see Thaçi Motion, para. 25.

⁷⁷ The Thaçi Defence submits that in Case 06 it heard evidence over two years, including some 125 *viva voce* witnesses, and the SPO sought to admit the evidence of around 133 witnesses in writing. It also adds that the case record includes more than 3,160 filings. See Thaçi Motion, para. 21.

Accused at the SC Detention Facilities, i.e. on 2 July, 3 and 9 September, and 6 and 7 October 2023, and the transcripts of those visits, have been disclosed to the Accused for several months.⁷⁸ Also, the bulk of the evidence in this case derives directly from Mr Thaçi and his Case 12 Co-Accused, or from their electronic devices.

49. Second, the Pre-Trial Judge also takes note that the anticipated timeline of Case 12 remains at this time uncertain. Importantly, while pre-trial proceedings are moving forward expeditiously, a date for the transmission of this case to trial has yet to be set and, by the same token, a trial panel has yet to be appointed.⁷⁹ The Motions/arguments are thus assessed with regard to the present phase of the proceedings, namely the pre-trial phase.

50. The Pre-Trial Judge notes in this regard that, should resource- and time-intensive phases of the proceedings be scheduled to occur concurrently, appropriate measures can be adopted to accommodate parallel proceedings in a manner that safeguard Mr Thaçi's effective participation in his trials. These may include scheduling hearings with adequate intervals to allow meaningful preparation, granting extensions of time where necessary, adjourning proceedings for the purpose of preparation of the defence (Rule 123 of the Rules), and coordinating procedural timelines to avoid undue burden on Mr Thaçi or his Specialist Counsel or conflicting schedules. Such adjustments

⁷⁸ See Amended Confirmed Indictment.

⁷⁹ The Pre-Trial Judge also observes that, in Case 06, Trial Panel II has yet to rule on the motions pursuant to Rule 130 of the Rules, and Mr Thaçi and the Case 06 Co-Accused have yet to declare whether they will present a defence case, *see* Thaçi Motion, paras 22-24 (*see* KSC-BC-2020-06, F03232, Trial Panel II, [Revised Scheduling Order](#) ("Case 06 Revised Scheduling Order"), 5 June 2025, public, para. 12 (Trial Panel II announced that it would rule on the motions pursuant to Rule 130 of the Rules in the week of 14 July 2025); *see also* F03258, Thaçi and Case 06 Co-Accused Defence, *Joint Defence Request for a Variation of the Schedule*, 13 June 2025, public, paras 1, 2, 5 (the Thaçi and Case 06 Co-Accused Defence seek a variation of the time limit set in the Case 06 Revised Scheduling Order in order to submit a witness list and hold the Defence Preparation Conference in the week commencing on 18 August 2025, and indicate that any potential defence case is likely to be limited in size and scope and last approximately three months).

can be implemented while also mitigating any potential delays or prejudice to the other co-accused, thereby preserving the fairness and efficiency of the overall proceedings. Lastly, it is also noted that Mr Thaçi is represented in Case 12 by two Specialist Counsel, who have a dual appointment for Case 06 and Case 12, and who may organise the work, together with their team, accordingly.⁸⁰

51. Third, as regards the Thaçi Defence's argument that Mr Thaçi requires a Specialist Counsel familiar with Case 06, the Pre-Trial Judge notes that the Thaçi Defence does not point to specific issues that would need intimate knowledge of Case 06 in order to advise Mr Thaçi in Case 12, or that would entail complex coordination between Case 06 and Case 12. To have "an understanding of the Case 06 charges and evidence and the history of the proceedings"⁸¹ is perhaps helpful, but not a prerequisite for Specialist Counsel to represent Mr Thaçi in Case 12. If this were the case, none of the other Specialist Counsel would be adequately equipped to represent the Case 12 Co-Accused. In the view of the Pre-Trial Judge, and contrary to the Thaçi Defence's submission, [REDACTED]⁸² does not create an overlap of issues between the two cases.⁸³ Moreover, while recognising the additional efforts and attention required, in particular in relation to the upcoming presentation of defence evidence in Case 06,⁸⁴ the Pre-Trial Judge also observes that Specialist Counsel has nonetheless been able to effectively coordinate detention matters and requests for compassionate release.⁸⁵

⁸⁰ See also KSC-BC-2023-12, F00135, Pre-Trial Judge, [Decision on Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions](#) ("VTL Decision"), 24 January 2025, public, para. 19.

⁸¹ Thaçi Motion, para. 25.

⁸² Thaçi Reply, para. 19.

⁸³ See *infra* para. 57.

⁸⁴ See Thaçi Motion, para. 23.

⁸⁵ See, for instance, [REDACTED]; F00233/RED, Thaçi Defence, *Public Redacted Version of Urgent Thaçi Defence Request to Vary the Decision on Urgent Thaçi Defence Request for Temporary Release on*

52. Fourth, as regards the Thaçi Defence's argument that availability of Specialist Counsel is limited while the Case 06 trial is ongoing, the Pre-Trial Judge further emphasises that it is the responsibility of the Specialist Counsel to determine whether they are able to fulfil their duties and obligations in representing Mr Thaçi.⁸⁶ The Pre-Trial Judge also notes that the right to be represented by counsel of one's own choosing is not absolute and may be set aside when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice.⁸⁷

53. Fifth, as regards the Thaçi Defence's submission that Mr Thaçi is not indigent and therefore is not entitled to legal aid,⁸⁸ the Pre-Trial Judge notes that, pursuant to Regulation 6(1) of the Registry Practice Direction – Legal Aid Regulations, an indigent or partially indigent accused may be awarded legal aid.⁸⁹ The Pre-Trial Judge also underlines that financial matters pertaining to legal representation must first be directed to the Registrar.⁹⁰

54. The Pre-Trial Judge lastly recalls that she has previously highlighted that arguments of Mr Thaçi relating to the professional commitments of his Specialist Counsel or budgetary constraints (especially when Mr Thaçi is at liberty to request legal aid) cannot be considered at the expense of the Case 12

Compassionate Grounds (F00230), 2 April 2025 (original version filed on 20 March 2025), public, paras 1-2; F00223/RED, Thaçi Defence, *Public Redacted Version of Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 1 April 2025 (original version filed on 17 March 2025), public, para. 2.

⁸⁶ See KSC-BD-07-Rev1, Registrar, [Registry Practice Direction: Code of Professional Conduct – for Counsel and Prosecutors Before the Kosovo Specialist Chambers](#), public, 28 April 2021, Articles 22, 23(b), 24.

⁸⁷ ECtHR, *Meftah and Others v. France*, nos. 32911/96, 35237/97 and 34595/97, [Judgment](#), 26 July 2002, para. 45; [Dvorski](#) Case, para. 79.

⁸⁸ See Thaçi Motion, para. 46.

⁸⁹ KSC-BD-25-Rev1, Registrar, [Registry Practice Direction – Legal Aid Regulations](#) ("KSC Legal Aid Regulations"), 22 February 2024, public, with Annexes A-C, public.

⁹⁰ Article 34(1) and (7) of the Law; Rule 23(6) of the Rules; [KSC Legal Aid Regulations](#). See also [VTL Decision](#), para. 19.

Co-Accused and the present proceedings.⁹¹ As such, the Pre-Trial Judge finds these arguments unpersuasive.

55. In this light, the Pre-Trial Judge finds that the Thaçi Defence fails to show that continuing with Case 12 at this time would impinge upon Mr Thaçi's right to a fair trial. Accordingly, the Pre-Trial Judge finds the Thaçi Defence's arguments without merit and will thus not consider them further in her adjudication of the Motions.

C. OVERLAPPING FINDINGS

56. The Pre-Trial Judge notes the submissions of the Thaçi Defence that the continuation of Case 12 proceedings may potentially engage the principle of *res judicata* or create legal uncertainty. According to the Thaçi Defence, Trial Panel II may make factual findings on evidence as regards Mr Thaçi's alleged criminal conduct, and, more specifically, that: "Mr Thaçi discussed with and/or disclosed to unauthorised third parties confidential SPO witness-related material", and such findings would be binding on the future Trial Panel in Case 12.⁹² The Thaçi Defence also posits that Trial Panel II is the panel best placed to rule on any question of whether Case 06 witness testimony did change due to alleged interference, given its high level of familiarity with the details in that evidence and how it is relevant to the Case 06 charges.⁹³

57. Before addressing the Thaçi Defence's arguments, the Pre-Trial Judge recalls her findings in the Decision on the Thaçi Defence Preliminary Motion on Jurisdiction asserting her competence in the present proceedings over that of Trial Panel II in Case 06: "Trial Panel II's authority over the proceedings in Case 06 cannot justify extending its powers over proceedings in a different case

⁹¹ See [VTL Decision](#), para. 19.

⁹² See *supra* paras 11, 27.

⁹³ See *supra* para. 11.

(here, the present one). Doing so would encroach on the powers and responsibilities of the SPO and the Pre-Trial Judge, as delineated by the Law and the Rules”.⁹⁴

58. Turning to the arguments at hand, the Pre-Trial Judge finds that, contrary to the Taçi Defence’s submissions, Trial Panel II is not, and the future Trial Panel in Case 12 will not, be seized of the same issues, thereby potentially engaging the principle of *res judicata* or creating legal uncertainty.⁹⁵ Indeed, as held previously, like any case on alleged offences against the administration of justice, the present one relates to official proceedings before the Specialist Chambers, namely the Case 06 proceedings. However, this does not mean that the present case and Case 06 are the “same case”.⁹⁶ Notably, they involve different accused persons, different alleged offences/crimes and a different temporal scope.⁹⁷ Any findings as to the charges in the two cases are entirely different and panels conduct their proceedings (and assessments) independently of each other.⁹⁸ The Pre-Trial Judge has highlighted several times

⁹⁴ [Jurisdiction Decision](#), para. 32.

⁹⁵ See ECtHR, *Şamat v. Turkey*, no. 29115/07, [Judgment](#), 21 January 2020, paras 53-54; *Brumărescu v. Romania*, no. 28342/95, [Judgment](#), 28 October 1999, para. 61, (“[o]ne of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question”); *Ryabykh v. Russia*, no. 52854/99, [Judgment](#), 24 July 2003, para. 52, (“Legal certainty presupposes respect for the principle of *res judicata* [...], that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts’ power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination”).

⁹⁶ See also [Jurisdiction Decision](#), para. 32.

⁹⁷ See also [Jurisdiction Decision](#), para. 32.

⁹⁸ See also [Jurisdiction Decision](#), para. 34. A related argument as to conflicting findings on the same matter by the Pre-Trial Judge Panel and Trial Panel II was equally rejected by the Pre-Trial Judge: “The Taçi Defence’s speculation that Trial Panel II’s findings in Case 06 will become *res judicata* and render the present proceedings moot ignores the fact that any findings as to the charges in the two cases are entirely different and that Panels conduct their proceedings (and assessments) independently of each other. Notably, Trial Panel II will conduct its credibility assessments of the witnesses in Case 06 and determine any impact of the alleged (attempted) interference in its own right and based on the evidence before it” ([Jurisdiction Decision](#), para. 34).

the independent mandate of panels.⁹⁹ In fact, the core of the Case 12 charges does not concern the allegation of witness interference itself, but rather an attempted obstruction intended to bring about such interference.

59. Furthermore, contrary to the Thaçi Defence's assertion, the Pre-Trial Judge finds that [REDACTED].¹⁰⁰ [REDACTED].¹⁰¹ [REDACTED].

60. In this light, the Pre-Trial Judge finds that the Thaçi Defence's arguments on the risk of *res judicata* or legal uncertainty are without merit and will thus not consider them further in her adjudication of the Motions.

D. UNDUE DELAY

61. The Pre-Trial Judge observes that, according to Mr Thaçi and the Case 12 Co-Accused, the risk of unduly delaying the Case 12 proceedings would arise as a result of an adjournment of the trial.¹⁰² The Pre-Trial Judge will thus conduct her assessment of the reasonableness of the length of the proceedings, according to the criteria set out above,¹⁰³ under this lens.

62. *Complexity of the case.* The Pre-Trial Judge agrees with the Smakaj, Kilaj, Fazliu, and Kuçi Defence that Case 12 is of relative complexity considering that: (i) it involves five accused charged with the offences of attempting to obstruct official persons in performing official duties (Mr Thaçi: Counts 1-3, Mr Smakaj:

⁹⁹ See, for example, KSC-BC-2023-12, F00165, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi*, 7 February 2025, public, para. 21; F00173, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information and Witness Contacts*, 11 February 2025, public, para. 30 (a public redacted version was filed on 11 March 2025); F00165, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi*, 7 February 2025, public, para. 21; F00235, Pre-Trial Judge, *Decision on Urgent Thaçi Defence Request to amend Decision F00230*, 21 March 2025, confidential and *ex parte*, para. 13 ("Lastly, the Pre-Trial Judge reiterates that rulings or findings made by Trial Panel II in the context of Case 06 are not binding or determinative on the Pre-Trial Judge, who takes her decisions independently, informed by the specific circumstances of this present case"). A public redacted version was filed on 14 April 2025.

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² See *supra* paras 12-15.

¹⁰³ See *supra* para. 38.

Count 12, Mr Kilaj: Count 14, and Mr Fazliu: Count 16), contempt of court (Mr Thaçi: Counts 8-11, Mr Smakaj: Count 13, Mr Kilaj: Count 15, Mr Fazliu: Count 17, and Mr Kuçi: Counts 18-19), and violation of the secrecy of the proceedings (Mr Thaçi: Counts 4-7), and pursuant to various modes of liability, in relation to conduct between, between 26 June and 2 November 2023 (Mr Thaçi), 9 and 30 September 2023 (Mr Smakaj), 6 October and 2 November 2023 (Mr Kilaj), 26 June and 18 July 2023 (Mr Fazliu), and 1 and 13 September 2023 and on or about 12 April 2023 (Mr Kuçi); (ii) the counts carry a potential sentence of up to five years of imprisonment (as regards the offence of obstruction pursuant to Article 401(2), (3) and (5) of the KCC), six months of imprisonment (as regards the offence of contempt of court pursuant to Article 393 of the KCC), one year and three years of imprisonment (as regards the offence of violation of the secrecy of the proceedings pursuant to Article 392(1)-(2) of the KCC);¹⁰⁴ and (iii) the evidence in this case includes live witnesses (albeit a limited number thereof),¹⁰⁵ documentary evidence, audio recordings, as well as evidence recovered from electronic devices, such as telephone mobiles, thereby increasing the investigation's complexity.¹⁰⁶

63. *Conduct of the relevant authorities.* The Pre-Trial Judge notes that the Case 12 Co-Accused do not take issue with the conduct of the SPO or the length of the present proceedings to date.¹⁰⁷ The Pre-Trial Judge recalls in this regard her previous finding that proceedings in Case 12 move forward expeditiously.¹⁰⁸

¹⁰⁴ See Confirmation Decision, paras 50, 60, 71, 85.

¹⁰⁵ KSC-BC-2023-12, F00079/RED, Specialist Prosecutor, *Public Redacted Version of 'Prosecution Submissions for First Status Conference'*, 16 December 2024 (original version was filed on 12 December 2024), public, para. 11.

¹⁰⁶ See *supra* para. 15; KSC-BC-2023-12, F00079/RED, Specialist Prosecutor, *Public Redacted Version of 'Prosecution Submissions for First Status Conference'*, 16 December 2024 (original version was filed on 12 December 2024), public, paras 8-11.

¹⁰⁷ Joint Motion, para. 17.

¹⁰⁸ See for instance KSC-BC-2023-12, F00325, Pre-Trial Judge, *Third Decision on Review of Detention of Hashim Thaçi*, 5 June 2025, public, para. 11.

64. *Conduct of the accused.* The Pre-Trial Judge notes that the Thaçi Defence is seeking a remedy (adjournment of the Case 12 trial) that is available to him, and the Case 12 Co-Accused support his request.¹⁰⁹ The Pre-Trial Judge recalls in this respect that the right to be tried within a reasonable time under Article 21(4)(d) of the Law protects the accused against undue delay, and not against a justified or necessary delay in the proceedings.¹¹⁰

65. *What is at stake for the accused.* The Pre-Trial Judge takes note of the submissions of the Smakaj, Kilaj, Fazliu, and Kuçi Defence as regards the personal circumstances of the Case 12 Co-Accused and the fact that they remain in pre-trial detention or under strict conditional release.¹¹¹

66. The Pre-Trial Judge observes that in the jurisprudence of the ECtHR, persons held in detention pending trial are entitled to “special diligence” on the part of the competent authorities. The Pre-Trial Judge observes in this context that the length of the proceedings may be deemed unreasonable where there are “protracted periods of inactivity” resulting from a lack of diligence.¹¹²

67. The Pre-Trial Judge notes that the Smakaj, Kilaj, Fazliu, and Kuçi Defence do not raise in the Joint Motion lack of diligence as an issue.¹¹³ At any rate, the Pre-Trial Judge finds that, although an adjournment might impact the length of the proceedings, it would not, in itself, constitute a “protracted period of inactivity” attributable to a lack of diligence. The Pre-Trial Judge further recalls that, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, detention shall be reviewed every two months or as soon as a change in circumstances

¹⁰⁹ See *supra* para. 15. See also Joint Motion, para. 17.

¹¹⁰ See *supra* para. 38. See also KSC-BC-2020-06, IA028/F00011/RED, Court of Appeals, *Public Redacted Version of Decision on Thaçi, Selimi and Krasniqi Appeal against Oral Order on Trial Panel Questioning*, 4 July 2023, public, para. 51.

¹¹¹ See *supra* para. 15.

¹¹² Similarly, [Case 10 Severance Decision](#), para. 54 referring to ECtHR, *Abdoella v. Netherlands* (“Abdoella Case”), no. 12728/87, Judgment, 25 November 1992, para. 24.

¹¹³ See Joint Motion, para. 21. See also *supra* para. 63.

arises,¹¹⁴ and therefore the Smakaj, Kilaj, and Fazliu Defence have the opportunity to challenge the reasonableness of Messrs Smakaj, Kilaj, Fazliu, and Kuçi's pre-trial detention through that avenue. Likewise, the Kuçi Defence may challenge the conditions of release of Mr Kuçi.

68. Accordingly, the Pre-Trial Judge considers that, while adjournment would impact the length of the proceedings, she is not convinced that it would amount to "undue delay".

69. Lastly, to the extent that the Thaçi Defence contends that, should adjournment be denied, the trial proceedings in Case 12 will be significantly slowed down, also to the detriment of his Case 12 Co-Accused,¹¹⁵ the Pre-Trial Judge finds that such argument is premature at this stage of the proceedings.¹¹⁶

70. In this light, the Pre-Trial Judge finds the Thaçi Defence's arguments without merit and will not consider them further in her adjudication of the Motions.

E. ADMINISTRATION OF JUSTICE CONSIDERATIONS

71. The Pre-Trial Judge recalls that, in her assessment as to whether adjournment and severance are warranted, the rights of the accused must be balanced against the need to ensure the proper administration of justice.¹¹⁷

72. In this regard, the Pre-Trial Judge first recalls that Mr Thaçi and his Case 12 Co-Accused are charged with the same offences, namely attempted obstruction of official persons in performing official duties and/or contempt of court (Articles 393 and 401 (2)-(3) and (5) of the 2019 Kosovo Criminal Code, Law No.

¹¹⁴ Rule 56(2) of the Rules. Similarly, [Case 10 Severance Decision](#), para. 54 referring to *Abdoella* Case, para. 24.

¹¹⁵ See Thaçi Motion, paras 2, 39.

¹¹⁶ See *supra* para. 49.

¹¹⁷ See *supra* para. 39.

06/L-074), based on the same events.¹¹⁸ More specifically, the Amended Confirmed Indictment stipulates that Mr Thaçi individually and by common action in groups he belonged to – namely the Fazliu group, Smakaj group, and Kilaj 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 Case 06 proceedings.¹¹⁹ The Amended Confirmed Indictment further stipulates, following a visit to Mr Thaçi at the SC Detention Facilities, Mr Kuçi committed the offence of contempt of court by, *inter alia*, violating court orders.¹²⁰ Importantly, the Case 12 charges are all rooted in the same alleged course of conduct by Mr Thaçi – characterised as the leader of each group and main beneficiary of the obstruction efforts – which serves as an unifying basis across the entire case and highlights the factual interdependence of the allegations. In the view of the Pre-Trial Judge, this strongly militates for Mr Thaçi and his Case 12 Co-Accused to be tried jointly. The Pre-Trial Judge notes in this regard that the case-law cited by the Thaçi Defence to support severance is inapposite since in those cases, the reason for prosecuting the co-perpetrators separately for similar conduct was due to the various accused evading arrest over time, a circumstance that does not apply here.¹²¹

73. The Pre-Trial also takes note that, as argued by the SPO, should severance be ordered, an entire, almost identical trial would have to be run twice. The Pre-Trial Judge further takes note that separate trials would duplicate the evidence and related procedural decisions, and cause inconvenience to any witness who would be required to testify in two separate trials. The Pre-Trial

¹¹⁸ See Amended Confirmed Decision, paras 46-50.

¹¹⁹ Amended Confirmed Indictment, para. 23.

¹²⁰ Amended Confirmed Indictment, paras 13-15, 38, 41.

¹²¹ See Thaçi Motion, para. 81; SPO Consolidated Response, para. 26.

Judge lastly notes that separate trials would inevitably increase judicial time and resources

74. In the view of the Pre-Trial Judge, the above considerations militate against both adjournment and severance. Accordingly, the Pre-Trial Judge finds the Thaçi Defence's arguments without merit and will thus not consider them further in her adjudication of the Motions.

F. CONCLUSION

75. Having considered all of the above circumstances and factors as a whole, the Pre-Trial Judge finds that the Thaçi Defence, Smakaj Defence, Kilaj Defence, Fazliu Defence, and Kuçi Defence have failed to demonstrate that, at this juncture, adjournment and/or severance are required in the interest of a fair and expeditious trial and are further compatible with the proper administration of justice.

V. VARIATION OF TIME LIMITS

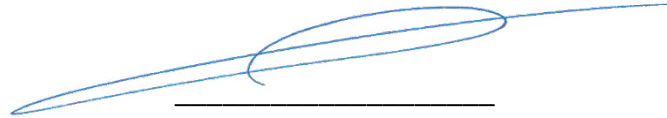
76. In light of the upcoming summer judicial recess, starting on Monday, 28 July 2025,¹²² the Pre-Trial Judge considers it appropriate to vary the time limit for responses and replies to any requests for certification to appeal the present decision, should the Parties wish to do so, in order to enable the Pre-Trial Judge to rule on any such requests before the summer judicial recess. Accordingly, pursuant to Rule 9(5)(a) of the Rules, responses to any requests under Article 45(2) of the Law and Rules 77 and 97(3) of the Rules may be made by no later than Wednesday, 16 July 2025, and replies may be made by no later than Monday, 21 July 2025.

¹²² KSCPR-2024, F00002, President of the Specialist Chambers, [Judicial Recess Periods for 2025](#), 14 October 2024, public.

VI. DISPOSITION

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

- a) **REJECTS** the Thaçi Motion;
- b) **REJECTS** the Joint Motion;
- c) **ORDERS** the Thaçi Defence to file, by no later than Monday, 7 July 2025, a confidential redacted version of the Thaçi Reply (F00332); and
- d) **DECIDES** to vary the time limit for responses and replies to requests for certification to appeal the present decision, if any, as specified in paragraph 76 of the present decision.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Monday, 30 June 2025

At The Hague, the Netherlands.