

In: KSC-BC-2023-12

Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 2 July 2025

Language: English

Classification: Public

Thaçi Defence Request for Certification to Appeal “Decision on Preliminary Motions Alleging Defects in the Indictment”

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I. INTRODUCTION

1. On 8 May 2025, the Defence for Mr Hashim Thaçi (“Defence”) filed a preliminary motion (“Defence Motion”) which submitted that the Case 12 indictment (“Indictment”) is defective.¹ On 24 June 2025, the Pre-Trial Judge issued her “Decision on the Preliminary Motions Alleging Defects in the Indictment (“Impugned Decision”).²
2. The Defence requests leave to appeal the Impugned Decision pursuant to Article 45(2) of the Law³ and Rules 77(1) and 97(3).⁴

II. APPLICABLE LAW

3. Article 45(2) of the Law and Rule 97(3) provide that appeal of any decision on a preliminary motion, save those under Rule 97(1)(a), are subject to the certification of the judge or panel which issued the impugned decision.
4. Pursuant to Article 45(2) of the Law and Rule 77(2), a Judge or Trial Panel shall grant certification if: (i) the matter raised by the party is an “appealable issue”; (ii) the issue would significantly affect either (a) the fair and expeditious conduct of the proceedings, or (b) the outcome of the trial; and (ii) immediate resolution by the Court of Appeals Panel may materially advance the proceedings (“Certification Test”).⁵

¹ KSC-BC-2023-12/F00288, [Thaçi Defence Motion on Defects in the Indictment](#), 8 May 2025, Public.

² KSC-BC-2023-12/F00347, Pre-Trial Judge, [Decision on Preliminary Motions Alleging Defects in the Indictment](#), 24 June 2025, public.

³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (“Law”)

⁴ Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3, 2 June 2020 (“Rules”), Rules 77(1) and 97(3). All references to “Rule” or “Rules” herein refer to the Rules, unless otherwise specified.

⁵ KSC-BC-2020-07/F00423, *Specialist Prosecutor v Gucati and Haradinaj*, Trial Panel II, [Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect](#), 8 November 2021, public (“Case 07 Decision on Leave to Appeal”), paras 11–12; 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 (“Decision of 30 January 2025”), para. 16.

5. The applicable law concerning the Certification Test has been comprehensively laid out by the Pre-Trial Judge in a prior decision in this case.⁶

III. SUBMISSIONS

A. APPEALABLE ISSUE: THE PRE-TRIAL JUDGE ERRED IN CONSIDERING THAT THE AN ATTEMPT CHARGE REQUIRES FEWER PARTICULARS THAN A COMMISSION CHARGE

6. The Defence Motion was focused on the Counts 1 to 3 of the Indictment, which charge Mr Thaçi under Article 401(2) of the Kosovo Criminal Code (“KCC”).
7. These counts concern the offence of obstruction or attempted obstruction of official persons in performing official duties by participating in the common action of a group. In the earlier indictment proposed by the SPO, Mr Thaçi was charged with actual obstruction under Article 401(2) of the KCC.⁷ In her initial decision confirming the indictment, the Pre-Trial Judge modified the charges to reflect *attempted* obstruction.⁸
8. The Defence Motion argued several respects in which the Indictment failed to provide sufficient particulars regarding the obstruction which Mr Thaçi is said to have attempted. Specifically, the Defence Motion argued that the Indictment fails to articulate (i) the official persons who were to be the victims of the obstruction; (ii) the official duties of those persons which would have been obstructed; (iii) the mechanism by which alleged efforts to influence witnesses would have caused obstruction; and (iv) the common action which obstruction is said to have been attempted.

⁶ [Decision of 30 January 2025](#), paras. 17–22. See also [Case 07 Decision on Leave to Appeal](#), paras 13–21.

⁷ KSC-BC-2023-12/F00028/RED/A02/RED, SPO, [Public redacted version of ‘ANNEX 2’ to Submission of Further amended Indictment for confirmation](#), 12 November 2024 (public redacted version 4 February 2025), public, paras 9, 38, 50.

⁸ KSC-BC-2023-12/F00036, [Public Redacted Version of Decision on the Confirmation of the Indictment](#), 29 November 2024 (public redacted version 12 February 2025), public, paras 189-194 (“Initial Confirmation Decision”).

9. The Pre-Trial Judge rejected all of these arguments. Throughout, she repeatedly emphasized that Mr Thaçi is not charged with *committing* obstruction, but rather with *attempted* obstruction.⁹ This fact was essential in her decision. The Pre-Trial Judge considered that Mr Thaçi's charging with *attempted* obstruction (rather than actual obstruction) meant that on the matters identified by the Defence, it was not necessary for the Indictment to provide more particulars.
10. However, the Defence is not aware of any authority in international criminal law which treats a charge of attempt as requiring a lower level of particularisation in an indictment than a charge of commission. As referenced in the Impugned Decision, case law establishes that one of the factors affecting the level of detail required in an indictment is the mode of liability which is charged.¹⁰ However, this is most generally linked to the principle that the level of specificity required from an indictment will increase proportionally to directness of the accused person's alleged involvement with the crimes.¹¹ Thus, where joint criminal enterprise or command responsibility is used, and particularly where the crimes charged are large scale in nature, it is accepted that "a lesser degree of specificity" may be provided in an indictment.¹² However, precisely the converse logic applies in respect of this case. Mr Thaçi is accused of having *himself* attempted to obstruct public officials. The mode of liability is not such as involves a great distance and multiple intervening actors between the accused and the crimes.
11. Secondly, as a matter of principle, it is not clear why the charge being one of attempt would reduce the level of particularity required. The Pre-Trial Judge has ruled that an attempt occurs when a perpetrator "has intentionally begun to

⁹ Impugned Decision, paras 48, 51, 55.

¹⁰ Impugned Decision, para. 34; *Prosecutor v Thaçi et al.*, [Court of Appeals Panel, Public Redacted Version of Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment](#), 22 August 2022, public, paras 73, 109.

¹¹ *Prosecutor v Thaçi et al.*, [Court of Appeals Panel, Public Redacted Version of Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment](#), 22 August 2022, public, paras 73.

¹² *Ibid.*

execute the offence by fulfilling one or more of the material elements of the offence”.¹³ It might be expected that those elements of the offence which were executed should be particularised as precisely as in a charge based on commission. More significantly still, the accused must have intended the actual commission of the offence. In order to demonstrate that this mental element was fulfilled, it is necessary to know the contours of what the offence would have been if it had been successfully carried out. By way of analogy: if an accused is charged with attempted murder, it will be necessary for the indictment to particularise the victim and the means which were to be used, since it will need to be demonstrated that the accused intended to kill the victim through those means.

12. Accordingly, the Defence submits that the Pre-Trial Judge erred by treating an attempt charge as requiring lesser particulars than a charge of commission (“the Issue”).

B. SIGNIFICANT EFFECT ON THE FAIR AND EXPEDITIOUS CONDUCT OF PROCEEDINGS OR THE OUTCOME OF THE TRIAL

13. Mr *Thaçi* has a fundamental right to be properly informed of the charges against him. This right is protected not only under the KSC’s texts (in Articles 21(4) and 38(4) of the KSC Law and Rule 86(3) of the Rules) but is explicitly articulated by Article 6(3)(a) of the European Convention on Human Rights.
14. If, as the Defence submits, the Indictment contains insufficient particulars regarding the attempted obstruction charges, this undermines the fairness of all proceedings based on *those* charges. It leaves Mr *Thaçi* and the Defence unable to answer the charges as it is not clear what is alleged. This is therefore an issue which fundamentally affects the fairness of the proceedings.
15. Moreover, proper pleading of the Indictment also ensures the expeditious conduct of the proceedings. If charges are sufficiently precise, it is a simple matter for the

¹³ [Initial Confirmation Decision](#), para. 107.

parties to identify the evidence required to address them. In contrast, where charges are overly vague, an overly wide range of evidence may be introduced unnecessarily, slowing proceedings. In the same way, a well-defined Indictment makes Defence case preparation more efficient, by enabling more focused work, for example on disclosure review, investigations, and legal analysis. A clearly defined Indictment would therefore expedite Defence preparations for trial.

16. The Issue is therefore one which has a significant effect on both the fairness and the expeditious conduct of the proceedings.

C. IMMEDIATE RESOLUTION WOULD MATERIALLY ADVANCE PROCEEDINGS

17. If the Issue is not certified by the Pre-Trial Judge, it is almost certain that it will arise again before the Trial Panel assigned to oversee Case 12, and in the event of a conviction will form part of a final appeal. If that occurs, and an appeal ruling determines that the Indictment was defective, the impact will be significant. A final appeal ruling that the Indictment was defective may invalidate a conviction. A ruling by the Trial Panel that the Indictment was defective would likely cause significant delays to the trial as the Defence would need to be supplied with further particulars at that point, and given sufficient time to prepare in light of them.
18. More generally, as set out above, a properly particularised Indictment would improve the expeditiousness of the proceedings. The earlier that this question is addressed, the sooner that effect will be seen.
19. For these reasons, immediate resolution of the Issue would materially advance the proceedings.
20. The Defence therefore submits that all requirements of the Certification Test are satisfied in respect of the identified Issue.

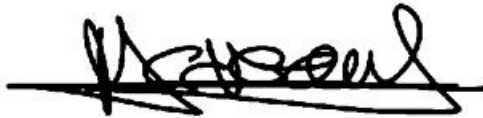
IV. RELIEF SOUGHT

21. Accordingly, the Defence requests that the Pre-Trial Judge:

CERTIFY the issue for appeal pursuant to Rule 77.

[Word count: 1,629 words]

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sophie Menegon', written over a horizontal line.

Sophie Menegon

Counsel for Hashim Thaçi

2 July 2025

Paris, France