



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**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 Prosecutor's Office

**Date:** 14 July 2025

**Language:** English

**Classification:** Public

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**Consolidated Prosecution response to requests for certification to appeal decision  
on alleged defects in the form of the indictment**

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## I. INTRODUCTION

1. The Requests<sup>1</sup> for leave to appeal the Decision<sup>2</sup> on alleged defects in the form of the Indictment<sup>3</sup> should be rejected because none of the three (3) issues raised meets the criteria for certification under Article 45 of the Law<sup>4</sup> and Rule 77 of the Rules.<sup>5</sup> Rather, the Requests misrepresent the Decision and merely express disagreement with the reasoning of the Pre-Trial Judge.

## II. SUBMISSIONS

### A. THE ISSUES ARE NOT APPEALABLE

#### *(i) The Thaçi Request<sup>6</sup>*

2. In claiming that the Pre-Trial Judge found fewer particulars to be required for attempt than commission, THAÇI misrepresents the Decision. No such finding was made. Rather, the Decision correctly reflects: (i) the well-established principle that the particulars required must be assessed *in concreto* and on a case-by-case basis;<sup>7</sup> and (ii) the axiomatic fact that where elements of an offence are unfulfilled, there may not be

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<sup>1</sup> Thaçi Defence Request for Certification to Appeal “Decision on Preliminary Motions Alleging Defects in the Indictment”, KSC-BC-2023-12/F00358, 2 July 2025 (‘Thaçi Request’); Fazliu Defence Request for Certification to Appeal the Decision on Preliminary Motions Alleging Defects in the Indictment, KSC-BC-2023-12/F00359, 2 July 2025 (‘Fazliu Request’). Collectively, the Thaçi Request and the Fazliu Request will be referred to as the ‘Requests’.

<sup>2</sup> Decision on Preliminary Motions Alleging Defects in the Indictment, KSC-BC-2023-12/F00347, 24 June 2025 (‘Decision’).

<sup>3</sup> Public Redacted Amended Confirmed Indictment, KSC-BC-2023-12/F00264/A02, 16 April 2025 (‘Indictment’).

<sup>4</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (‘Law’). All references to ‘Article(s)’ refer to articles of the Law, unless otherwise specified.

<sup>5</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (‘KSC’), KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’). All references to ‘Rule(s)’ refer to the Rules, unless otherwise specified.

<sup>6</sup> Thaçi Request, KSC-BC-2023-12/F00358, Section III(A): ‘THE PRE-TRIAL JUDGE ERRED IN CONSIDERING THAT THE AN (sic) ATTEMPT CHARGE REQUIRES FEWER PARTICULARS THAN A COMMISSION CHARGE’.

<sup>7</sup> See Decision, KSC-BC-2023-12/F00347, para.34.

particulars or facts relating to such unfulfilled elements available. The Decision properly analysed what is required for the particular charges and relevant underlying facts in this case – which, as correctly noted by the Pre-Trial Judge, is *inter alia* alleging a pattern of conduct aimed at obstruction, rather than discrete incidents or actual obstruction.

3. Separately, it is unclear what the purpose of THAÇI's submissions on intent are,<sup>8</sup> noting that he had not previously challenged particulars in the Indictment relating to intent.<sup>9</sup> In any event, the analogy THAÇI attempts to draw is completely inapposite to the particulars he is seeking. Both the contours and means of the attempted crime – manipulating the testimony of witnesses before the KSC – are very clearly pled.<sup>10</sup> What the Pre-Trial Judge found unnecessary was a further explanation of the myriad ways manipulated witness testimony could have obstructed KSC/SPO officials in the performance of their duties.<sup>11</sup> In the terms of THAÇI's own analogy, he is not merely seeking to know that a gun was the intended means of killing, but rather an explanation of the various ways in which the gun could have killed the victim had the crime been completed.

4. In sum, the Thaçi Request fails to articulate an appealable issue. Rather, THAÇI misrepresents the record, merely expresses his disagreement with the findings of the Pre-Trial Judge, and does not identify – must less substantiate – any discernible error.

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<sup>8</sup> Thaçi Request, KSC-BC-2023-12/F00358, para.11.

<sup>9</sup> See generally Thaçi Defence Motion on Defects in the Indictment, KSC-BC-2023-12/F00288. See also Decision, KSC-BC-2023-12/F00347, paras 9-13.

<sup>10</sup> Indictment, paras 7, 9, 13-14, 16-17, 21. See also Decision, KSC-BC-2023-12/F00347, para.48.

<sup>11</sup> Decision, KSC-BC-2023-12/F00347, para.55.

(ii) *The first issue of the Fazliu Request*<sup>12</sup>

5. As a preliminary matter, it is noted that the first issue put forward by FAZLIU arises in a portion of the Decision addressing alleged pleading errors raised by the THAÇI Defence. The quoted sentence<sup>13</sup> formed no part of the reasoning addressing the issues FAZLIU had raised.<sup>14</sup> The mere fact that it happens to be in the same decision – because a consolidated decision was issued – does not make it appealable by him. The issue could be dismissed on this basis alone.

6. However, the first issue also misreads, and merely disagrees with, the Decision. Although FAZLIU now attempts to conflate issues and adjust his pleading,<sup>15</sup> as the Pre-Trial Judge correctly identified, what FAZLIU is in fact claiming is not a pleading issue at all – rather, he is challenging the sufficiency of his pleaded conduct to constitute a crime. This is readily apparent from his claim that, if the potential to obstruct does not exist, the facts ‘cannot sustain a charge of attempt’.<sup>16</sup> As correctly held in the Decision, this is a matter for trial.<sup>17</sup> As also set out in the Decision, FAZLIU’s conduct – including the 2 July 2023 meeting in which he conspired with THAÇI to manipulate witness testimony before the KSC – is clearly set out in the Indictment.<sup>18</sup>

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<sup>12</sup> Fazliu Request, KSC-BC-2023-12/F00359, para.2(i): ‘whether the Pre-Trial Judge erred in law by concluding that, because the offence charged is attempted obstruction, the SPO is relieved from specifying in the Indictment how the Accused’s conduct *could* prevent or impede the SC/SPO officials in their duties’.

<sup>13</sup> Fazliu Request, KSC-BC-2023-12/F00359, para.13, quoting Decision, KSC-BC-2023-12/F00347, para.55.

<sup>14</sup> As FAZLIU himself concedes, the finding he quotes is not ‘erroneous’ (Fazliu Request, KSC-BC-2023-12/F00359, para.13, quoting Decision, KSC-BC-2023-12/F00347, para.55).

<sup>15</sup> What the Pre-Trial Judge was addressing in the Decision were submissions from FAZLIU seeking additional particulars of the meeting and contacts between FAZLIU and Witness 1, and an explanation of how the conduct fell short of full obstruction (Decision, KSC-BC-2023-12/F00347, paras 15, 17). Relying on portions of the Decision unrelated to his pleadings, FAZLIU now attempts to convert this into an explanation of how his actions could not have amounted to the charged offence.

<sup>16</sup> Fazliu Request, KSC-BC-2023-12/F00359, para.13.

<sup>17</sup> Decision, KSC-BC-2023-12/F00347, para.61.

<sup>18</sup> Decision, KSC-BC-2023-12/F00347, paras 61, 63.

7. Ultimately, FAZLIU conflates issues in an attempt to disguise what is simply disagreement with the outcome, to try to manufacture an appeal ground. This should be rejected.

(iii) *The second issue of the Fazliu Request*<sup>19</sup>

8. The second issue of the Fazliu Request also fails to establish an appealable issue. The Decision correctly held that ‘challenges concerning the legal elements of an offence do not constitute challenges to the form of the indictment, but are matters to be raised at trial.’<sup>20</sup> FAZLIU fails to acknowledge, let alone address, this fact. The purported issue he raises clearly constitutes disagreement regarding the interpretation of the legal elements. It should be rejected accordingly.

(iv) *Conclusion*

9. As outlined above, the Requests misrepresent the Decision, merely express disagreement therewith, and fail to establish any identifiable topic which is essential to be resolved by an Appeals Panel.

B. THE OTHER RULE 77 REQUIREMENTS ARE NOT MET

10. The remaining requirements of Rule 77 are also not met. The misrepresentations of the Decision do not raise issues significantly affecting the fair and expeditious conduct of these proceedings. Nor are they capable of significantly affecting the outcome of the anticipated trial.

11. Moreover, the two disagreements expressed by FAZLIU – that is, the sufficiency of the facts to comprise a crime, and the interpretation of legal elements –

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<sup>19</sup> Fazliu Request, KSC-BC-2023-12/F00359, para.2(ii): ‘whether the Pre-Trial Judge erred in law by finding that the concurrent application of Article 28 of the 2019 Kosovo Criminal Code, Law No. 06/L-074 (‘KCC’) alongside Article 401(2) of the KCC is legally untenable’.

<sup>20</sup> Decision, KSC-BC-2023-12/F00347, para.64.

are, as noted in the Decision, precisely the type of matters which should be addressed at trial. As such, immediate resolution by an Appeals Panel is not necessary and would not materially advance proceedings.

### III. REFLIEF REQUESTED

12. For the foregoing reasons, and because an interlocutory appeal is a restrictive remedy,<sup>21</sup> the Requests should be rejected.

**Word count: 1,290**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 14 July 2025,

At The Hague, The Netherlands.

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<sup>21</sup> See for example *Specialist Prosecutor v. Driton Lajçi*, Decision on Application for Leave to Appeal the Decision F00180, KSC-BC-2018-01/F00184, 24 August 2021, para.11.