



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: 12 September 2025

Language: English

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Decision on Prosecution Request for RFA

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 39(3), (10) and (12) and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 23(8), 102(3) and 208(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 5 September 2025, the Specialist Prosecutor's Office ("SPO") requested the Pre-Trial Judge to issue a request for assistance ("RFA") to the External Forensic Institute ("EFI") to create a copy of the forensic image, including the corresponding Cellebrite report, of the mobile telephone seized from Hajredin Kuçi ("Mr Kuçi") in March 2024 ("March Phone"), in order to provide it, via the Registry, to the Defence for Mr Kuçi ("Kuçi Defence") ("Request").² The SPO also indicates that the Kuçi Defence has reviewed, and joins in, the Request.³
2. On 8 September 2025, the Kuçi Defence confirmed its joinder to the Request ("Response").⁴

II. SUBMISSIONS

3. By way of background, the SPO recalls that immediately after the seizure of the March Phone, it transferred it, via the Registry, to the EFI for further processing and storage.⁵ The SPO also refers to its previous reports which noted the receipt of material extracted from the March Phone ("Extracted Material") and

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

² KSC-BC-2023-12, F00435, Specialist Prosecutor, *Prosecution Request for RFA*, 5 September 2025, confidential.

³ Request, para. 4.

⁴ KSC-BC-2023-12, F00441, Kuçi Defence, *Kuçi Filing Pursuant to Prosecution Request for RFA F00435*, 8 September 2025, confidential.

⁵ Request, para. 2.

its disclosure of the Extracted Material to all Accused pursuant to Rule 102(1)(b) and Rule 102(3) of the Rules. It then underlines that the March Phone, held by the EFI, is being retained until after the completion of the present proceedings.⁶ The SPO further recalls that the March Phone remains subject to additional review for relevant information to be conducted by the Independent Counsel.⁷

4. In support of the Request, the SPO submits that the requested RFA: (i) is consistent with Rule 102(3) of the Rules regarding items seized from the Accused⁸ and (ii) is necessary because the SPO itself is not in possession of the March Phone.⁹ The SPO further maintains that providing a copy of the March Phone and corresponding Cellebrite report to the Kuçi Defence is also consistent with the established disclosure practice in this case, whereby each Accused from whom an electronic device was seized is provided with a forensic copy and corresponding Cellebrite report of his own device.¹⁰

5. In its Response, the Kuçi Defence emphasises the importance of receiving a copy of the forensic image of the March Phone as soon as possible, in order to ensure the progress of the case.¹¹

III. APPLICABLE LAW

6. Pursuant to Article 39(3) of the Law, the Pre-Trial Judge, may, where necessary issues such orders as may be required for the conduct of the investigation and for the preparation of a fair and expeditious trial. Pursuant to

⁶ Request, para. 2 referring to KSC-BC-2023-12, F00414, Specialist Prosecutor, *Prosecution Report Pursuant to Decision F00368* ("SPO 13 August Report"), 13 August 2025, confidential.

⁷ Request, para. 2 referring to KSC-BC-2023-12, F00407, Pre-Trial Judge, *Decision on SPO Request for an Order (F00361) and Further Modalities for Independent Counsel Review*, 5 August 2025, confidential.

⁸ Request, para. 3.

⁹ Request, para. 3.

¹⁰ Request, para. 3 referring to KSC-BC-2023-12, F00420, Specialist Prosecutor, *Prosecution Submissions Pursuant to Order F00395* ("SPO 25 August Report"), 25 August 2025, para. 6. A public redacted version of this filing was submitted on 5 September 2025, F0020/RED.

¹¹ Response, para. 2.

Article 39(10) of the Law, the Pre-Trial Judge may, issue such orders as may be necessary to assist a person in the preparation of his or her defence.

7. Pursuant to Article 39(12) of the Law, the Pre-Trial Judge may, where necessary, seek the cooperation of States or inter-governmental, international or national organizations, as may be necessary for any of these purposes.

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

9. Pursuant to Article 55(1) of the Law and Rule 208(1) of the Rules, the SC, through the Registrar, may request the assistance and cooperation from other states, international organisations and other entities as is necessary for the investigation and prosecution of persons accused of committing crimes within the subject matter jurisdiction of the SC.

10. Pursuant to Rule 102(3) of the Rules, second sentence, the Specialist Prosecutor shall disclose to the Defence, upon request and without delay, any statements, documents, photographs and allow inspection of other tangible objects in the custody or control of the Specialist Prosecutor, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused.

IV. DISCUSSION

11. At the outset, the Pre-Trial Judge notes the SPO’s obligations under Rule 102(3) of the Rules to disclose material or evidence, deemed by the Defence to be material to their case preparation, which is in the custody or control of the SPO or was obtained from or belonged to the Accused.¹² The Pre-Trial Judge also

¹² KSC-BC-2023-12, F00100, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 20 December 2024, public, paras 48-52.

notes the SPO's submissions on the Parties' agreement in this case, whereby each Accused from whom an electronic device was seized is provided with a forensic copy and corresponding Cellebrite report of his own.¹³ The Pre-Trial Judge further notes the Kuçi Defence's agreement with the Request.¹⁴ Moreover, the Pre-Trial Judge pays heed to the SPO's submissions that, following the seizure of the March Phone and the SPO's review of the Extracted Material, the March Phone will be retained until the completion of the present proceedings and the EFI is the entity in possession of the March Phone.¹⁵ Lastly, the Pre-Trial Judge is also of the view that the forensic copy of the March Phone will assist Mr Kuçi in the preparation of his defence, and ultimately will ensure a fair and expeditious trial.

12. Considering the above, the Pre-Trial Judge finds it appropriate to request the assistance of the EFI to: (i) create a copy of the forensic image, including the corresponding Cellebrite report of the March Phone; and (ii) transmit said copy and report, via the Registry, to the Kuçi Defence ("Requested Operations"). The Pre-Trial Judge requests the EFI to do so as soon as possible, and not later than three weeks from the date of service of the annexed RFA.¹⁶ To that end, the Pre-Trial Judge issues the annexed RFA seeking the assistance of the EFI, pursuant to Article 55(1) of the Law and Rule 208(1) of the Rules.

13. The Pre-Trial Judge further: (i) requests the EFI to direct any questions or communications regarding the Requested Operations to the Registry; (ii) orders the Registry to immediately inform the Pre-Trial Judge of any questions raised or issues reported by the EFI during the execution of the Requested Operations; and

¹³ SPO 25 August Report, para. 6; Request, para. 4.

¹⁴ Response, para. 2.

¹⁵ Request, para. 3; SPO 13 August Report, paras 2-3; KSC-BC-2023-12, INV/F00105, Single Judge, *Decision on Special Investigative Measures and Request for Assistance and Cooperation* ("March 2024 SIM Decision"), 15 March 2024, confidential, para. 46

¹⁶ The Pre-Trial Judge notes in this regard that the EFI has previously created the forensic image of the March Phone and generated the corresponding Cellebrite report (see March 2024 SIM Decision, para. 46; F00159, Registrar, *Registry Submissions on Request for Assistance (F00619 in KSC-BC-2018-01)*, confidential, with Annex 1, confidential and *ex parte*).

(iii) instructs the Registry to provide any assistance the EFI may require for the execution of the Requested Operations.

V. TRANSMISSION AND DISCLOSURE OF THE ANNEXED REQUEST

14. Pursuant to Article 55(2) of the Law and Rule 208 of the Rules, the Pre-Trial Judge orders the Registrar, to transmit the annexed RFA to the EFI. The Pre-Trial Judge clarifies that the Registry may, as appropriate and necessary, disclose the annexed RFA for the purpose of its execution by the EFI.

VI. NOTIFICATION AND REPORTING

15. The Pre-Trial Judge orders the Registry to notify the Pre-Trial Judge and the SPO immediately following the execution of the Requested Operations.

16. Furthermore, the Registry is ordered to report to the Pre-Trial Judge on the implementation of the present decision by the EFI. The Registry shall submit such report within fourteen (14) days of its execution by the EFI. To this end, the Pre-Trial Judge requests the EFI to provide the Registry with the necessary information for the preparation of said report, including details on the creation of the concerned material, any precautionary measures adopted for the transmission of the concerned material, and any issues encountered during the execution of the Requested Operations.


VII. DISPOSITION

17. For the above-mentioned reasons, the Single Judge hereby:

(a) **GRANTS** the Request;

- (b) **REQUESTS** the assistance of the EFI to execute the Requested Operations as soon as possible and not later than three weeks from the date of service of the RFA;
- (c) **REQUESTS** the EFI to direct any questions or communications regarding the Request Operations to the Registry;
- (d) **ORDERS** the Registry to immediately inform the Pre-Trial Judge of any questions raised or issues reported by the EFI during the execution of the Requested Operations;
- (e) **INSTRUCTS** the Registry to provide any assistance the EFI may require for the execution of the Requested Operations;
- (f) **REQUESTS** the EFI to provide the Registry with details on the creation of the concerned material, any precautionary measures adopted for the transmission of the concerned material, and any issues encountered during the execution of the Requested Operations;
- (g) **INSTRUCTS** the Registry to provide the copy of the forensic image, including the corresponding Cellebrite report, of the March Phone to the Kuçi Defence, upon receipt from the EFI;
- (h) **INSTRUCTS** the Registry to notify the Pre-Trial Judge and the SPO immediately following the execution of the Requested Operations;
- (i) **ORDERS** the Registry to report to the Pre-Trial Judge on the implementation of the present decision, within fourteen (14) days of its execution by the EFI, in accordance with the present decision;
- (j) **DIRECTS** the Registry to transmit the annexed RFA to the EFI; and
- (k) **AUTHORISES** the Registrar to disclose, as appropriate and necessary, the annexed RFA for the purpose of its execution; and

- (l) **ORDERS** the Kuçi Defence to submit a public redacted version of its respective filing (F00441) or a request to be reclassified as public by **Friday, 19 September 2025**.



Judge Marjorie Masselot

Pre-Trial Judge

Dated this Friday, 12 September 2025

At The Hague, the Netherlands.