



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: 17 October 2025

Language: English

Classification: Public

**Decision on Kilaj Request for Extension of Time to Submit
Defence Pre-Trial Brief**

Specialist Prosecutor
Kimberly P. West

Specialist Counsel for Hashim Thaçi
Sophie Menegon
Luka Mišetić

Specialist Counsel for Bashkim Smakaj
Jonathan Rees
Huw Bowden

Specialist Counsel for Isni Kilaj
Iain Edwards
Joe Holmes

Specialist Counsel for Fadil Fazliu
David Young

Specialist Counsel for Hajredin Kuçi
Alexander Admiraal

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a), 76, 82(5), and 95(2), (4) and (5), of the Rules of Procedure and Evidence Before the Kosovo Specialist Chamber ("Rules"), hereby renders the following decision.

I. PROCEDURAL BACKGROUND

1. On 25 July 2025, the Pre-Trial Judge, *inter alia*, informed the Defence that she intended to set the deadline for submission of their respective Pre-Trial Briefs to 20 October 2025.²

2. On 4 August 2025, upon request for clarification of Counsel for Isni Kilaj ("Mr Kilaj"), the Pre-Trial Judge clarified that she intended to determinatively set the deadline for any Defence Pre-Trial Briefs to 20 October 2025 in a further order, subject to the Defence's submissions on the matter, among others.³

3. On 16 September 2025, the Pre-Trial Judge invited the Defence to submit their respective Pre-Trial Briefs by 20 October 2025 and informed the Parties that she intends to transmit the case to a Trial Panel in the first half of November 2025.⁴

4. On 16 October 2025, the Defence for Mr Kilaj ("Kilaj Defence") submitted the "Kilaj Defence Request for Extension of Time Limit to File its Pre-Trial Brief" ("Request").⁵

5. On 17 October 2025, following the Pre-Trial Judge's variation of the briefing schedule,⁶ the Defence for Hashim Thaçi ("Thaçi Defence"), the Defence for Hajredin

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

² KSC-BC-2023-12, F00395, Pre-Trial Judge, *Order Relating to the Calendar for the Remaining Pre-Trial Proceedings*, 25 July 2025, public, para. 18(d).

³ KSC-BC-2023-12, CRSPD101, 4 August 2025, confidential.

⁴ KSC-BC-2023-12, F00453, Pre-Trial Judge, *Decision on the Remaining Calendar of the Pre-Trial Proceedings* ("Calendar Decision"), 16 September 2025, public, para. 23(a) and (e).

⁵ KSC-BC-2023-12, F00503, Kilaj Defence, *Kilaj Defence Request for Variation of Time Limit to File its Pre-Trial Brief*, 16 October 2025, public.

⁶ KSC-BC-2023-12, CRSPD145, 16 October 2025, confidential.

Kuçi (“Kuçi Defence”) and the Specialist Prosecutor’s Office (“SPO”) responded to the Request.⁷

II. SUBMISSIONS

6. The Kilaj Defence submits that, on 15 October 2025, it was informed by the SPO, *inter alia*, that it would receive, on 17 October 2025, a full forensic copy of Mr Kilaj’s iPhone 12 and that the SPO would thereafter commence its relevance review of the iPhone and promptly disclose all material identified under Rules 102(1)(b) and/or 102(3) of the Rules (“SPO Notice”).⁸ In light of this development, the Kilaj Defence argues that good cause exists to request an extension of time to submit its Pre-Trial Brief as: (i) depending on the SPO’s review process, the evidence relied upon by the SPO in support of its case against Mr Kilaj may change;⁹ (ii) the SPO may file an addendum to its Pre-Trial Brief in relation to which the Defence should be afforded the opportunity to respond;¹⁰ and (iii) the Defence is under no obligation to submit a Pre-Trial Brief and if no extension is granted, it will simply not do so.¹¹ As a result, the Kilaj Defence requests the Pre-Trial Judge to vary the time limit to submit its Pre-Trial Brief to seven (7) days after the SPO finalises all disclosure of new material under Rules 102(1)(b), 102(3) and/or 103 of the Rules and either files an addendum to its Pre-Trial Brief or confirms it will not file such addendum.¹²

⁷ KSC-BC-2023-12, F00506, Thaçi Defence, *Thaçi Defence Response to Kilaj Defence Request for Variation of Time Limit to File its Pre-Trial Brief (F00503)* (“Thaçi Response”), 17 October 2025, public; F00507, Specialist Prosecutor, *Prosecution Response to “Kilaj Defence Request for Variation of Time Limit to File its Pre-Trial Brief”* (“SPO Response”), 17 October 2025, confidential; F00508, Kuçi Defence, *Kuçi Submission Pursuant to Kilaj Defence Filing F00503* (“Kuçi Response”), 17 October 2025, public.

⁸ Request, para. 2. *See also* KSC-BC-2023-12, F00499, Specialist Prosecutor, *Prosecution Notification in Relation to Filing F00420*, 15 October 2025, public.

⁹ Request, para. 6.

¹⁰ Request, para. 7.

¹¹ Request, para. 8.

¹² Request, para. 9.

7. The Thaçi Defence joins the Request, for the same reasons set forth therein, and requests that the time limit be varied also for the Thaçi Defence.¹³

8. The Kuçi Defence similarly joins the Request, for the same reasons set forth therein, adding that: (i) it still awaits the final report of the Independent Counsel on the devices seized from Hajredin Kuçi (“Mr Kuçi”);¹⁴ and (ii) other ongoing investigations may likewise prove relevant to the defence of Mr Kuçi.¹⁵

9. The SPO submits that the Kilaj Defence fails to show good cause because: (i) neither Rule 95(4) nor Rule 95(5) of the Rules requires the exposition of every single piece of evidence to be relied upon by the SPO at trial;¹⁶ (ii) the claim that evidence will be recovered from Mr Kilaj’s iPhone 12 is speculative;¹⁷ (iii) the SPO Pre-Trial Brief has provided the necessary information for Mr Kilaj to lay out the general terms of his defence, and identify the charges and matters he disputes and the potential witnesses he intends to call;¹⁸ and (iv) the Defence has been aware of the SPO’s continued efforts to access Mr Kilaj’s password-protected iPhone 12 and the Pre-Trial Judge’s authorisations of targeted SPO investigative actions.¹⁹ As a result, the SPO requests that the Request be denied.

III. APPLICABLE LAW

10. Pursuant to Article 39(13) of the Law, the Pre-Trial Judge may, where necessary, on her own motion, issue any order that may be necessary for the preparation of a fair and expeditious trial.

¹³ Thaçi Response, paras 1-2.

¹⁴ Kuçi Response, paras 5-6.

¹⁵ Kuçi Response, para. 6.

¹⁶ SPO Response, para. 2.

¹⁷ SPO Response, para. 3.

¹⁸ SPO Response, para. 3.

¹⁹ SPO Response, para. 4.

11. Pursuant to Rule 95(2) of the Rules, the Pre-Trial Judge shall ensure that pre-trial proceedings are not unduly delayed and shall take all necessary measures for the expeditious preparation of the case for trial.

12. Pursuant to Rule 95(4) of the Rules, the Pre-Trial Judge shall order the Specialist Prosecutor to file: (a) the Specialist Prosecutor's Pre-Trial Brief; (b) the list of witnesses the Specialist Prosecutor intends to call; and (c) the list of proposed exhibits the Specialist Prosecutor intends to present stating, where possible, any objection of the Defence regarding authenticity.

13. Pursuant to Rule 95(5) of the Rules, after submission of the items mentioned under Rule 95(4) of the Rules, the Pre-Trial Judge shall invite the Defence to file a Pre-Trial Brief within a set time limit.

14. Pursuant to Rule 9(5)(a) of the Rules, the Pre-Trial Judge may, *proprio motu* or upon showing of good cause, extend any time limit prescribed by the Rules or set by the Panel.

15. Pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.

16. Pursuant to Rule 82(5) of the Rules, the Pre-Trial Judge may reclassify a filing upon request by any other participant or *proprio motu*.

IV. DISCUSSION

17. The Pre-Trial Judge notes that the Request was submitted immediately following the SPO Notice. In these specific circumstances, the Pre-Trial Judge finds that the Request was submitted sufficiently in advance, in accordance with Rule 76 of the Rules.

18. Before turning to the Kilaj's submissions regarding good cause, the Pre-Trial Judge recalls that: (i) the Kilaj Defence has known ever since the seizure of

Mr Kilaj's iPhone 12²⁰ that his phone would be forensically analysed, its content reviewed by the SPO, and information extracted therefrom possibly disclosed; (ii) the Defence has known the date for the submission of the Defence Pre-Trial Briefs since 25 July 2025 when they were first informed;²¹ (iii) this date was confirmed to the Kilaj Defence (and the other Defence teams) on two occasions;²² (iv) the SPO has submitted its Pre-Trial Brief, together with a list of witnesses and a list of exhibits on which it intends to rely at trial, on 19 September 2025;²³ and (v) the Pre-Trial Judge informed the Parties that she intends to transmit the case to a Trial Panel in the first half of November 2025, in the event the decisions of the Court of Appeals Panel on the pending appeals relating to pre-trial motions allow for such transfer.²⁴

19. Turning to the Kilaj Defence's argument that the SPO evidence in support of its case against Mr Kilaj may change, the Pre-Trial Judge is of the view that the Kilaj Defence is misguided. The "case" against Mr Kilaj is set out in the confirmed amended indictment,²⁵ the SPO Pre-Trial Brief and related documents,²⁶

²⁰ KSC-BC-2023-12, INV/F00056/COR2/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of "Corrected version of 'Prosecution Report pursuant to Decision F00484 with strictly confidential and ex parte Annexes 1 to 4' KSC-BC-2018-01/F00515/COR"*, 16 November 2023 (date of confidential redacted version 27 February 2025), confidential, para. 25; see further INV/F00117, Specialist Prosecutor, *Prosecution Request for Retention of Evidence (F00611)*, 24 April 2024, confidential, para. 4.

²¹ See paragraph 1 above.

²² See paragraphs 2-3 above.

²³ See KSC-BC-2023-12, F00459, Specialist Prosecutor, *Prosecution Submission of Pre-Trial Brief, Witness and Exhibit Lists*, 19 September 2025, public, with Annexes 1-5, confidential. A corrected version of the SPO Pre-Trial Brief, together with confidential Annexes 1-5, was filed on 26 September 2025, F00467. The corrected version of the Pre-Trial Brief, together with confidential Annexes 1-5, were re-submitted on 6 October 2025 detailing in an explanatory note the corrections made to the SPO Pre-Trial Brief and Annex 4 (Exhibit List), F00459/COR. A public redacted version of the Pre-Trial Brief was submitted on 7 October 2025, F00489, with Annex 1, public.

²⁴ See Calendar Decision, para. 21.

²⁵ 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).

²⁶ See footnote 23 above.

complemented by the decision confirming the indictment and its amendment,²⁷ the SPO Rule 109(c) Chart,²⁸ the evidence disclosed so far in this case,²⁹ and the Rule 86(3)(b) Outline.³⁰ Some material in the present case, seized from the Accused and protected by passwords that some Accused chose not to share voluntarily, entails an analysis by external forensic institutes, which in turn impacts the progress of disclosure of evidence. Yet, any (potential) additional evidence to be disclosed in the course of the SPO's review of Mr Kilaj's iPhone 12 or any other evidence to be disclosed and relied upon under Rule 102(1)(b) of the Rules can only, at this stage, be considered supplementary without changing the content and nature of the charges.³¹ Any potentially exculpatory evidence to be disclosed under Rules 102(3) or 103 of the Rules, must and will be discussed at trial. The same reasoning applies to the arguments raised by the Kuçi Defence regarding the ongoing review of Mr Kuçi's devices and "other ongoing investigations".³²

20. As to the Kilaj Defence's argument that the SPO may file an addendum to its Pre-Trial Brief (either *proprio motu* or upon order by the Pre-Trial Judge), the Pre-Trial Judge considers this to be speculative and premature at this stage. In any event, should such amendment be sought, the competent Panel will take the necessary measures to ensure the fairness of the proceedings and the rights of the

²⁷ KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, confidential. A public redacted version was filed on 12 February 2025, F00036/RED; 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.

²⁸ KSC-BC-2023-12, F00488, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart*, 6 October 2025, public, with Annex 1, confidential.

²⁹ The Pre-Trial Judge recalls that the SPO has disclosed in total 74 packages of evidence to the Defence: six (6) disclosure packages contain Rule 102(1)(a) material; twenty-five (25) disclosure packages contain Rule 102(1)(b) material; twenty-nine (29) disclosure packages contain Rule 102(3) material; and fourteen (14) disclosure packages contain Rule 103 material.

³⁰ KSC-BC-2023-12, F00028/A02, Specialist Prosecutor, *Annex 2 to Submission of Further Amended Indictment for Confirmation*, 12 November 2024, confidential.

³¹ See similarly KSC-BC-2023-12, F00509, Pre-Trial Judge, *Decision Authorising Disclosure under Rule 102(1)(b) of the Rules*, 17 October 2025, public, para. 23.

³² Kuçi Response, paras 5-6.

Accused. For this reason, it is not necessary to order the SPO at this stage to either file an addendum to its Pre-Trial Brief or to confirm it will not file an addendum.

21. As to the Kilaj Defence's argument that it might not file a Pre-Trial Brief if the extension of the time limit is not granted, the Pre-Trial Judge recalls that the Defence is under no obligation to submit a Pre-Trial Brief. It is its choice not to submit a Pre-Trial Brief at all.

22. Having regard to the above, the Pre-Trial Judge remains unpersuaded that good cause has been shown by the Kilaj Defence to vary the time limit to submit its Pre-Trial Brief. The same reasons also apply to the Thaçi Defence and the Kuçi Defence requests to vary the time limit for their Pre-Trial Briefs.

23. Accordingly, the time limit for the Defence to submit their respective Pre-Trial Briefs, if they so wish, remains **Monday, 20 October 2025**.

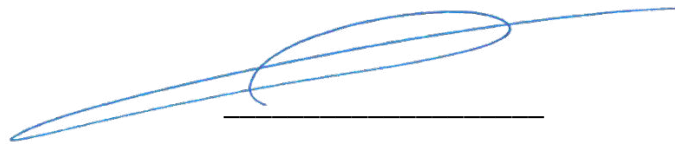
24. Finally, noting the SPO's request for reclassification of its response as public,³³ and being satisfied that the information contained therein may be made public, the Pre-Trial Judge orders the Registry, pursuant to Rule 82(5) of the Rules, to reclassify filing F00507 as public.

³³ SPO Response, para. 5.

V. DISPOSITION

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

- a. **REJECTS** the Request;
- b. **RECALLS** her invitation to the Defence to submit their Pre-Trial Briefs, if they so wish, by **Monday, 20 October 2025**; and
- c. **ORDERS** the Registry to reclassify as public filing F00507.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Friday, 17 October 2025

At The Hague, the Netherland