

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 Fadil Fazliu

Date: 20 October 2025

Language: English

Classification: Confidential

Public Redacted Version of Fazliu Pre-Trial Brief

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I. INTRODUCTION

1. Pursuant to Rule 95(5) of the *Rules*¹ and the Pre-Trial Judge's order,² the Defence for Mr. Fadil Fazliu ('Defence') submits this Pre-Trial Brief.
2. The Defence underscores that this Pre-Trial Brief is not intended to be exhaustive. The submissions herein are without prejudice to any subsequent amendment to the Defence position or to Mr. Fazliu's right to silence.

II. PROCEDURAL HISTORY

3. On 16 April 2025, the SPO issued the amended confirmed indictment against Mr. Fazliu ('Indictment'),³ charging him with:
 - a. **Count 16**: ATTEMPTED OBSTRUCTION OF OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES, by participating in the common action of a group, between at least 26 June and 18 July 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 33, 35 and 401(2) and (5), and Articles 15(2) and 16(3) of the Law.
 - b. **Count 17**: CONTEMPT OF COURT, between at least 26 June and 18 July 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 21, 33, and

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020 ('Rules'), Rule 95(5).

² KSC-BC-2023-12, F00453, Decision on the Remaining Calendar of the Pre-Trial Proceedings, 16 September 2025, public, para. 18.

³ KSC-BC-2023-12, F00264/A01, Amended Confirmed Indictment, 16 April 2025, confidential ('Indictment'). Public redacted version submitted on the same day as F00264/A02.

393, and Articles 15(2) and 16(3) of the Law.

4. On 29 August 2025, the Defence indicated its intention to file a Pre-Trial Brief ‘as required by the second sentence of Rule 95(5) to give notice on its proposed ground excluding criminal responsibility’, namely mistake of fact.⁴
5. On 16 September 2025, the Pre-Trial Judge invited the Defence to submit their Pre-Trial Brief as envisaged by Rule 95(5) of the Rules by 20 October 2025 and to notify the SPO of their intent to invoke any grounds excluding criminal responsibility as envisaged by Rule 95(5) by 20 October 2025.⁵ The Parties are also reminded to file their Rule 109(c) charts within fifteen days from the filing of their respective Pre-Trial Brief.⁶
6. On 19 September 2025, the SPO submitted its Pre-Trial Brief,⁷ along with its lists of witnesses and exhibits.⁸

III. APPLICABLE LAW

7. Pursuant to the first sentence of Rule 95(5) of the *Rules*, the Defence may submit a pre-trial brief indicating, inter alia, the nature of the Accused’s defence in general terms, the charges and matters which the Accuse disputes, by reference to particular

⁴ KSC-BC-2023-12, F00425, Fazliu Defence Submissions pursuant to Order F00395, 29 August 2025, public, paras. 5 and 7.

⁵ KSC-BC-2023-12, F00453, Decision on the Remaining Calendar of the Pre-Trial Proceedings, 16 September 2025, public, para. 23(a) and (b).

⁶ KSC-BC-2023-12, F00453, Decision on the Remaining Calendar of the Pre-Trial Proceedings, 16 September 2025, public, para. 23(d).

⁷ KSC-BC-2023-12, F00459/COR/A01, Annex 1 to Corrected Version of “Prosecution submission of pre-trial brief, witness and exhibit list”, 6 October 2025, confidential (‘SPO PTB’). Public redacted version submitted on 7 October 2025 as F00489/A01.

⁸ KSC-BC-2023-12, F00459/A03, Annex 3 Prosecution submission of pre-trial brief, witness and exhibit list, 19 September 2025, confidential (‘List of Witnesses’); KSC-BC-2023-12, F00459/A04, Annex 4 to Prosecution submission of pre-trial brief, witness and exhibit list, 19 September 2025, confidential (‘List of Exhibits’).

paragraphs in the SPO Pre-Trial Brief, and reasons for the dispute. The Defence may also indicate the witness or witnesses it intends to call, without prejudice to any subsequent amendment.

8. Pursuant to the second sentence of Rule 95(5) of the *Rules*, the Defence shall notify the Specialist Prosecutor of its intent to offer any ground excluding criminal responsibility, including mistake of fact.

9. Article 25 of the KCC on mistake of fact provides that:

A person is not criminally liable if, at the time of committing a criminal offense, he or she is unaware of a characteristic of that act or he *or* she mistakenly believed that circumstances existed which, had they in fact existed, would have rendered the act permissible.⁹

10. Pursuant to Article 16(3) of the *Law*,¹⁰ Article 25 of the KCC is not among the provisions expressly incorporated and applied by the *Law* with regard to offences under Articles 393 and 401.¹¹

IV. SUBMISSIONS

11. The SPO have failed to establish beyond a reasonable doubt that Mr. Fazliu committed the offences alleged in Counts 16 and 17. The case advanced in the SPO Pre-Trial Brief rests on inference, speculations, and ambiguous material rather than verifiable fact. No reliable or direct evidence demonstrates that Mr. Fazliu attempted to participate in any concerted plan to obstruct justice or assisted in the violation of court orders.

⁹ Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC'), Article 25(1).

¹⁰ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Article 16(3).

¹¹ See also, *Law*, Article 3(2)(c).

(i) **Applicability of Mistake of Fact**

12. Where a factual error negates the requisite *mens rea* for the crime charged, the accused cannot be found criminally liable because an essential element of the offence cannot be proven beyond a reasonable doubt. This principle is characterised in various jurisdiction as a ‘mistake of fact’, including in Article 25(1) of the KCC and, for instance, in Article 32(1) of the Rome Statute of the International Criminal Court.¹²
13. Whereas Article 25 of the KCC is not among the provisions of the *Law* expressly incorporated in the legal framework of the Specialist Chambers (‘SC’), mistake of fact as a ground excluding criminal liability does not appear to be applicable in the present case. The Defence cannot provide a notice of an affirmative defence that is unavailable. As such, the present brief is not submitted based on the second sentence of Rule 95(5).¹³
14. By the same token, the Defence does not have material disclosable pursuant to Rule 104(1) and, therefore, will not be filing a Rule 109(c) chart within fifteen days from the filing of the present brief.¹⁴ Should the Defence elect to present a case, the Rule 109(c) chart relating to the Rule 104(5) and (6) material will be duly filed within the time limit set by the Panel and no later than fifteen days prior to the opening of the Defence case.¹⁵

¹² Rome Statute, Article 32(1).

¹³ This is without prejudice to the Trial Panel’s discretion under Rule 104(4) to ‘*proprio motu* consider, as a matter of law, [other grounds excluding criminal responsibility] under [Rule 104] paragraph (1)(b) even if they were not advanced by the Defence’.

¹⁴ See, KSC-BC-2023-12, F00453, Decision on the Remaining Calendar of the Pre-Trial Proceedings, 16 September 2025, public, para. 20, fn. 33, citing KSC-BC-2020-12, F00100, Framework Decision on Disclosure of Evidence and Related Matters, 20 December 2024, public, para. 81 (‘With respect to the Defence, their Rule 109(c) charts shall relate to the Rule 104(1), (5) and (6) material.’).

¹⁵ Rule 104(5) and (6).

(ii) 2 July 2023 Visit

15. The Defence contests the assertions in paragraphs 37-45 of the SPO Pre-Trial Brief regarding Mr. Fazliu's visit to Mr. Thaçi on 2 July 2023.
16. The excerpts relied upon by the SPO¹⁶ consists of partial, often indiscernible detention-centre audio recordings in which the alleged statements are heavily qualified by inaudibility markers and transcription uncertainties, and arise in the context of conversations on all manner of subjects, the majority of which were not case related at all. These materials do not establish, to the criminal standard of proof, that Mr. Fazliu ever sought to instruct, persuade, or interfere with Witness 1.
17. Even accepting the SPO's interpretation at its highest, the relevant passages do not demonstrate that Mr. Fazliu intended, agreed, or undertook to convey any improper instructions to Witness 1 regarding his testimony in Case 6. The SPO's inference about his state of mind or his subsequent conduct are speculative and unsupported by any direct evidence.
18. The Defence also observes that there is no recording, messages, or independent evidence showing any conversation between Mr. Fazliu and Witness 1 on the subject matter alleged. The SPO's narrative relies on extrapolation from circumstantial data such as messages¹⁷ and photographs metadata¹⁸ that, at most, establish ordinary social contact among long-standing acquaintances.
19. The Defence further notes that the SPO attributes meaning to tones of voices, alleged

¹⁶ 114037 020723-115000-140500-TR-AT-ET.

¹⁷ See, e.g., SPO PTB, fns 104-105, citing 125704-125707_added partial ET.

¹⁸ See, e.g., SPO PTB, fns 106-107, citing SPOE00398231-00398242 RED; SPOE00287772-SPOE00287773; 125698-125700.

whispering, and incomplete phrases as indicators of consciousness of wrongdoing.¹⁹ Such subjective interpretations of inaudible or ambiguous passages cannot bear evidentiary weight. Absent clear and unambiguous language showing a criminal purpose, the recording does not meet the threshold of reliable proof of intent or agreement.

20. As such, the Defence submits that paragraphs 37-45 of the SPO Pre-Trial Brief and the evidence cited therein are insufficient to demonstrate that Mr. Fazliu would have actually tried to instruct Witness 1 or tried to interfere with the evidence of Witness 1 in Case 6. The allegations rest on inference rather than verifiable fact and cannot sustain a conviction to the requisite criminal standard.

(iii) Witness 1

21. The Defence notes that, paragraph 47 of the SPO Pre-Trial Brief acknowledges that the SPO summoned to interview on 18 November 2023 Witness 1 to answer questions on the alleged interference with Witness 1.²⁰ The SPO Pre-Trial Brief also acknowledges that Witness 1 expressly stated no one had interfered with him, from which one can infer there was no interference or attempted interference with Witness 1.²¹ This statement was made spontaneously, before any questioning began, but after it had been explained to Witness 1 that the SPO in the interview was investigating ‘obstruction of the administration of justice related offences’,²² and ‘any attempts to obstruct the prosecution or trial of that case. And, specifically, any attempts to interfere with the testimony of witnesses such as yourself’.²³ It is therefore not an

¹⁹ See SPO Pre-Trial Brief, para. 43.

²⁰ 117044-TR-ET Part 1.

²¹ 117044-TR-ET Part 1, p. 9, ln. 3.

²² 117044-TR-ET Part 1, p. 2, lns 1-3.

²³ 117044-TR-ET Part 1, p. 7, lns 11-13.

inference but a direct denial from the very person alleged to have been the object of the supposed interference. In light of this unequivocal denial, the Defence submits that there is no credible evidential foundation – let alone proof beyond reasonable doubt – that Mr Fazliu attempted to interfere with or otherwise influence Witness 1.

22. This is contended to be highly significant given the allegations that Mr. Fazliu faces.
23. Despite that, while Witness 1 had a suspect interview, he is effectively alleged to be the ‘victim’ of Mr. Fazliu’s criminal conduct, and yet [REDACTED]. [REDACTED]. [REDACTED] underscores the limitations of the available evidence and further supports the Defence submission that the allegations cannot be proven to the requisite criminal standard. The Defence further recalls the fact that it was this very SPO team who themselves called Witness 1 to give evidence on their behalf in Case 6, over a number of days in July 2023, relying upon him as a witness of truth.

(iv) Alleged ‘Fazliu Group’

24. The Defence contests the assertions in paragraphs 212-213 of the SPO Pre-Trial Brief regarding the purported ‘Fazliu Group’.
25. The cited evidence consists of the same detention-centre recording excerpts and messages already addressed above.²⁴ These materials do not establish any ‘clear instructions’,²⁵ agreement or joint plan between Mr. Fazliu and others to influence Witness 1.
26. The SPO’s assertion that the participant ‘acted jointly and in synergy’²⁶ rests entirely on speculative inferences drawn from the limited and circumstantial material. There

²⁴ See, *supra*, para. 18.

²⁵ SPO PTB, para. 211.

²⁶ SPO PTB, para. 212.

is no contemporaneous record of any agreement, no corroborating evidence, and no reliable evidence as to the content of any alleged conversation between Witness 1 and Mr. Fadil Fazliu and/or Mr. Fahri Fazliu.

27. The Defence submits that such speculative reconstruction falls well short of the evidentiary threshold required to prove concerted action or common intent to obstruct justice.

(v) Public Domain Information

28. The Defence contests the assertions in paragraphs 234-237 and 260 of the SPO Pre-Trial Brief regarding the alleged disclosure of confidential information during the 2 July visit.
29. There is no evidence that Mr. Fazliu was aware, or could reasonably have been aware, that any of the topics discussed were subject to confidentiality restrictions imposed by the SC. The decisions that were purportedly violated were in English, a language Mr. Fazliu does not speak, and were not subject to any media reports in Kosovo when first made public.²⁷ The Albanian translations were not issued until early 2024.²⁸

²⁷ SPO PTB, paras 255-256, referencing KSC-BC-2020-06, F00854, Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant, 24 June 2022 ('KSC-BC-2020-06, F00854'); KSC-BC-2020-06/IA024, F00019, Decision on Defence Appeals against 'Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant', 27 December 2022, public ('KSC-BC-2020-06/IA024, F00019'); KSC-BC-2020-06, F01226/A01, Annex 1 to Order on the Conduct of the Proceedings, 25 January 2023 ('KSC-BC-2020-06, F01226/A01').

²⁸ KSC-BC-2020-06, F00854/sqi, Vendim Kornizë për Trajtimin e Informacionit Konfidencial gjatë Hetimeve dhe Kontakteve ndërmjet një Pale ose Pjesëmarrësi dhe Dëshmitarëve të Palës ose Pjesëmarrësit Kundërshtar, 17 January 2024; KSC-BC-2020-06/IA024, F00019/sqi, Vendim në lidhje me Apelet e Mbrojtjes kundër Vendimit Kornizë për Trajtimin e Informacionit Konfidencial gjatë Hetimeve dhe Kontakteve

30. Meanwhile, from Mr. Fazliu's perspective, the individuals and materials mentioned during the 2 July 2023 visit – insofar as allegedly underpinning Count 17 – were matters already in the public domain. Witness 1's status as an SPO witness and his impending testimony was widely reported on 1 July 2023.²⁹ The 'exhibits to be used during his testimony' consist solely of excerpts from a publicly available book on the general subject of discussion. W04758 and [REDACTED] were referenced by their names, with no indication of their witness status. As well-known figures whose connections to [REDACTED] were openly discussed in the media, the mention of W04758 and [REDACTED] was only natural.
31. Messrs Fazliu and Thaçi both lived the war that led to the independence of Kosovo. The simple truth is, what the SPO characterised as contents of confidential testimony and exhibits in the discussions on 2 July 2023 are also Mr. Fazliu's and Mr. Thaçi's respective personal experience and viewpoint of the history. Nothing in the recorded conversation indicates that Mr. Fazliu was placed on notice that it derived from non-public case materials. He was an uninformed recipient of remarks made by another person about matters he understood to be of general, public knowledge. Indeed, a layperson without knowledge of the underlying case materials could not reasonably

ndërmjet një Pale ose Pjesëmarrësi dhe Dëshmitarëve të Palës ose Pjesëmarrësit Kundërshtar, 1 February 2024; KSC-BC-2020-06, F01226/A01/sqi, Shtojca 1 e Urdhrit mbi Zhvillimin e Gjykimit, 10 January 2024.

²⁹ See, e.g., SPOE00368761-00368762; Kosova ime, 'Komandant Remi ftohet në Hagë' (1 July 2023, 11:36) <<https://kosovaimetv.com/komandant-remi-ftohet-ne-hage/>> ('Rrustem Mustafa do të paraqitet në Hagë për të dëshmuar rreth organizimit të UÇK-së' [Rrustem Mustafa will appear in The Hague to testify about the organization of the KLA]); IndeksOnline, 'Kanal10: Komandant Remi ftohet për të dëshmuar në Hagë' (1 July 2023, 12:41) <<https://indeksonline.net/kanal10-komandant-remi-ftohet-per-te-deshmuar-ne-hage/>>; Sinjali, 'Rrustem Mustafa ftohet për të dëshmuar në Hagë' (1 July 2023, 12:56) <<https://sinjali.com/rrustem-mustafa-ftohet-per-te-deshmuar-ne-hage/1/>>; Dukagjini, 'Ish-komandant Remi ftohet për të dëshmuar në Hagë' (1 July 2023, 13:14) ('Lajmin për Dukagjinin e ka konfirmuar vetë Mustafa' [Mustafa himself confirmed the news to Dukagjin]) <<https://www.dukagjini.com/ish-komandant-remi-ftohet-per-te-deshmuar-ne-hage/>>; Kontakt Plus, 'Rustem Mustafa ka marrë një thirrje nga Gjykata Speciale në Hagë' (1 July 2023, 15:28). See also DrenicaOnline, 'Rrustem Mustafa ftohet për të dëshmuar në Hagë' (1 July 2023) <<https://drenicaonline.com/2023/07/01/rrustem-mustafa-ftohet-per-te-deshmuar-ne-hage/>>.

discern that any of the subjects discussed were confidential. There is simply insufficient evidence to establish the requisite *mens rea* to convict Mr. Fazliu.

V. CLASSIFICATION

32. This brief is filed on a confidential basis as it refers to information contained in filings of the same designation. A public redacted version will be filed forthwith.

VI. CONCLUSION & RELIEF

33. In light of the above, the Defence respectfully submits that the allegations contained in Counts 16 and 17 are not supported by reliable or probative evidence capable of establishing guilt beyond reasonable doubt. The evidence relied upon by the SPO is circumstantial, fragmentary, and speculative, and fails to prove the essential elements of either offence.
34. The Defence trusts that the SC will reaffirm that criminal liability before this court must rest on clear, reliable, and proven facts—not on speculation—and will acquit Mr. Fazliu accordingly.

Word count: 2814 words

Respectfully submitted,

A handwritten signature in black ink, reading "David A. Young". The signature is written in a cursive style with a large, stylized "D" and "Y".

David A. Young

Specialist Counsel for Fadil Fazliu

20 October 2025

The Hague, the Netherlands