

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

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Public redacted version of the Thaçi Defence Pre-Trial Brief

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I. INTRODUCTION

1. The Defence of Hashim Thaçi ("Defence") hereby files its Pre-Trial Brief, pursuant to Rule 95(5) of the Rules,¹ and the Pre-Trial Judge's order of 16 September 2025.²
2. The Defence Pre-Trial Brief is filed confidentially, because it refers to confidential filings and confidential evidence. A public redacted version will be filed in due course.

A. THE CONTEXT OF THESE PROCEEDINGS

3. This case represents a misuse of prosecutorial powers by the Specialist Prosecutor's Office ("SPO"). At best, it is motivated by a desire to retroactively justify the SPO's over-reaching and invasive use of Special Investigative Measures ("SIMs") throughout 2023, based on wide-reaching allegations most of which are now no longer maintained. At worst, it is an attempt to influence the outcome of the KSC's main case, *Prosecutor v Thaçi, Veseli, Selimi, and Krasniqi* ("Case 06"), both by burdening Mr Thaçi and his Defence teams with parallel proceedings, and by creating prejudicial factors which may influence the Case 06 outcome.
4. The SPO has consistently spoken of this case as involving "witness interference",³ including in recent public statements.⁴ This not only threatens Mr Thaçi's presumption of innocence, but misrepresents the charges. The SPO has not

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ("Rules"). All references to "Rule" or "Rules" herein are to the Rules.

² KSC-BC-2023-12/F00453, Pre-Trial Judge, Decision on the Remaining Calendar of the Pre-Trial Proceedings, 16 September 2025, public, paras 17 and 23(a).

³ For example KSC-BC-2023-12/F00003, Specialist Prosecutor, Confidential redacted version of "Requests for warrants of arrests and related requests", 31 January 2024, confidential ([public redacted version](#) 13 December 2024), para.11; KSC-BC-2023-12/F00014, [Prosecution submissions pursuant to Order F00011](#), 2 May 2024, public, para.2; KSC-CC-2024-25/F00004, Prosecution response to 'Referral to the Constitutional Court Panel on the violation of Mr Hashim Thaçi's fundamental rights', 16 September 2024, confidential, para.3; KSC-BC-2023-12/F00024, Confidential redacted version of "Prosecution supplement to Request F000018", 30 October 2024, confidential ([public redacted version](#) 30 October 2024), para. 38; KSC-BC-2023-12/F00361, Prosecution request for an order, 3 July 2025, confidential (public redacted version 17 October 2025), para. 26.

⁴ See, for example, the Deputy Specialist Prosecutor's [LinkedIn post](#) of 9 October 2025, stating that: "Thaci is charged with systematically directing witness interference from the KSC Detention Facilities".

charged the offence of “obstruction of evidence or official proceedings”, which is available under Article 386 of the Kosovo Criminal Code (“KCC”) where a person uses compulsion or a bribe with the intent to induce false testimony or to prevent or delay evidence. Even the SPO apparently recognises that such charges would never have been confirmed. Nonetheless, in order to maintain its narrative and justify the intrusive measures which it convinced the Case 12 Pre-Trial Judges to impose, another serious charge had to be found. Accordingly, Mr Thaçi is now accused of a public order offence, “obstructing official persons in performing official duties”; an offence which has never been used in Kosovo in the context of “witness interference” allegations, and the correct elements of which, as applied by the Kosovo courts, have nothing at all to do with the SPO’s factual allegations in this case.

5. The SPO first convinced a Single Judge to begin issuing intrusive SIMs against Mr Thaçi in March 2023. The SPO claimed that Mr Thaçi and others were systematically “interfering” with witnesses, by “intimidation”,⁵ for example, by “frightening” them.⁶ When evidence of this claim failed to materialise, the SPO sought a widening range of measures, as well as the extension of those already in

⁵ For example, KSC-BC-2023-12/INV/F00009/CONF/RED, Confidential redacted version of ‘Prosecution request for special investigative measures’ with a confidential and *ex parte* Annex 1, 28 April 2023 (confidential redacted version 22 November 2023; [public redacted version](#) 27 February 2025), paras 4, 5, 6, 21, 22, 25, 26, 27, 28, 29; KSC-BC-2023-12/INV/F00018/CONF/RED, Confidential redacted version of ‘Prosecution request for extension of Decision F00330’, 28 November 2023, confidential and *ex parte* ([public redacted version](#) 27 February 2025), para 2; KSC-BC-2023-12/INV/F00027/CONF/RED2, Lesser confidential redacted version of ‘Prosecution report pursuant to Decision F00384 and related requests with strictly confidential and *ex parte* Annex 1’, 20 February 2025, confidential ([public redacted version](#) 27 February 2025), para.4.

⁶ For example, KSC-BC-2023-12/INV/F00004/CONF/RED, Confidential redacted version of ‘Prosecution requests for Detention Centre information [REDACTED] with strictly confidential and *ex parte* Annex 1’, 28 March 2023, confidential (confidential redacted version 28 November 2023; [public redacted version](#) 26 February 2025), para. 7; *Case 06*, KSC-BC-2020-06/F01401/CONF/RED, para. 7.

place.⁷ Eventually, in December 2023, the SPO filed its first proposed indictment in what would become this case (“Case 12”).⁸

6. It has been clear at least since then that the SPO has been unable to justify the claims it made against Mr Thaçi and others. Mr Kadri Veseli and Mr Rexhep Selimi have never been charged with any offences against the administration of justice. Charges have been brought in respect of only 6 witnesses in the Case 12 Indictment (“Indictment”), and the Pre-Trial Judge ruled that there was insufficient evidence to even confirm an indictment in respect of the SPO’s allegations of actual obstruction.⁹ Claims that witnesses were threatened or

⁷ KSC-BC-2023-12/INV/F00004/CONF/RED, Confidential redacted version of ‘Prosecution requests for Detention Centre information [REDACTED] with strictly confidential and *ex parte* Annex 1’, 28 March 2023, confidential (confidential redacted version 28 November 2023; [public redacted version](#) 26 February 2025); KSC-BC-2023-12/INV/F00006/RED, Urgent Prosecution supplemental requests in relation to F00318 and F00321 with strictly confidential and *ex parte* Annexes 1–5’, 5 April 2023 ([public redacted version](#) 26 February 2025); KSC-BC-2023-12/INV/F00009/CONF/RED, Confidential redacted version of ‘Prosecution request for special investigative measures’ with a confidential and *ex parte* Annex 1, 28 April 2023 (confidential redacted version 22 November 2023; [public redacted version](#) 27 February 2025); KSC-BC-2023-12/INV/F00011/RED, Prosecution further submissions in response to KSCBC-2018-01/F00343, 1 May 2023 ([public redacted version](#) 27 February 2025); KSC-BC-2023-12/INV/F00013/RED, Supplement to SPO Filing F00340, 3 May 2023 ([public redacted version](#) 26 February 2025); KSC-BC-2023-12/INV/F00016/RED, Supplemental Request Regarding Prosecution Filings F00340 and F00344, 26 May 2023 ([public redacted version](#) 26 February 2025); KSC-BC-2023-12/INV/F00018/CONF/RED, Confidential redacted version of ‘Prosecution request for extension of Decision F00330’, 28 November 2023, confidential and *ex parte* ([public redacted version](#) 27 February 2025); KSC-BC-2023-12/INV/F00021, SPO, Further submissions regarding Filings F00358, 1 June 2023, confidential ([public redacted version](#) 3 March 2025); KSC-BC-2023-12/INV/F00023/COR2/RED, Corrected Version of “Prosecution request for extensions of Decisions F00350 and F00363” KSC-BC-2018-01/F00380/COR’, 28 June 2023 ([public redacted version](#) 27 February 2025); KSC-BC-2023-12/INV/F00027/CONF/RED2, Lesser confidential redacted version of ‘Prosecution report pursuant to Decision F00384 and related requests with strictly confidential and *ex parte* Annex 1’, 20 February 2025, confidential ([public redacted version](#) 27 February 2025); KSC-BC-2023-12/INV/F00054/RED, Urgent Prosecution request for order, 10 November 2023 ([public redacted version](#) 27 February 2025); KSC-BC-2023-12/INV/F00064/RED, Prosecution request for preservation orders, 13 December 2023 ([public redacted version](#) 28 February 2025).

⁸ KSC-BC-2023-12/F00002, SPO, Submission of Indictment for confirmation and related request with strictly confidential and *ex parte* Annexes 1-3, 15 December 2023, strictly confidential and *ex parte* (reclassified as confidential 15 December 2023).

⁹ KSC-BC-2023-12/F00036, Pre-Trial Judge, Decision on the Confirmation of the Indictment, 29 November 2024, confidential ([public redacted version](#) 12 February 2025), para. 191.

intimidated are also conspicuously absent from the current case, despite the SPO having used such allegations to obtain SIMs. The Indictment is a long way from the claims which the SPO felt bold enough to make in *ex parte* litigation. In determining those allegations which survive in the Indictment, the Defence invites the Trial Panel to keep in mind the SPO's demonstrated willingness to bring various other prejudicial claims which it ultimately could not sustain.

B. CONTENTS OF THE DEFENCE PRE-TRIAL BRIEF

7. This Pre-Trial Brief does not purport to set out the Defence case in definitive terms. That is partly because the burden of establishing the charges falls on the SPO.¹⁰ It is also because the SPO, [REDACTED],¹¹ is continuing to disclose additional evidence under Rules 102(1)(b), 103 and 102(3), including after the filing of its Pre-Trial Brief.¹² Additionally, the Defence has been hindered in its preparation by the concurrent Case 06 proceedings, which are consuming the time of Mr Thaçi and his Defence team alike, and by the significant restrictions on defence investigations which specifically affect Mr Thaçi.¹³
8. Rather, in this document the Defence provides a basic overview of its position. Section II provides a summary of the numerous procedural defects which have already tainted the present case. Section III sets out the general framework of the Defence case, first in respect of factual deficiencies in the SPO case, and secondly in respect of legal errors.

¹⁰ Article 21(3) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("KSC Law"); Article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950 ("ECHR").

¹¹ For example, [REDACTED].

¹² KSC-BC-2023-12/F00459/COR/A01, Annex 1 to Corrected Version of "Prosecution submission of pre-trial brief, witness and exhibit list", 19 September 2025 (corrected version 6 October 2025) ("SPO Pre-Trial Brief").

¹³ Case 06, KSC-BC-2020-06/F03488, [Joint Thaçi Defence Request for Amendment of the Contact Protocol with confidential and ex parte Annex 1](#), 18 September 2025, public, paras 17-28.

II. PROCEDURAL DEFECTS

9. This case has been marred from the outset by numerous procedural defects. The SPO appears to be focused on obtaining as many and as serious convictions as possible against Mr Thaçi, without regard to the fairness of the process or its conformity with the applicable law.
10. Some of these irregularities have already been raised in litigation before the Pre-Trial Judge, while other are matters for the Trial Panel. The most significant are identified below, along with their consequences for the proceedings.

The Case 12 Indictment was confirmed by an unlawfully composed judicial panel

11. As detailed in the Defence's Preliminary Motion on Jurisdiction, both the SPO and the President have disregarded the KSC Law's provisions regarding the division of judicial responsibilities and the assignment of judges.¹⁴ The most significant consequence of this has been that the Indictment was issued by a tribunal not composed in accordance with the law, rendering it null. The very foundation of the case is invalid as a result.

Concurrent and interrelated proceedings are creating procedural anomalies

12. This case could have been allowed to occur after the conclusion of Case 06. No explanation has ever been provided by the SPO of its haste to proceed in parallel with Case 06, although the conduct of two concurrent, interrelated trials is unprecedented in international criminal law and is creating a range of procedural irregularities.¹⁵

¹⁴ KSC-BC-2023-12/F00290, Thaçi Defence Preliminary Motion on Jurisdiction, 8 May 2025, confidential and *ex parte* ([public redacted version](#) 12 May 2025), paras 57-81. This motion was dismissed by the Pre-Trial Judge and is currently under appeal. See KSC-BC-2023-12/IA007/F00004, Thaçi Defence Appeal against "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction", 18 August 2025, confidential and *ex parte* (confidential redacted version and [public redacted version](#) 20 August 2025).

¹⁵ The Defence has repeatedly highlighted these procedural difficulties and irregularities: KSC-BC-2023-12/F00290, Thaçi Defence Preliminary Motion on Jurisdiction, 8 May 2025, confidential and *ex parte* ([public redacted version](#) 12 May 2025), paras 46-56; KSC-BC-2023-12/F00285, [Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings concerning Mr Thaçi](#), 7 May 2025, public, paras 27-51, 60-68; KSC-BC-2023-12/F00320, Thaçi Defence Response to Prosecution

13. As explained by the Defence in its motion for severance and adjournment, the parallel conduct of the cases is infringing Mr Thaçi's right to actively participate in his own defence; and is placing a significant and unjustified burden on his Defence teams, hindering the preparation of his defence.¹⁶
14. Mr Thaçi's unprecedented prosecution in two concurrent, interrelated trials has also created conflicting legal regimes. Mr Thaçi is subject to two sets of detention conditions, with conflicting conditions about which persons may visit him.¹⁷ In March 2025, compassionate conditional release was granted to Mr Thaçi on the

request to modify detention conditions (F00308), 30 May 2025, confidential ([public redacted version](#) 27 July 2025), paras 14-15, 19, 22, 23-25; KSC-BC-2023-12/F00396, Thaçi Defence Request for Certification to Appeal "Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions, 28 July 2025, confidential and *ex parte* (confidential redacted version and [public redacted version](#) notified the same day), paras 6-8, 16-17; KSC-BC-2023-12/IA006/F00004, Thaçi Defence Appeal against "Decision on Preliminary Motions for Adjournment and Severance of the Proceedings", 18 August 2025, confidential and *ex parte* (confidential redacted version and [public redacted version](#) 20 August 2025), paras 12-45; KSC-BC-2023-12/IA007/F00004, Thaçi Defence Appeal against "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction", 18 August 2025, confidential and *ex parte* (confidential redacted version and [public redacted version](#) 20 August 2025), paras 10-20; KSC-BC-2023-12/F00480, Thaçi Defence Response to "Prosecution Submissions pursuant to Decision F00382", 3 October 2025, confidential and *ex parte* (confidential redacted versions 6 October 2025), para. 23. The concurrence of the present proceedings with those in Case 06 has also necessitated several variations of deadlines in Case 12. See, for example, KSC-BC-2023-12/F00135, Pre-Trial Judge, [Decision on Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions](#), 24 January 2025, public, para. 18; KSC-BC-2023-12/IA006/F00003 & KSC-BC-2023-12/IA007/F00003, Court of Appeals Panel, [Decision on Thaçi Defence Requests for Variation of Time Limit for the Filing of Appeals](#), 28 July 2025, public, para. 4.

¹⁶ KSC-BC-2023-12/F00285, [Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings concerning Mr Thaçi With Public Annex 1](#), 7 May 2025, public, paras 33-51. This motion was dismissed by the Pre-Trial Judge and is currently under appeal. See KSC-BC-2023-12/IA006/F00004/RED, Public Redacted Version of Thaçi Defence Appeal against "Decision on Preliminary Motions for Adjournment and Severance of the Proceedings", 18 August 2025, public.

¹⁷ See the conflicting rulings issued by Trial Panel II in *Case 06* and by the *Case 12* Pre-Trial Judge regarding certain visitors to Mr Thaçi: *Case 06*, KSC-BC-2020-06/F03442/RED, Public Redacted Version of Decision on Second Prosecution Request to Modify Detention Conditions, 3 September 2025, public; and KSC-BC-2023-12/F00382/COR/RED, Public Redacted Version of Corrected Version of Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions, 18 July 2025, public, confirmed by [REDACTED]. See also KSC-BC-2023-12/F00320, Thaçi Defence Response to Prosecution request to modify detention conditions (F00308), 30 May 2025, confidential ([public redacted version](#) 27 July 2025), paras 14-22; KSC-BC-2023-12/F00396, Thaçi Defence Request for Certification to Appeal "Decision on Specialist Prosecutor's Request for Modification of Hashim Thaçi's detention conditions, 28 July 2025, confidential and *ex parte* (confidential redacted version and [public redacted version](#) notified the same day), paras 8, 16-17.

basis of concurrent and conflicting conditions.¹⁸ Mr Thaçi and his Defence teams are subject to two conflicting frameworks for contact with witnesses, with the result that Mr Thaçi is subject to a different set of rules than those imposed on the SPO and the co-accused.¹⁹ Given that the persons alleged by the SPO to be at risk in Case 06 and Case 12 are the *same persons*, the differences between these regimes cannot be justified by material factors. This not only undermines the legitimacy of the KSC, but in some instances – most obviously in respect of the witness contact protocols – it infringes Mr Thaçi’s fundamental rights.²⁰

15. The handling of the two cases in parallel, despite the fact that they involve overlapping factual questions, has also created the risk of conflicting findings. Since the SPO and Mr Thaçi are both parties in both cases, such conflicting findings would violate the principle of *res judicata*.²¹
16. All of these procedural anomalies could be avoided by simply conducting the two proceedings consecutively rather than concurrently. The Defence requested the severance of charges against Mr Thaçi, to enable the trial of those charges alone to be adjourned, removing the risk of prejudice to the co-accused. In May, the SPO opposed this, including by arguing that two separate trials would “result in

¹⁸ KSC-BC-2023-12/F00290, Thaçi Defence Preliminary Motion on Jurisdiction With Confidential and Ex Parte Annex 1 8 May 2025, confidential and *ex parte* ([public redacted version](#) 12 May 2025), para. 54.

¹⁹ *Case 06*, KSC-BC-2020-06/F03488, [Joint Thaçi Defence Request for Amendment of the Contact Protocol with confidential and ex parte Annex 1](#), 18 September 2025, public, paras 17-28.

²⁰ *Ibid.*, paras 26-28. See also *Case 06*, KSC-BC-2020-06/F03508, Reply to SPO and Victims’ Counsel’s Responses to Joint Thaçi Defence Request for Amendment of the Contact Protocol, 6 October 2025, confidential ([public redacted version](#) 6 October 2025), paras 3-7.

²¹ KSC-BC-2023-12/F00285, [Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings concerning Mr Thaçi With Public Annex 1](#), 7 May 2025, public, paras 63-70; KSC-BC-2023-12/F00290, Thaçi Defence Preliminary Motion on Jurisdiction, 8 May 2025, confidential and *ex parte* ([public redacted version](#) 12 May 2025), para. 48; KSC-BC-2023-12/IA006/F00004, Thaçi Defence Appeal against “Decision on Preliminary Motions for Adjournment and Severance of the Proceedings”, 18 August 2025, confidential and *ex parte* ([public redacted version](#) 20 August 2025); KSC-BC-2023-12/IA007/F00004, Thaçi Defence Appeal against “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction”, 18 August 2025, confidential and *ex parte* ([public redacted version](#) 20 August 2025), paras 10-23.

extensive duplication [...] to the inconvenience of witnesses”;²² even though it is now clear that the SPO will call only [REDACTED] live witnesses, [REDACTED].²³

The Indictment's obstruction charges are defective

17. As the Defence has previously submitted,²⁴ Counts 1 to 3 against Mr Thaçi are defective because they fail to identify alleged facts which are material to the SPO's case. The SPO Pre-Trial Brief has not cured these defects.
18. The SPO accuses Mr Thaçi of attempting to obstruct official persons, through the common action of three groups. However, it has never specified which *official persons* are said to have been the target of this attempted obstruction. Neither is it specified which *official duties* are said to have been targeted. Among the 145 pages of the SPO Pre-Trial Brief, there is only one paragraph which directly addresses these two questions, but does so in the most vague terms:

The official persons subject of the attempted obstruction were the SPO investigators, prosecutors and other staff members in charge of investigating and prosecuting crimes within the KSC jurisdiction, as well as the KSC judges vested with the authority to hear and assess the evidence in Case 6, and deliver a judgment. The official duties engaged by these facts relate to the SPO/KSC's work and responsibility within the context of official proceedings of the KSC, including SPO investigations and prosecutions.²⁵

19. The Defence is therefore asked to answer a charge without knowing its material particulars. The omission is especially unjustifiable because in the initial form of the proposed indictment the SPO did not merely allege *attempted* obstruction. Rather, it sought to argue that actual obstruction had occurred. The SPO must have a view, therefore, on *whom* it considered was obstructed, and *which official duties* they were obstructed from carrying out. Although the Indictment now charges attempt, the SPO must demonstrate that the accused had the intent to

²² KSC-BC-2023-12/F00317, [Consolidated Prosecution response to severance motions \(F00285 and F00286\)](#), 30 May 2025, public, para. 28.

²³ KSC-BC-2023-12/F00459/A03, Annex 3 to Prosecution submission of pre-trial brief, witness and exhibit lists: List of Witnesses, 19 September 2025, confidential.

²⁴ KSC-BC-2023-12/F00288, [Thaçi Defence Motion on Defects in the Indictment](#), 8 May 2025, public.

²⁵ SPO Pre-Trial Brief, para. 221.

obstruct certain identified officials from carrying out certain identified official duties. However, these material facts have never been pleaded by the SPO.

20. Although the Pre-Trial Judge rejected these arguments from the Defence and refused leave to appeal,²⁶ the Indictment's defects remain relevant. In the event that Mr Taçi is convicted on the basis of a material fact of which he did not have adequate notice, that conviction could be quashed on appeal.²⁷

The SPO's approach threatens to violate the principle of legality

21. The Indictment charges crimes under the Kosovo Criminal Code, pursuant to Article 15(2) of the KSC Law. However, as detailed below in section III.B, the charges appear to be premised on an incorrect interpretation of the elements of these Kosovar crimes. The SPO's interpretation is substantially different from the prevailing interpretation and standard application within the Kosovar legal system. If Mr Taçi were convicted based on such an incorrect interpretation, this would violate the principle of legality, and Article 7 of the European Convention on Human Rights ("ECHR").²⁸

The SPO Case depends on apparently inadmissible evidence

22. It is striking that the SPO Case is almost entirely dependent on documents rather than on live evidence. The SPO Witness List includes [REDACTED] persons: [REDACTED]. In contrast the SPO's Exhibit List includes [REDACTED] items. It appears that the SPO intends to build its case almost entirely from the bar table, with little or no regard for the principle of orality.

²⁶ KSC-BC-2023-12/F00347, Pre-Trial Judge, [Decision on Preliminary Motions Alleging Defects in the Indictment](#), 24 June 2025, public; KSC-BC-2023-12/F00392, Pre-Trial Judge, [Decision on the Taçi and Fazliu Requests for Certification to Appeal the "Decision on Preliminary Motions Alleging Defects in the Indictment"](#), 24 July 2025, public.

²⁷ ICTY, *Prosecutor v Kupreškić et al.*, IT-95-16-A, Appeals Chamber, [Judgement](#), 23 October 2002, paras 79-125; ICTR, *Renzaho v Prosecutor*, ICTR-97-31-A, Appeals Chamber, [Judgement](#), 1 April 2011, paras 119-129.

²⁸ ECtHR, *Pessino v France*, App no. 20203/02, [Judgment](#), 10 October 2006; ECtHR, *Dragotoniu and Militaru-Pidhorni v Romania*, App nos 77193/01 and 77196/01, [Judgment](#), 24 May 2007.

23. For a significant number of the [REDACTED] items listed in the SPO Exhibit List, it is unclear to the Defence on what basis they could permissibly be tendered. For example: the Exhibit List contains a significant number of items which fall into the category of written witness testimony ([REDACTED], etc). Such documents are subject to Rules 153 to 155. Presumptively, such documents should not be admitted and given weight unless the witness is available for cross-examination by the Defence. That is even more so the case when the evidence concerns the acts and conduct of the Accused as charged.²⁹ However, [REDACTED]. Yes, despite the questionable admissibility of this material, the SPO has already begun quoting from it and relying on it in the SPO's Pre-Trial Brief.³⁰
24. It also appears that the SPO intends to rely extensively on evidence about events outside the scope of the case. Transcripts of Detention Centre visits which are *not* mentioned in the Indictment are nonetheless relied on by the SPO.³¹ In this way, the SPO seeks to introduce evidence which is of questionable relevance and probative value. If transcripts of these visits demonstrated criminal activity, it would be expected that the additional visits would have been included in the Indictment.
25. These are only two examples of the SPO's flawed approach to the evidence in this case; others exist. As referenced below (see paragraph 34) the SPO appears to intend to rely heavily on transcripts created by the SPO itself, without the support of any live evidence regarding how these transcripts were created (for example, how voice attribution was achieved). The SPO's overall goals appear to be the conviction of Mr Taçi in the present case; and ensuring that this occurs *before* the conclusion of Case 06. To achieve this, the SPO is prepared to disregard the established evidentiary rules intended to ensure a fair trial.

²⁹ In which case, Rule 153 is inapplicable: Rule 153(1).

³⁰ For example, SPO Pre-Trial Brief, paras [REDACTED].

³¹ For example, SPO Pre-Trial Brief, paras 33-34, 58, 70, 86, 94-95, 104, 143-144, 165, 167, 169, 170, 173, 175, 188, 194, 201- 208.

III. OVERVIEW OF THE DEFENCE CASE

26. Pursuant to Rule 95(5)(b), at this stage, the Defence disputes the entirety of the charges against Mr Taçi.
27. The **factual matters** underpinning the SPO case cannot be proved. The Defence will put the SPO to proof and expects that the SPO will fail to meet its burden. Some of the specific areas in which the Defence disputes the SPO's claims are set out (non-exhaustively) below.
28. In addition, the SPO's case is flawed by a number of **legal errors** regarding the elements of the crimes and modes of liability charged.

A. FACTUAL MATTERS

The presumption of innocence and burden of proof

29. Article 21(3) of the KSC Law presumes the innocence of the accused "until proved guilty beyond reasonable doubt according to the provisions of this Law", thereby incorporating the central right of an accused provided in Article 31(5) of the Kosovo Constitution and Article 6(2) of the ECHR. A conviction cannot be entered unless the offences for which Mr Taçi is charged have been established by the SPO beyond a reasonable doubt.³²
30. The standard "beyond reasonable doubt" means that "the evidence establishes a particular point and it is beyond dispute that any reasonable alternative is possible".³³ It requires a trial panel to be satisfied that there is no reasonable

³² Rule 140(1): "[a] Panel may find an Accused guilty where guilt is proved beyond reasonable doubt". See also Rule 158(3); *Prosecutor v Gucati and Haradinaj*, KSC-CA-2022-01/F00114, Court of Appeals Panel, [Appeal Judgment](#), 2 February 2023, para. 328.

³³ *Prosecutor v Gucati and Haradinaj*, KSC-BC-2020-07/F00611/RED, Trial Panel II, [Public Redacted Version of the Trial Judgment](#), 18 May 2022 ("*Gucati and Haradinaj* Trial Judgment"), para. 37; IRMCT, *Prosecutor v Ngirabatware*, MICT-12-29-A, Appeals Chamber, [Judgement](#), 18 December 2014 ("*Ngirabatware* Appeal Judgment"), para. 20; ICTY, *Prosecutor v Mrkšić and Šljivančanin*, IT-95-13/1-A, Appeals Chamber, [Judgement](#), 5 May 2009 ("*Mrkšić and Šljivančanin* Appeal Judgment"), para. 220.

explanation of the evidence other than the guilt of the accused.³⁴ The reasonable doubt standard must also be applied to “the facts constituting the elements of the crime and of the mode of liability of the Accused as charged, as well as to other facts on which the conviction depends”.³⁵

31. As such, in order for Mr Taçi to be convicted, the SPO must prove, beyond a reasonable doubt, the relevant elements of the commission of the crimes alleged in Counts 1 to 11 of the Indictment, including the forms of individual responsibility alleged against Mr Taçi in paragraphs 36 to 43 of the Indictment.
32. Despite the SPO’s apparent confidence in public statements about this case, there are good reasons to doubt that it will meet its burden. Some of these have already been addressed above: Numerous past SPO claims about the events which this case concerns proved unfit for inclusion in an indictment, no doubt because they were not supported by evidence. Moreover, much of the evidence which the SPO apparently intends to rely on in this case is of questionable admissibility. In addition, there are a number of specific areas in which the SPO’s case is based on errors and/or misrepresentations.

Specific factual errors and misrepresentations in the SPO Case

a) Lack of evidence about the alleged sharing of information and documents

33. Counts 4 to 11 of the Indictment are concerned with the SPO’s allegation that Mr Taçi shared certain information and/or documents with persons not authorised to receive them.

³⁴ [Gucati and Haradinaj Trial Judgment](#), para. 37; [Ngirabatware Appeal Judgment](#), para. 20; [Mrkšić and Šljivančanin Appeal Judgment](#), para. 220; ICTY, *Prosecutor v D. Milošević*, IT-98-29/1-A, Appeals Chamber, [Judgement](#), 12 November 2009 (“D. Milošević Appeal Judgment”), para. 20; ICTY, *Prosecutor v Martić*, IT-95-11-A, Appeals Chamber, [Judgement](#), 8 October 2008, para. 61.

³⁵ Rule 140(2). See also [Gucati and Haradinaj Trial Judgment](#), para. 35; ICC, *Prosecutor v Ongwen*, Appeals Chamber, [Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”](#), ICC-02/04-01/15-2022-Red, 15 December 2022, para. 388; ICC, *Prosecutor v Ngudjolo*, Appeals Chamber, [Judgment on the Prosecutor’s appeal against the decision of Trial Chamber II entitled “Judgment pursuant to article 74 of the Statute”](#), ICC-01/04-02/12-271-Corr, 7 April 2015, para. 125; [D. Milošević Appeal Judgment](#), para. 25.

34. In this respect the SPO case appears to rest largely on transcripts of Mr Thaçi's non-privileged Detention Centre visits. This is clear from the SPO Pre-Trial Brief, which quotes extensively from these transcripts throughout.³⁶ However, these transcripts have been prepared by the SPO itself and in several material respects are inherently unreliable. The transcripts incorporate what appears to be SPO commentary on material issues (for example, as to the exchange of papers or the sound of writing or drawing).³⁷ The English versions reflect an SPO interpretation of the conversations in areas where the language used is ambiguous, [REDACTED].³⁸ And most crucially, no explanation – let alone admissible evidence – has been provided of how the SPO came to or justifies the voice attribution reflected in these transcripts.³⁹
35. Similarly, the SPO does not demonstrate beyond reasonable doubt that documents obtained during search and seizures emanated from Mr Thaçi.
36. Moreover, in some instances, the SPO is charging Mr Thaçi with sharing information which had already been released by others into the public domain at the relevant time. For example, Witness 1 and Witness 2 had testified extensively in other criminal proceedings about the conflict in Kosovo well before 2023, such that the content of their evidence was readily accessible in the public domain. Before the Detention Centre visit of 2 July 2023, Witness 1 had already made public that he had was providing evidence to the SPO,⁴⁰ and had publicly shared his views on Case 06.⁴¹ The SPO fails to acknowledge these facts or to grapple with how the sharing of such information could still amount to an offence in these circumstances.

³⁶ For example, the footnotes to SPO Pre-Trial Brief, paras 31-43, 57-75, 86-99, 102-109, 128-130, 132-139.

³⁷ For example, SPO Pre-Trial Brief, paras 68, 74, 105.

³⁸ For example, [REDACTED].

³⁹ See also KSC-BC-2023-12/F00376, Thaçi Defence Notice of Objection and Reservation of Rights, 17 July 2025, confidential.

⁴⁰ See SPOE00330366-SPOE00330381-ET ([REDACTED]).

⁴¹ [REDACTED], 122005-01-TR-AT-ET,

b) *Lack of evidence about alleged action taken regarding witnesses*

37. The SPO's case become weaker still as concerns its allegations that action was taken in respect of witnesses following Detention Centre visits. For a number of the charges contained in the Indictment, it is required that some concrete action must have been taken, beyond mere discussions.
38. For example, where Article 35 of the KCC is relied on to establish criminal liability as a result of an agreement to commit a criminal offence, the SPO acknowledges that this mode of liability would require it prove that "substantial acts towards the commission of the offence" were taken.⁴² However, the SPO repeatedly fails in its Pre-Trial Brief to make clear what "substantial acts" it claims were taken beyond discussions in the Detention Centre.
39. Regarding the claim that Mr Thaçi and Mr Hajredin Kuçi agreed to commit contempt (Count 9), the SPO alleges that the two men met and discussed Case 06 matters on 3 September 2025.⁴³ The SPO then identifies what it claims were "substantial acts" to implement an "agreement", but all of which are themselves merely part of the alleged discussion which also constitutes the "agreement".⁴⁴ The SPO nowhere alleges that Mr Kuçi made contact with any Case 06 witnesses *after* having visited Mr Thaçi.
40. For these charges concerning Mr Kuçi, the omission is particularly significant. That is because, Mr Kuçi was at all relevant times a member of the defence team of Mr Veseli, as the SPO itself acknowledges.⁴⁵ Neither the Indictment nor the Pre-Trial Brief identifies any KSC order which prohibited an accused from discussing

⁴² SPO Pre-Trial Brief, paras 263, 272, 278. See also [Gucati and Haradinaj Trial Judgment](#), para. 198; *Prosecutor v Januzi and Bahtjari*, KSC-BC-2023-10/F00008/RED/COR, Pre-Trial Judge, [Corrected Version of Public Redacted Version of the Decision on the Confirmation of the Indictment](#), 2 October 2023 ("*Januzi and Bahtjari* Confirmation Decision"), para. 64; *Prosecutor v H. Shala*, KSC-BC-2023-11/F00005/RED, Pre-Trial Judge, [Public Redacted Version of the Decision on the Confirmation of the Indictment](#), 4 December 2023 ("*H. Shala* Confirmation Decision"), para. 63.

⁴³ SPO Pre-Trial Brief, paras 7, 48-75.

⁴⁴ SPO Pre-Trial Brief, para. 263.

⁴⁵ SPO Pre-Trial Brief, paras 3, 7, 79, 260.

case-related matters with a member of another defence team. The SPO Pre-Trial Brief appears to present Count 9 as being related to a violation of the Case 06 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 ("Case 06 Protocol").⁴⁶ However the Case 06 Protocol did not prohibit Mr Thaçi from discussing confidential case matters with a member of Mr Veseli's defence team. Without some concrete action taken to contact a witness, no crime can have occurred.⁴⁷

41. A similar issue arises in respect of the attempted obstruction charges. A conviction for these charges would require showing, beyond reasonable doubt, that more than mere preparatory acts⁴⁸ were undertaken to achieve the obstruction of a public official from carrying out his or her duties; and that a result of obstruction, although it did not occur, was *intended*. The alleged steps identified by the SPO⁴⁹ are insufficient to characterise an attempt.
42. The SPO claims that, following visits with Mr Thaçi, meetings were arranged and/or messages exchanged between Mr Thaçi's co-accused and Case 06 witnesses.⁵⁰ However, the SPO has been unable to produce any evidence to suggest that these alleged interactions related at all to the KSC or Case 06 proceedings. Indeed, the SPO acknowledges that some of these Case 06 witnesses

⁴⁶ SPO Pre-Trial Brief, paras 254-257. The only other court order referred to is the First Protective Measures Decision (SPO Pre-Trial Brief, para. 258), however it is referred to as relevant to Witness 4, who is not alleged to have been discussed between Mr Thaçi and Mr Kuçi (SPO Pre-Trial Brief, paras 48-77).

⁴⁷ The SPO Pre-Trial Brief does not elaborate as to how contempt could have been committed based on the facts it alleges. Its relevant paragraphs merely assert that contempt was committed, and cross-reference to the narrative account of the SPO allegations: SPO Pre-Trial Brief, para. 278.

⁴⁸ [Gucati and Haradinaj Trial Judgment](#), para. 201; [Januzi and Bahtjari Confirmation Decision](#), para. 67; [H. Shala Confirmation Decision](#), para. 66.

⁴⁹ SPO Pre-Trial Brief, para. 219.

⁵⁰ SPO Pre-Trial Brief, para. 219, fn 732.

have explicitly denied that their potential interactions with the co-accused concerned the KSC or Case 06.⁵¹

c) *Lack of evidence regarding obstructive potential or intent*

43. There is an additional fundamental flaw in the SPO's obstruction charges. From the SPO's Pre-Trial Brief, it remains unclear how the alleged contact with witnesses, or sharing of information with witnesses, *even had it occurred*, would amount to obstruction. Contact with a witness does not *per se* fulfil the elements of Article 401(2) of the KCC, as such contact is not inherently likely to obstruct the duties of a public official. For example, contact with a witness which involved no discussion of the KSC's activities would not be capable of obstructing KSC or SPO officials in any of their duties. Likewise, actively urging a witness to be truthful and to cooperate with the KSC and SPO could not be an act capable of obstructing a public official.
44. The SPO thus seems to imply that that something more than contact occurred, even though this is not stated explicitly in its Pre-Trial Brief. Perhaps the clearest indicator is found in the claim that conduct of the accused "threatened the ability of the KSC/SPO to obtain *accurate and truthful* testimony of the witnesses concerned" (emphasis added).⁵² This appears to imply that Mr Thaçi and his co-accused sought to encourage or incite witnesses to give testimony which was *untrue*. However, no evidence is given to support such a claim, and the SPO Pre-Trial Brief never goes so far as to explicitly suggest that witnesses were asked to lie or discouraged from cooperating.
45. The SPO Pre-Trial Brief only alleges that Mr Thaçi sought to give instructions to witnesses which were "consistent"⁵³ and which reflected Mr Thaçi's view of the

⁵¹ SPO Pre-Trial Brief, paras 47, 114.

⁵² SPO Pre-Trial Brief, para. 219.

⁵³ SPO Pre-Trial Brief, para. 163.

war in Kosovo.⁵⁴ But the SPO has not demonstrated that this consistency of instructions would, if proved, support a conclusion that the conduct was *obstructive*.

B. LEGAL ISSUES

46. The factual deficiencies in the SPO's case appear to be linked to a flawed understanding of the Kosovar crimes which form the basis of the charges.
47. This is most apparent in respect of the charges of obstructing a public official. The use of this domestic offence at the KSC bears little or no relationship to the way in which this crime has ever been applied in Kosovo. The SPO has distorted this public order offence into a substitute for a witness interference offence. In fact, the KCC contains several specific witness interference offences (in Articles 386 to 388). It is telling that the SPO has not sought to charge any form of these crimes, even attempt. Instead, it has re-defined an entirely different offence – obstruction of a public official – giving it a meaning which has never been recognised by judges in Kosovo.
48. The Defence anticipates that the SPO will seek to rely on rulings from Case 07 and Case 10 to support its interpretations of these offences under the KCC. However, Mr Thaçi was not a party to those cases. He had no possibility to advocate for the correct interpretation of Kosovar law and cannot be held responsible for the failure of other defendants to do so. The Defence will call for a correct interpretation of the KCC's offences which respects Kosovo domestic case law and practice. As indicated above (see paragraph 21), this is demanded by the principle of legality. This Court cannot be permitted to convict an accused under the KCC for conduct which would never form the basis of such a conviction in a "normal" Kosovo court.

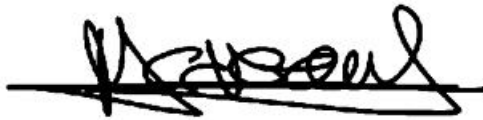
⁵⁴ SPO Pre-Trial Brief, paras 110, 173.

IV. CONCLUSION

49. The Defence refutes Mr Thaçi's liability on all Counts. The SPO case rests on flawed allegations of facts and equally flawed interpretations of the KCC. The Defence will further continue to litigate the numerous procedural irregularities which are interfering with Mr Thaçi's fair trial rights in this case.

[Word count: 6,444 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

20 October 2025

Paris, France