

In: KSC-BC-2023-12

Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: **Single Trial Judge**
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi, Bashkim Smakaj, Isni Kilaj,
Fadil Fazliu and Hajredin Kuçi

Date: 20 January 2026

Language: English

Classification: Public

**Public Redacted Version of Joint Defence Response to Prosecution request
for transcription/translation verification deadline (F00666)**

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I. INTRODUCTION

1. The Defence for Messers Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi (“Defence”) responds to the Prosecution request for a transcription/translation verification deadline (“SPO Request” or “Request”).¹
2. In its request the SPO asks the Single Trial Judge to:
 - (i) impose a deadline by which the Defence must identify – with specificity as to page(s) and line number(s) – the portions of the Exhibit-listed Detention Centre audio recording transcripts/translations which the Defence challenges the accuracy of (‘Requested Verifications’), if they want to do so; and (ii) confirm, consistent with past practice, that the SPO is authorised to request LSU to conduct the Requested Verifications and order the SPO to submit any and all Verification Request(s) to LSU once received from the Defence.

II. PROCEDURAL HISTORY

3. On 17 December 2025 the SPO filed its Bar Table Motion.
4. On 7 January 2026, the Single Trial Judge extended the time for the Defence response to 23 January 2026 at 16h00.²
5. On 14 January the SPO filed the Request.

III. SUBMISSIONS

6. The Defence disputes the accuracy of the transcripts from the Detention Centre audio recordings *in their entirety*. The burden falls on the SPO to demonstrate that these transcripts (and thus related translations) are accurate.
7. The party tending a piece of evidence bears the burden of demonstrating that it is at least *prima facie* authentic, relevant and has probative value not outweighed by its prejudicial effect.³ Since relevance and the establishment of probative value

¹ KSC-BC-2023-12/F00666, Prosecution request for transcription/translation verification deadline, 14 January 2026, Confidential.

² KSC-BC-2023-12/F00656, Single Trial Judge, [Decision on “Joint Defence Request for Extensions of Time and Word Limit for Responding to the SPO Bar Table Motion”](#), 7 January 2026, Public.

³ *Case 07*, KSC-BC-2020-07/F00334, Trial Panel II, [Decision on the Prosecution Request for Admission of Items Through the Bar Table](#), 29 September 2021, Public, paras 11-15.

require reliability, this also entails that a tendering party must demonstrate the *prima facie* reliability of a tendered item.⁴

8. Regarding the transcripts and translations which are the subject of the Request, the SPO has not met this burden. In its response to the SPO Bar Table Motion, the Defence will set out in full the reasons why this evidence is unreliable in its entirety. Those Defence submissions will be received by the Single Trial Judge by Friday 23 January 2026.⁵ The relief sought in the SPO Request is therefore redundant and/or unnecessary.
9. Moreover, the requested relief would reverse the burden of proof and violate the right to silence of the Accused. These principles are protected by the Kosovo Constitution,⁶ the KSC Law,⁷ and the European Convention on Human Rights.⁸ Compelling the Defence to identify which specific parts of the transcripts are inaccurate would entitle the STJ to assume that any *other* portions of the transcripts are accurate and reliable simply because the Accused has not demonstrated them to be otherwise. This would very clearly:
 - (i) Place the burden on the Defence to demonstrate flaws in the SPO's evidence; and

⁴ *Case 07*, KSC-BC-2020-07/F00334, Trial Panel II, [Decision on the Prosecution Request for Admission of Items Through the Bar Table](#), 29 September 2021, Public, para. 14; ICTY, *Prosecutor v Tadić*, IT-94-1-T, Trial Chamber, [Decision on Defence Motion on Hearsay](#), 5 August 1996, para. 9 (regarding relevance); ICTY, *Prosecutor v Delalić et al.*, IT-96-21-T, Trial Chamber, [Decision on the Prosecution's oral requests for the admission of Exhibit 155 into evidence and for an order to compel the Accused, Zdravko Mucić, to provide a handwriting sample](#), 19 January 1998, para. 32; ICTR, *Prosecutor v Musema*, ICTR-96-13-T, Trial Chamber I, [Judgement and Sentence](#), 27 January 2000, para. 38; *Prosecutor v Popović et al.*, IT-05-88-T, Trial Chamber II, [Decision on Admissibility of Intercepted Communications](#), 7 December 2007, pp.12-13.

⁵ KSC-BC-2023-12/F00656, Single Trial Judge, [Decision on "Joint Defence Request for Extensions of Time and Word Limit for Responding to the SPO Bar Table Motion"](#), 7 January 2026, Public, para. 10.

⁶ Article 30(6), Article 31(5).

⁷ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("KSC Law"), Articles 21(3), 21(4)(h), 38(3)(b).

⁸ Article 6(2).

- (ii) Violate the Accused's right to silence, by compelling them to set out their position regarding what was said in the relevant conversations and/or by whom.
10. The SPO cites a ruling made by Trial Panel II in Case 07,⁹ claiming that an "analogous situation" was involved there. No such analogy can be drawn. In Case 07 the Accused had not objected to the SPO transcript in full; nor raised arguments about its overall reliability. Moreover, the material in question was entirely different. In Case 07 the SPO relied on a short video, recorded from a public television broadcast. There is no suggestion in the publicly available Case 07 material that the recording was indistinct. In the present case, the SPO has tendered more than thirty-five hours of covertly recorded and often indistinct audio material, without video. The circumstances are, in fact, very different; as are the appropriate methods for creating and "verifying" transcripts. Full submissions related to these matters will be set out in the Defence response to the Bar Table Motion.
11. Finally, the Defence notes that the SPO has been on notice regarding the Defence position on these matters since at least July 2025, both through *inter partes* correspondence and formal filings.¹⁰ It is unclear why the Request has been made now, in the final weeks before trial. It is also unclear why the transcripts are tendered from the bar table, rather than through a witness who is able to testify about their reliability, including as to the process by which these transcripts were created. The SPO has had since at least July 2025 to arrange such a witness. Instead of doing so, the SPO now asks the Defence to *disprove* the accuracy of the transcripts. This attempt by the SPO to shift the burden of proof onto the defence

⁹ SPO Request, para. 5, referring to *Case 07*, KSC-BC-2020-07/F00267, Trial Panel II, [Order for Submissions and Scheduling the Trial Preparation Conference](#), 21 July 2021, Public, para. 14.

¹⁰ KSC-BC-2023-12/F00376, [Thaçi Defence Notice of Objection and Reservation of Rights](#), 17 July 2025 (Reclassified as Public 21 October 2025), Public; [REDACTED].

must be rejected as a violation of Rule 140(1), which requires the SPO to prove the reliability of the transcripts beyond reasonable doubt.

12. The SPO has decided that the accuracy of the transcripts is self-evident and no witness needs be called to establish their accuracy. Once the SPO rests its case, it is only then that the Defence has an obligation to announce whether it intends to introduce its own evidence to dispute the SPO's case-in-chief.

IV. CLASSIFICATION

13. This filing is classified as confidential because it responds to a confidential filing.

V. RELIEF SOUGHT

14. The Defence Requests the Single Trial Judge to:

REJECT the SPO Request.

[Word count: 1156 words]

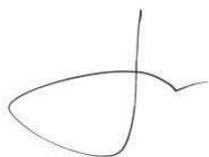
Respectfully submitted,

20 January 2026



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Counsel for Hashim Thaçi



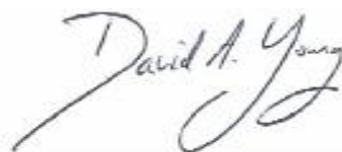
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