



**In:** KSC-BC-2023-12

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

**Before:** Single Trial Judge

Judge Christopher Gosnell

**Registrar:** Fidelma Donlon

**Date:** 26 January 2026

**Language:** English

**Classification:** Public

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**Interim Decision on Prosecution Motion for Admission of Evidence of Witness 8**

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**THE SINGLE TRIAL JUDGE**, pursuant to Article 40(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 82(5), 84(1), 118(2) and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues this decision.<sup>1</sup>

## I. PROCEDURAL BACKGROUND

1. On 19 September 2025, the Specialist Prosecutor's Office ("SPO") filed a list of witnesses including Witness 8 as an expert.<sup>2</sup>
2. On 1 December 2025, the Defence for Hashim Thaçi, the Defence for Bashkim Smakaj and the Defence for Isni Kilaj (collectively, "the Defence") provided notice of their challenges to, and wish to cross-examine, Witness 8 pursuant to Rule 149(2)(a)-(c).<sup>3</sup>
3. On 15 December 2025, the SPO filed a response to the Defence Notification together with a motion seeking the admission of the evidence of Witness 8.<sup>4</sup>
4. On 5 January 2026, the Defence filed a response to the SPO Motion.<sup>5</sup> The SPO did not reply.

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<sup>1</sup> All references to "Article" and "Rule" shall be understood, unless otherwise indicated, as referring to the Law and Rules.

<sup>2</sup> KSC-BC-2023-12, F00459/A03/COR, Specialist Prosecutor, *Annex 3 to Corrected Version of Prosecution Submission of Pre-trial Brief, Witness, and Exhibit Lists*, 19 September 2025, confidential.

<sup>3</sup> KSC-BC-2023-12, F00586, Defence for Hashim Thaçi ("Thaçi Defence"), Bashkim Smakaj ("Smakaj Defence") and Isni Kilaj ("Kilaj Defence"), *Joint Defence Notification Pursuant to Rule 149* ("Defence Notification"), 1 December 2025, public, para. 1.

<sup>4</sup> KSC-BC-2023-12, F00620, Specialist Prosecutor, *Prosecution Response to Filing F00586 and Motion for Admission of Evidence of Witness 8* ("SPO Motion"), 15 December 2025, confidential, with Annex 1, confidential; a public redacted version was filed on 7 January 2026, F00620/RED.

<sup>5</sup> KSC-BC-2023-12, F00648, Thaçi Defence, Smakaj Defence and Kilaj Defence, *Joint Defence Response to Prosecution Motion for Admission of Evidence of Witness 8* ("Defence Response"), 5 January 2026, confidential.

## II. SUBMISSIONS

### A. SPO

5. The SPO seeks, subject to the fulfilment of the conditions under Rule 149, admission of the Report and Associated Materials through Witness 8.<sup>6</sup>

### B. DEFENCE

6. The Defence re-affirms its prior notice of challenge to Witness 8 as an expert and the admission of the Report, as well as its wish to cross-examine this witness.<sup>7</sup> The Defence requests that the Single Trial Judge defer any decision on the qualification of Witness 8 as an expert and the admission of the Report until after his testimony and additional written submissions from the Parties.<sup>8</sup> The Defence also notes that the SPO's requests to Witness 8 to prepare the Report, which are cited in a footnote of the Report, are not included on the Exhibit List and therefore are not currently admissible.<sup>9</sup>

## III. APPLICABLE LAW

7. Pursuant to Rule 118(2), the Single Trial Judge may permit upon timely notice and a showing of good cause, the amendment of the SPO's list of exhibits.

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<sup>6</sup> SPO Motion, paras 1-2, 3, 17. The SPO seeks to tender the following material with Witness 8: 118299 ("Report") and 127822-127830 RED, SPOE00408800- 00408801 RED/SPOE00408800- SPOE00408801- ET, SPOE00408802- 00408803 RED/SPOE00408802- SPOE00408803- ET, SPOE00408849- 00408850 RED/SPOE00408849- SPOE00408850- ET, 119225-119225 RED, 119227-119227 RED, 119228-119228 RED ("Associated Materials").

<sup>7</sup> Defence Response, para. 2.

<sup>8</sup> Defence Response, para. 7.

<sup>9</sup> Defence Response, para. 3; SPO Motion, para. 11; KSC-BC-2023-12, F00685, *Prosecution Submission of Amended Exhibit List*, 21 January 2026, public, with Annex 1 ("Exhibit List"), confidential.

8. Pursuant to Rule 149(2), within seven days of disclosure of the report of an expert witness, or as directed by the Panel, the opposing Party shall file a notice indicating whether:

(a) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the expert witness report and, if so, which parts;

(b) it accepts the expert witness report or parts thereof; or

(c) it wishes to cross-examine the expert witness.

9. Rule 149(4) provides that “[i]f a Party exercised its rights under paragraph (2)(b) or (c), the Panel shall decide on the admissibility of the expert witness report following the testimony and questioning of the expert.”

#### IV. DISCUSSION

10. Rule 149(4) prescribes that the admissibility of an expert report “shall” be deferred until after the expert’s testimony if the Defence challenges the expert report and wishes to cross-examine the expert. This has occurred.<sup>10</sup> Accordingly, no decision will be made on the admissibility of the Report or the Associated Materials until after the witness’s testimony.

11. The Defence has also made clear that it challenges Witness 8’s qualifications as an expert.<sup>11</sup> Therefore, as previously indicated in the Conduct of Proceedings Decision,<sup>12</sup> the Single Trial Judge will likewise defer any decision on Witness 8’s qualification as an expert until after his testimony. The Single Trial Judge would be assisted by written submissions following that testimony

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<sup>10</sup> Defence Response, para. 7-8.

<sup>11</sup> Defence Response, paras 2, 8.

<sup>12</sup> KSC-BC-2023-12, F00642, Single Trial Judge, [Decision on the Conduct of Proceedings](#) (“Conduct of Proceedings Decision”), 22 December 2025, public, para. 37.

on both his qualifications as an expert and the admissibility of the Report and Associated Materials. The Defence is authorized to file such supplementary written submissions no later than two days following the end of the witness's testimony, and the SPO is authorized to file any response no later than two days after the filing of the Defence's submissions.

12. Pursuant to Rule 118(2), the Single Trial Judge, *proprio motu*, grants leave and directs the SPO to immediately add to the Exhibit List what are described as the SPO's "requests for examination"<sup>13</sup> to Witness 8. The Instructions are *prima facie* relevant as they assist in the understanding of the Report; timely notified, in that they are short and have already been disclosed; and their addition to the Exhibit List at this stage causes no undue prejudice to the Defence. Furthermore, the Decision on the Conduct of Proceedings requires this material to be disclosed and "submit[ted]".<sup>14</sup> The SPO shall accordingly file an amended Exhibit List by Wednesday, 28 January 2026, at 16h00.

## V. CLASSIFICATION

13. The Single Trial Judge orders the Defence to request reclassification of the Defence Response, or to file a public redacted version, by Monday, 2 February 2026.<sup>15</sup>

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<sup>13</sup> SPO Motion, para. 11 *referring to* SPOE00408800-004008801 RED/SPOE00408800-SPOE00408801-ET, SPOE00408802-00408803 RED/ SPOE00408802-SPOE00408803-ET and SPOE00408849-00408850 RED/ SPOE00408849-SPOE00408850-ET (collectively, "Instructions").

<sup>14</sup> Conduct of Proceedings Decision, para. 36 ("Along with the expert report, the calling Party shall disclose and submit any engagement letter or other written instructions setting out the terms of reference for the work of the expert, as well as any further written instructions that may have been provided.")

<sup>15</sup> Rules 82(5) and 84(1).

## VI. DISPOSITION

14. For the above reasons, the Single Trial Judge hereby:

- a. **DEFERS** any decision on the Witness 8's qualification as an expert and the admissibility of the Report and the Associated Materials until after his testimony;
- b. **AUTHORIZES** the Defence and the SPO to file supplementary written submissions as indicated in paragraph 11, above;
- c. **ORDERS**, *proprio motu*, the SPO, by **Wednesday, 28 January 2026, at 16h00**, to amend its Exhibit List to include the Instructions; and
- d. **ORDERS** the Defence to request reclassification or file a public redacted version of the Defence Response by **Monday, 2 February 2026**.



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**Judge Christopher Gosnell**  
**Single Trial Judge**

Dated this Monday, 26 January 2026

At The Hague, the Netherlands.