

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 Bashkim Smakaj

Date: 19 October 2025

Language: English

Classification: **Public**

Public Redacted Version of Smakaj Pre-Trial Brief in accordance with Rule 95(5)

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I. GENERAL NATURE OF THE ACCUSED'S DEFENCE

1. The Accused did not participate in a group whose common actions attempted to obstruct official persons in performing official duties.
2. As far as the Accused is aware, there was no common action to obstruct official persons in performing official duties.
3. The Accused did not contribute to or enable any common action to obstruct.
4. The Accused did not participate in any activities aimed at obstructing KSC proceedings by way of influencing the testimony of Witness 2.
5. The Accused was not aware of the 'Case 6 Protocol' and was not aware that THAÇI failed to comply with it (if he did so fail).
6. The Accused was not aware that THAÇI revealed confidential information to the Accused (if he did so reveal).
7. The Accused did not assist THAÇI in disobeying the terms of the Case 6 Protocol, an order of which he was unaware, and did not engage in THAÇI's instructions on Witness 2's testimony, exchange confidential information and/or contact/meet Witness 2 at THAÇI's behest.
8. The history of the KLA and the resistance to Serbia is not confidential, and the KSC/SPO cannot prevent people discussing their recollections of it. The so-called 'THAÇI preferred narrative of the events during the Kosovo conflict', as labelled by the SPO, is nothing more or less than the truth.

9. The Accused has been informed that the SPO is not in possession of any video footage of any DMU visits and is not aware of any video recordings of such meetings ever being made. In the absence of video recorded or eye-witness evidence or expert evidence, the Accused disputes:
 - a. the voice attribution as made in the transcripts; and
 - b. any commentary in the transcripts on movement of persons/objects, or location of persons/objects.
10. It is noted that the speaker at 116083 071023-113000-135500-TR-AT Revised 1 page 47 line 24 does not say, [REDACTED]. The translation is incorrect.
11. It is further noted that the speaker at 116083 071023-113000-135500-TR-AT Revised 1 page 48 line 5 does not say, [REDACTED]. The transcription is incorrect.
12. Further, the Accused had never seen AAOR4213NL (the 'Smakaj Document', as labelled by the SPO) before it was produced before him by an anonymous SPO officer. The Accused has been informed by the SPO that no DNA or fingerprint analysis in relation thereto has been conducted and requests an agreed fact confirming the same.

II. THE CHARGES AND MATTERS WHICH THE ACCUSED DISPUTES, BY REFERENCE TO PARTICULAR PARAGRAPHS IN THE SPECIALIST PROSECUTOR'S PRE-TRIAL BRIEF AND THE REASONS WHY THE ACCUSED DISPUTES THEM

13. The Accused is charged on Counts 12 (attempted obstruction of official persons in performing official duties) and 13 (contempt of court)¹. The Accused disputes both charges.

14. The Defendant disputes the following paragraphs of the Prosecution Pre-Trial Brief ('PPTB')² for the reasons set out:

Paragraph Disputed	Reason
213	THAÇI did not give, and the Accused did not understand THAÇI to be giving, detailed instructions to the Accused on the content and manner of Witness 2's testimony; THAÇI did not task, and the Accused did not understand THAÇI to be tasking, the Accused with conveying instructions to Witness 2; the Accused was not aware of THAÇI revealing any confidential information; THAÇI did not make reference to or handle 'certain paper documents' specifically the 'SMAKAJ Document'; the Accused has never seen the 'SMAKAJ Document' before

¹ KSC-BC-2023-12/F00264/AO1, *Amended Confirmed Indictment*, Prosecution, 16 April 2025, Confidential at paragraph 47

² KSC-BC-2023-12/F00459/AO1, *Prosecution Pre-Trial Brief*, Prosecution, 19 September 2025, Confidential

214	See above re paragraph 213
215	The Accused did not agree on instructions for Witness 2 with others; the Accused did not discuss instructions for Witness 2; the Accused did not instruct Witness 2 to provide evidence in accordance with THAÇI's 'preferred narrative of events'; the Accused did not return on 7 October 2023 to receive further instructions for witness interference
218	The Accused did not attempt to prevent, impeded, hinder and/or delay KSC proceedings; THAÇI did not provide, and the Accused did not understand THAÇI to be providing, detailed instructions on how Witness 2 should testify to be consistent with 'THAÇI's preferred narrative of the events during the Kosovo conflict'; the Accused took no steps to influence witnesses' testimony
223	The Accused did not act with direct intent to participate in a group of persons in order to influence the testimony of witnesses in Case 6
225	The Accused was not aware of, nor desired, participation in a group in order

	<p>to obstruct official persons; the Accused did not engage with, or offer to 'deal with', any instructions to interfere with witnesses; the Accused did not speak in low or whispered tones in order to make portions of conversation inaudible to 'non-participants'; the Accused had no idea that visits with THAÇI were audio recorded; the Accused did not handle 'certain' paper documents and has never seen the 'SMAKAJ Document' before</p>
261	<p>The Accused was not aware of the 'Case 6 Protocol' and was not aware that THAÇI failed to comply with it (if he did so fail); the Accused was not aware that THAÇI revealed confidential identifying information to the Accused (if he did so reveal); the Accused did not assist THAÇI in disobeying the terms of the Case 6 Protocol, an order of which he was unaware, and the Accused did not engage with instructions on Witness 2's testimony, exchange confidential information and/or contact/meet Witness 2 at THAÇI's behest.</p>
268	<p>The Accused was not aware that confidential information was exchanged;</p>

	the Accused was not aware that he was not allowed to contact Witness 2; the Accused was, as a matter of law/fact, not prohibited from having contact with [REDACTED]; THAÇI did not exchange any item with the Accused; the Accused did not speak in low or whispered tones because he was aware of exchanging confidential information; the Accused did not desire, or accede to, the disobeyance of KSC decisions
270	The Accused did not commit the crime of attempted obstruction
271	The Accused did not agree to commit the crime of attempted obstruction
272	The Accused did not provide assistance to THAÇI in the commission of the crimes of attempted obstruction and contempt of court
278	The Accused did not coordinate with others to unlawfully influence the testimony of and/or contact SPO witnesses in Case 6

15. Where a paragraph of the PPTB has not been specifically disputed above, it is not to be taken that the content thereof is agreed.

III. LIST OF POTENTIAL WITNESSES THE DEFENCE INTENDS TO CALL

16. Without prejudice to any subsequent amendment or filing thereof, the Defence intends to call the following witnesses:

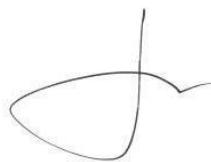
Name	Relevant Issue
Artan BEHRAMI	Events of 9 September 2023 and 7 October 2023
Blerim SHALA	Events of 9 September 2023
Ismail SYLA	Events of 9 September 2023

17. Additionally, the Accused requires the Prosecution to call [REDACTED]³ as a witness and/or tender him for cross-examination.

IV. CLASSIFICATION

18. This filing is classified as confidential pursuant to rule 82(4).

Word count: 1205 words



³ The content of the SPO interview with [REDACTED] is referred to at [REDACTED] of the PPTB

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19 October 2025

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