

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 Isni Kilaj

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**Public Redacted Version of
‘Isni Kilaj Pre-Trial Brief’**

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I. INTRODUCTION

1. Pursuant to Rule 95(5) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), the Defence for Mr Isni Kilaj (“Defence”; “Accused”) hereby files its Pre-Trial Brief.
2. Rule 95(5) provides that a Defence Pre-Trial Brief should indicate:
 - (a) in general terms, the nature of the Accused’s defence;
 - (b) 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; and
 - (c) a list of potential witnesses the Defence intends to call, without prejudice to any subsequent amendment or filing thereof. In relation to each witness, the Defence shall specify to which particular relevant issue the evidence relates.
3. On 19 September 2025, the SPO filed its Pre-Trial Brief (“SPO PTB”) and lists of witnesses and exhibits.¹ A corrected version was filed on 6 October 2025.²

II. THE BURDEN AND STANDARD OF PROOF

4. Article 21(3) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) provides that the Accused shall be presumed innocent until proved guilty beyond reasonable doubt according to the provisions of the Law.
5. Rule 140(2) of the Rules provides that:

¹ Prosecution submission of pre-trial brief, witness and exhibits lists, KSC-BC-2023-12/F00459, 19 September 2025, public, with Annexes 1-5, confidential

² Corrected version of ‘Prosecution submission of pre-trial brief, witness and exhibits lists’, KSC-BC-2023-12/F00459/COR, 6 October 2025, public, with Annexes 1-5, confidential

The standard of proof beyond reasonable doubt shall 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. The beyond reasonable doubt requirement shall not be applied to individual pieces of evidence.

6. Rule 140(3) of the Rules sets out the approach to be taken with circumstantial evidence:

In respect of circumstantial evidence, the standard of proof beyond reasonable doubt is only satisfied if the inference from that evidence is the only reasonable one that could be drawn from the evidence presented. If the evidence allows for other reasonable conclusion(s) to be drawn, the standard of proof beyond reasonable doubt is not satisfied.

III. THE GENERAL NATURE OF THE ACCUSED'S DEFENCE

7. Mr Kilaj is charged on two counts in the public redacted Amended Confirmed Indictment³ ("Indictment"), both relating broadly to offences against the administration of justice, as follows:

Count 14: Attempted obstruction of official persons in performing official duties, by participating in the common action of a group, between at least 6 October and 2 November 2023, a criminal offence against public order, punishable under the Kosovo Criminal Code 2019 ("KCC"), Articles 17, 21, 33, 35 and 401(2) and (5), and Articles 15(2) and 16(3) of the Law; and

Count 15: Contempt of court, between at least 6 October and 2 November 2023, a criminal offence against the administration of justice and public administration, punishable under KCC Articles 21, 33, and 393, and Articles 15(2) and 16(3) of the Law.

8. According to Articles 15(2) and 16(3) of the Law, the modes of liability ("MoL") in respect of both counts are governed by the KCC rather than the Law itself.

³ Annex 2 to "Submission of Amended Confirmed Indictment", KSC-BC-2023-12/F00264, 16 April 2025

9. The charges in Counts 14 and 15 are disputed in their entirety.

10. The Prosecution's case against Mr Kilaj is of limited factual scope. It is advanced by way of a complex but legally unsustainable layering of MoL, most strikingly in relation to Count 14. Even taking the Prosecution's case at its highest, it fails to establish Mr Kilaj's individual criminal responsibility for the crimes charged through properly pleaded MoL.

IV. THE CHARGES AND MATTERS WHICH THE ACCUSED DISPUTES

11. In this section, by reference to the Prosecution's case as set out in the Indictment and the SPO PTB, the Defence sets out issue of law and of fact that are in issue.

A. Issues of Law

(i) *Count 14: attempted obstruction of official persons in the execution of official duties*

(a) Participation in the common action of the group is the only MoL specifically pleaded in the Indictment

12. In the Statement of Crimes part of the Indictment, Count 14 charges Mr Kilaj with "[a]ttempted obstruction of official persons in performing official duties, by participating in the common action of a group". It adopts the specific form of liability provided in Article 401(2), replicating the language therein, to invoke a charge of participation in a group which by common action attempts to obstruct. That is the sole MoL charged in the Statement of Crimes part of the Indictment.

13. Elsewhere in the Indictment, and indeed in the SPO PTB, there is reference to other MoL in connection with Count 14. For example, the SPO PTB alleges within its description of Count 14 that "Kilaj attempted to prevent, impede, hinder and/or delay the KSC proceedings", which resembles language alleging the *commission* of attempted obstruction. However, this is said to have been committed together with Messrs Thaçi, Smakaj and Fazliu, and specifically "through their concerted efforts", thus using language indicative of alleged liability by way of participation in a group

(and thus consistently with paragraph 47 of the Indictment alleging participation in a group as the sole MoL).

14. There is additional reference to assistance as a MoL, that is, assisted attempted obstruction.⁴ However, the Statement of Crimes does not charge it.

15. Furthermore, paragraphs 36 and 40 of the Indictment only charges Article 401(2). This is a collective form of commission of the offence of obstruction, in that it may only be committed as part of a group. As set out below, applying Article 35 of the KCC, it requires as an essential element, “agreement with one or more persons to commit an offence”. Article 401(1), which may be perpetrated individually, is not charged.

16. Two points arise concerning the use and construction of Article 401(2) in Count 14.

17. Firstly, Article 401 of the KCC criminalises the “obstruction of official persons” in two distinct forms. In all cases, “obstruction of official persons” *per se* is not a criminal offence, (either under Articles 401(1) or 401(2)). Article 401(1) requires the use of “force or serious threat”, whereas Article 401(2) requires participation in the common action of a group. Thus, both forms of the offence require some kind of aggravation to pass the criminal threshold.

18. Subparagraph (2) is charged in an acknowledgement that no threats or use of force was ever used or suggested. Consequently, the group participation component becomes an essential element of the offence is essential to prove, under the KCC, in order to take the alleged act of obstruction across the criminal threshold.

⁴ See *e.g.* Indictment, para. 43. “Isni KILAJ [...] provided assistance within and among their respective groups and to Hashim THAÇI in the commission of the crimes of attempted obstruction of official persons”.

19. Secondly, within Article 401(2) itself there are two alternative forms liability: actual and attempted obstruction. Count 14 expressly and exclusively charges the attempted form. This was a direct consequence of the Confirmation Decision.⁵ The SPO attempted to indict the Accused with actual obstruction but this failed for lack of evidence. Attempted obstruction was a deliberate and necessary choice in the Confirmed Indictment.

(b) Participation in a group of persons which by common action attempts to obstruct, as a mode of liability

20. As mentioned, paragraph 40 of the Indictment under the heading “agreement to commit criminal offences” alleges that “the members of the Fazliu Group, Smakaj Group, and Kilaj Group, pursuant to KCC Article 35, each agreed to commit the crime of attempted obstruction of official persons”.⁶

21. Count 14 invokes four articles of the KCC. Articles 17 and 21 relate to the *mens rea*. The references to Articles 33 and 35 of the KCC appear intended to import into the wording of the Count “assistance” and “agreement” as alternative theories of responsibility to the “commission” of the offence of attempted obstruction. This is consistent with the MoL section in the Indictment, in which Mr Kilaj appears charged with three alternative forms of liability in relation to Count 14: “commission and attempt”, “agreement to commit...” and “assistance”.⁷

22. Those three alternative MoL must be considered with the substantive underlying charge of “attempted obstruction of official persons in performing official duties, by participating in the common action of a group”. Each of these theories of responsibility appear to involve a complex layering of different MoL which can be summarised as follows:

⁵ Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036, 29 November 2024, confidential (public redacted version filed on 12 February 2025), paras 193-195

⁶ Indictment, para. 40

⁷ Indictment, para. 48

- (i) Obstruction of official persons: the substantive underlying crime in Article 401;
- (ii) Participation in the common action of a group: the first tier of MoL. It is required by virtue of charging the form of the offence under subparagraph (2);
- (iii) Attempt: the second tier of MoL is charged as a corollary of the rejection of actual obstruction as a viable charge in the Confirmation Decision;
- (iv) Commission, agreement or assistance: the third tier of MoL. These three alternative theories of liability are verbatim replications of earlier (unconfirmed) iterations of the Indictment.

23. The extent to which the MoL (commission, agreement and assistance) fit together with the attempted rather than the completed form of obstruction is unexplained in the Indictment, the SPO PTB or anywhere. Significant question marks arise therefore as to whether each of these three alternative theories of responsibility are properly charged, whether they are legally coherent and, if so, what the essential elements of each of the charges are.

24. The analysis which follows suggests the following conclusions:

- (i) Agreement to attempt is legally incoherent. Only agreement to actually obstruct, as opposed to attempt to obstruct, official persons could be legally viable. However, actual obstruction in all its forms was rejected by the Pre-Trial Judge.
- (ii) Assistance is superfluous and should be disregarded as a distinct MoL. Participation in a group is already an intrinsic MoL incorporated into Article 401(2). As a MoL, rather than as an inchoate offence, assisting an offence that already comprises a MoL is incoherent. At best, assistance is

descriptive of the nature of the alleged group participation but demands no additional points to prove; and

- (iii) Commission of the attempt may be a viable charge, but as with any Article 401(2) charge, it requires proof of participation in a group. This must be proved to have taken place at the same time as the fulfilment of the other essential ingredients of the charged offence.

25. It must be acknowledged that the entire premise for Count 14 in the form it is pleaded is the complete absence of evidence that Mr Kilaj actually interfered with any witnesses from Case 6. Witness interference was not merely the central theme of this case from the outset, it has been the leitmotif of the SPO since the Specialist Chambers' conception. Yet, there was no evidence of this critical component of the SPO's narrative to even allow actual obstruction to be confirmed.

26. The consequence is a charge of attempted obstruction that is complex to the point of incoherence, underpinned by no supporting evidence. The prosecutorial creativity of the drafting of the Indictment demonstrates the fragility of the evidential matrix in Mr Kilaj's case. Alleging that he was a party to an agreement whose object is not to commit a substantive crime, but merely to attempt it, and then go no further, is, to say the least, an unorthodox theory of liability. But this case goes beyond unorthodoxy: Count 14 is not merely a highly attenuated form of criminal responsibility, it is legally unsustainable. It was plainly a solution of last resort, instituted at the direction of the Pre-Trial Judge not the Prosecutor. This was not the charge that the SPO wanted to advance before the Trial Panel, but the absence of supporting evidence prevented it from pursuing its case of choice. The task of the Single Trial Judge is to sort the permissible from the impermissible and to determine what the remnants of the SPO's case, if any, amount to.

27. Below is an analysis of Count 14 and three alternate alleged MoL. As a predicate for that analysis, the relevant filings are set out to demonstrate how and why Count 14 has been charged in its current form.

(c) Relevant Filings

28. The Confirmation Decision ruled on the charges set out in the SPO's Further Amended Indictment of 12 November 2024.

29. The relevant count at that time was Count 15. It was charged in identical terms to the current Count 14, save for the fact that it alleged actual rather than attempted obstruction.

30. Indeed, this was the principal consequence of the Confirmation Decision for present purposes. The PTJ refused to confirm the count of actual obstruction, finding that "the supporting material does not demonstrate that there is a well-grounded suspicion that the acts and statements of Messrs Thaçi, Fazliu, Smakaj, and Kilaj, obstructed the work of SC/SPO Officials in the context of SC Proceedings."⁸

31. The PTJ then proceeded in relation to the substantive offences section to substitute, *proprio motu*, attempted obstruction for obstruction.⁹ The logic of the PTJ appears to have been that, since the evidence does not demonstrate that actual obstruction took place, charging the attempted form avoids that evidentiary problem.

32. In the Disposition,¹⁰ the PTJ confirmed the counts that later appeared verbatim in the Indictment, including Count 14. The confirmed aspects of the Indictment were to be read exhaustively, since the PTJ expressly rejected "the remainder of the legal and factual allegations contained in the Further Amended Indictment".¹¹

⁸ Confirmation Decision, para. 192

⁹ Confirmation Decision, paras 193-194

¹⁰ Confirmation Decision, para. 313

¹¹ Confirmation Decision, para. 313(f)

33. The SPO was left with no room for manoeuvre. It was ordered to file the Indictment by 2 December 2024,¹² consistent with the letter of the Confirmation Decision.

34. The SPO duly filed the Indictment. It followed the PTJ's direction to the letter and, seemingly, without room for any exercise of prosecutorial discretion to verify whether its evidence could support charges in which obstruction was mechanically swapped out for attempted obstruction, or to revalidate its overall case theory and strategy accordingly.

35. Of course, the SPO did have the discretion to appeal against the Confirmation Decision, a discretion which it exercised in relation to certain parts of the Confirmation Decision, but it lodged no appeal against the formulation of Count 14 in any way.

36. As mentioned, Count 14 appears as per the Disposition in the Confirmation Decision. The MoL are replicated verbatim from the Further Amended Indictment. Like the Confirmation Decision, there is no attempt to explain how they relate to the now amended "attempted" form of the substantive underlying offence.

37. The SPO filed its PTB on 19 September 2025 and made submissions in support of the charge of attempted obstruction through participation in a group. The SPO's submissions follow the structure of the Confirmation Decision, placing the emphasis on essential elements of the substantive charge. Whilst the alternate theories of liability (commission,¹³ agreement¹⁴ and assistance¹⁵) are still alleged, it is no more than a perfunctory repetition of the allegation. No attempt has been made to demonstrate how legally or evidentially those theories work.

¹² Confirmation Decision, para. 313(g)

¹³ SPO PTB, para. 270

¹⁴ SPO PTB, para. 271

¹⁵ SPO PTB, para. 273

(d) Analysis

38. Against this background, and for the reasons given below, it is submitted that each of those theories should be read restrictively.

39. Agreement The agreement form of Count 14 amounts to an agreement to *attempt* to obstruct official persons through participation in the common action of a group. This theory is legally incoherent. It is not possible to agree to attempt to commit an offence, since that presupposes that it is predetermined that the perpetrator will not follow through, or will otherwise fail to complete, the commission of the underlying offence. Voluntary withdrawal from the commission of an offence is incompatible with attempt liability.

40. The nature and extent of the act required to give rise to attempt liability, and in particular the impact of the perpetrator's voluntary withdrawal from that act, was considered by the ICC's Pre-Trial Chamber I in the *Banda and Jerbo* case:

96. The first sentence of article 25(3)(f) of the Statute provides that a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person 'attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions'. It is therefore of critical importance, in considering whether a crime can be characterised as attempted (or 'inchoate') to determine whether the perpetrator's conduct was adequate to bring about as a consequence the crime in question. Such adequacy requires that, in the ordinary course of events, the perpetrator's conduct will have resulted in the crime being completed, had circumstances outside the perpetrator's control not intervened.

97. The attempted commission of a crime requires that the perpetrator's conduct reaches a more definite and concrete stage going beyond mere preparatory acts. This is apparent from the drafters' choice of the term 'substantial step' as a fundamental requirement for an attempt to occur as provided for in article 25(3)(f) of the Statute.¹⁶

41. From that clear wording it may be inferred that:

¹⁶ *Abdallah Banda Abakaer Nourain & Saleh Mohammed Jerbo Jamus*, Corrigendum of the "Decision on the Confirmation of Charges" (public redacted version), ICC-02/05-03/09-121-Corr-Red, 7 March 2011, paras 96-97 (emphasis added)

- (i) the actus reus of attempt must exceed mere preparation;¹⁷
- (ii) the ICC adopts a “but for” approach: but for the intervention of an act or circumstances independent of the accused, the underlying offence would have been committed; and
- (iii) therefore, where the crime is not completed because of an act attributable to the Accused, such as his voluntary withdrawal, that will not amount to an attempt. In other words, it is open to the potential attempter to withdraw from an attempt at any time prior to the completion of the underlying crime.

42. These standards are uncontroversial and common to many criminal justice jurisdictions around the world.

43. An agreement to merely attempt the obstruction of officials cannot be reconciled with the above standards. Any such agreement would have to involve a predetermination that the obstruction will not occur. This implies voluntary withdrawal by the would-be attempter which is inimical with liability for attempt.

44. The Confirmation Decision was clear and unambiguous in rejecting actual obstruction in all its forms, and replacing it with attempted obstruction. The Confirmation Decision was followed in all material aspects by the SPO. No appeal in this aspect of the Confirmation Decision was lodged and there has been no application to amend the Indictment. Failure to do so has resulted in the laying of a legally unsustainable charge.

¹⁷ KCC Articles 26 and 27 provide distinct mechanisms for “preparation” and “attempt” leading to distinct forms of responsibility and ultimately distinct criminal sanctions

45. **Assistance** For the reasons articulated below, the assistance form of Count 14 cannot be treated as a separate charge.

46. Whereas “agreement” for the purposes of KCC Article 35 is an inchoate offence,¹⁸ assistance is a form of accessorial liability.

47. The nature and scope of “assistance” as a MoL is defined by KCC Article 33. For the following reasons, notwithstanding the reference in Count 14 to KCC Article 33, it would be unsustainable to treat assistance as a distinct charge or MoL.

48. KCC Article 33(1) defines “assistance” as a form of commission of the substantive offences in the KCC in these terms:

Whoever intentionally assists another person in the commission of a criminal offense shall be punished more leniently than the perpetrator of the offense.

49. Firstly, “assistance” is accessorial to and contingent upon the existence of a principal who “commits”, not “attempts to commit”, the underlying offence. There is no provision in the KCC for assisting an attempted crime. Consequently, the SPO’s charge that Mr Kilaj assisted an attempted obstruction lacks any legal basis.

50. Secondly, and consistent with the above, Article 401(2) has its own form of accessorial liability intrinsically built into it: “participation in the common action of a group”. This is an integral and indispensable element of the Article 401(2) offence. It cannot be permissible to layer two individual MoL one on top of each other.

51. At best, the reference to “assistance” is simply descriptive of “group participation” for the purposes of Article 401(2) (and may be subsumed by it) but does not demand separate points to prove.

¹⁸ Decision on the Specialist Prosecutor’s Office’s Appeal Against the Decision on the Confirmation of the Indictment, KSC-BC-2023-12/IA002/F00012, 3 April 2025, confidential (public redacted version filed on same day), para. 36

52. Whilst reference to “assisting” survived from the Further Amended Indictment of 12 November 2024 in the Indictment of 2 December 2204, it was confirmed by the PTJ without any engagement on her part with the mechanics of how the different component parts of Count 14, committed through an assistance MoL, would fit together.

53. For the foregoing reasons, “assistance” should be read as purely contextual.

54. Even if assistance is a viable alternative theory of liability, it is a form of accessory liability that is contingent upon the existence of an alleged principal,¹⁹ said to be in this case Mr Thaçi. Mr Thaçi’s underlying criminal responsibility must therefore be proven as a predicate finding to Mr Kilaj’s alleged accessorial liability.

55. **Commission of the attempt** The commission form of Count 14 (attempted obstruction through participation in the common action of a group) requires, as a matter of law, proof concurrently of two essential material elements. The Trial Panel in Case 7, found that:

the offence of obstructing an official person in performing official duties, within the meaning of Article 401(2) of the KCC, requires the following material elements (*actus reus*): (i) participation in a group of persons which by common action (ii) obstructs or attempts to obstruct an official person in performing official duties. The Panel further finds that the wording of Article 401(2) of the KCC (“obstructs or attempts to obstruct”) indicates that the offence can be committed either when the obstruction has occurred or when it has only been attempted.²⁰

56. The “group” element was considered by the Pre-Trial Judge in this case. She found that it requires a demonstration based upon evidence of “the existence or formation of a group comprising at least three persons” as a consequence of Article 113(12) of the KCC.²¹

¹⁹ *Germain Katanga*, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07-3436-tENG, 7 March 2014, para. 1385

²⁰ *Hysni Gucati and Nasim Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para. 158

²¹ Confirmation Decision, para. 177

57. According to the Trial Panel in Case 7:

[a]s regards participation in a group, [...] this entails any person who, by his or her conduct, partakes in, contributes to or enables in some other form, the common action of obstructing or attempting to obstruct an official person in performing official duties.²²

58. As outlined above, the “attempt” requires proof of conduct on the part of the perpetrator that was adequate to bring about as a consequence the crime in question, (*ie* the act of obstruction which in this case is the alleged interference with witnesses). Any such action must be more than preparatory acts.²³

59. **Intent** According to KCC Article 17, criminal liability must be established with intent unless negligence is expressly provided. Since the relevant provisions do not invoke a negligence standard, all charges (under all MoL) that are the subject of Counts 14 and 15 must be proven with intent.

60. In practical terms, this means that for any of the theories of liability to be sustained under Count 14, the SPO must prove that Mr Kilaj intended to obstruct officials through the interference with witnesses. Intent may be proven – indeed is very often proven – through circumstantial evidence, but in accordance with well-established principles, intent may only be inferred where it is the only reasonable inference possible on the evidence as a whole. The existence of an alternative reasonable inference consistent with innocence is dispositive of the existence of the required criminal intent.

61. In this case, even if criminal intent were a possible inference, which is not accepted, other possible inferences abound, consistent with innocence, which cannot

²² *Hysni Gucati and Nasim Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para. 163

²³ *Hysni Gucati and Nasim Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para. 201

be ruled out and so a finding of criminal intent beyond reasonable doubt cannot be reached.

(ii) Count 15: contempt of court

62. Mr Kilaj is alleged in the Indictment to be criminally responsible on Count 15 of contempt of court as defined in KCC Article 393 by providing assistance within the Kilaj Group, and among the Smakaj, Fazliu and Kilaj Groups, and to Mr Thaçi in the commission of that crime, pursuant to KCC Article 33.²⁴ The Defence notes that in the SPO PTB it is alleged that Mr Kilaj assisted Mr Thaçi only. The Defence will prepare for trial on the basis of the case as set out in the SPO PTB.

B. Issues of Fact

(i) *The nature of Mr Kilaj's defence*

63. Mr Kilaj is not criminally responsible for the crime alleged in Count 14. He did not attempt to obstruct any official person in performing official duties with the requisite intent. Specifically, he did not take any action that amounted to more than preparatory acts towards the commission of the crime of obstruction of official persons with the requisite intent.

64. Mr Kilaj did not agree with anyone to attempt to obstruct any official person in performing official duties with the requisite intent. Specifically, neither he nor anyone else, undertook any substantial act towards the commission of the crime of attempted obstruction of official persons with the requisite intent.

65. Mr Kilaj did not assist Mr Thaçi, or anyone else, to attempt to obstruct any official person in performing official duties with the requisite intent.

²⁴ Indictment, paras 32, 44

66. Mr Kilaj is not criminally responsible for the crime alleged on Count 15. He did not assist Mr Thaçi, or anyone else, to commit contempt of court with the requisite intent.

67. The Defence sets out below the charges and matters which Mr Kilaj disputes, by reference to particular paragraphs in the SPO PTB, and the reasons why he disputes them.

68. **Paragraph 6** Mr Kilaj did not coordinate with Mr Thaçi to influence the Case 6 testimony of Witness 4 with the requisite intent. He never influenced or attempted to influence, and never intended to influence or attempt to influence, the testimony of any Case 6 witness with the requisite intent.

69. Neither did Mr Kilaj agree to attempt to influence the testimony of any Case 6 witness, or assist anyone to attempt to influence the testimony of any Case 6 witness, with the requisite intent.

70. **Paragraph 8** Mr Kilaj did not assist Mr Thaçi to violate final KSC decisions prohibiting the provision of confidential information to third parties and contact with witnesses with the requisite intent.

71. **Paragraph 119** Mr Kilaj visited Mr Thaçi at the KSC Detention Centre on 2 February 2023, but there is in fact no relationship between what the SPO describes as the "Kilaj Loose Notes", seized nine months later, and this visit. The SPO's attempt to create a link is based on speculation, not on evidence.

72. **Paragraphs 123-126** Mr Kilaj visited Mr Thaçi at the KSC Detention Centre on 6 October 2023, together with Mr Kryeziu. The Defence makes no concession about the nature or subject of any discussions he had with Messrs Thaçi or Kryeziu during the visit and puts the Prosecution to strict proof of the same. What is of greatest importance is Mr Kilaj's intent. At no point did Mr Kilaj agree to interfere, or attempt

to interfere, with Witness 4's testimony, or assist anyone to attempt to interfere with Witness 4's testimony, with the requisite intent.

73. The Defence makes no concession about how Mr Kilaj came to be in possession of copies of Witness 4's [REDACTED] Statement and [REDACTED] Statement ("Witness 4 Documents") and puts the Prosecution to strict proof of the same. Again, what is of greatest importance is his intent in possessing the Witness 4 Documents. At no point was Mr Kilaj in possession of these documents pursuant to an agreement to interfere, or attempt to interfere, with Witness 4's testimony, or in order to assist anyone to attempt to interfere with Witness 4's testimony, with the requisite intent.

74. Even if copies of the Witness 4 Documents were found at Mr Kilaj's residence on 2 November 2023, they had never been used by him to interfere, or attempt to interfere, with Witness 4's testimony. The fact they had been torn up for disposal is powerful evidence of the lack of Mr Kilaj's intent to interfere, or attempt to interfere, with Witness 4's testimony.

75. The fact there is no evidence that he ever contacted, or even attempted to contact, Witness 4 at any time during the 27 days between 6 October and 2 November 2023 is additional powerful evidence of the lack of Mr Kilaj's intent to interfere, or attempt to interfere, with Witness 4's testimony.

76. **Paragraphs 135 and 203** The Defence makes no concession about words allegedly spoken by Mr Kilaj amounting to an agreement to convey instructions to Witness 4. At no point did Mr Kilaj agree to convey instructions to Witness 4 with the requisite intent.

77. **Paragraphs 137-139** The Defence makes no concession about words allegedly spoken by Messrs Kilaj or Kryeziu about any prior attempts to contact a witness. However, Mr Kilaj did not in fact contact, or even attempt to contact, any Case 6 witness in connection with their evidence before the KSC, whether before or after his visit of 6 October 2023. The SPO has produced no evidence whatsoever to support

such an assertion. Further, Mr Kilaj is unaware of any contact, or any attempt to contact, any Case 6 witness by Mr Kryeziu in connection with their evidence before the KSC prior to the visit of 6 October 2023.

78. There is no evidence of Messrs Kilaj or Kryeziu actually contacting, or even attempting to contact, any Case 6 witness in connection with their evidence before the visit of 6 October 2023. This is powerful evidence of the lack of Mr Kilaj's intent to interfere, or attempt to interfere, with the testimony any Case 6 witness.

79. **Paragraphs 140 and 203** The Defence makes no concession about the nature of any discussions Mr Kilaj allegedly had with Messrs Thaçi or Kryeziu about Witness 4 during the visit, or about how Mr Kilaj came to be in possession of copies of the Witness 4 Documents, and puts the Prosecution to strict proof of the same.

80. **Paragraphs 141-142** The Defence makes no concession about the nature of any discussions Mr Kilaj allegedly had with Messrs Thaçi or Kryeziu about Witness 3 during the visit, and puts the Prosecution to strict proof of the same.

81. There is in fact no relationship between the contents of any handwritten notes found at Mr Kilaj's residence on 2 November 2023 and the 6 October visit. The SPO's attempt to create a link is based on speculation, not on evidence.

82. **Paragraphs 143-144** The Defence makes no concession about the nature of any discussions Mr Kilaj allegedly had with Messrs Thaçi or Kryeziu about [REDACTED] during the visit, and puts the Prosecution to strict proof of the same.

83. Whether or not Mr Kilaj met [REDACTED] a week before 6 October 2023, this significantly post-dates [REDACTED]'s testimony before the KSC [REDACTED]. There is no evidence of Mr Kilaj contacting, or even attempting to contact, [REDACTED] in connection with his evidence before the KSC.

84. **Paragraphs 145-146** The Defence makes no concession about the nature of any discussions Mr Kilaj allegedly had with Messrs Thaçi or Kryeziu about [REDACTED] during the visit, and puts the Prosecution to strict proof of the same.

85. **Paragraphs 147-148** The Defence makes no concession about the nature of any discussions Mr Kilaj allegedly had with Messrs Thaçi or Kryeziu about [REDACTED] during the visit, and puts the Prosecution to strict proof of the same.

86. **Paragraphs 149-150** The Defence makes no concession about the nature of any discussions Mr Kilaj allegedly had with Messrs Thaçi or Kryeziu about [REDACTED] or [REDACTED] during the visit, and puts the Prosecution to strict proof of the same.

87. The Defence makes no concession about words allegedly spoken by Messrs Kilaj or Kryeziu about contacting [REDACTED]. However, Mr Kilaj did not contact, or even attempt to contact, [REDACTED] in connection with his evidence before the KSC, and there is no evidence of any such contact. This is powerful evidence of the lack of Mr Kilaj's intent to interfere, or attempt to interfere, with [REDACTED]'s testimony.

88. **Paragraphs 151-152** The Defence makes no concession about the nature of any discussions Mr Kilaj allegedly had with Messrs Thaçi or Kryeziu about [REDACTED] during the visit, and puts the Prosecution to strict proof of the same.

89. **Paragraph 153** Even if copies of the Witness 4 Documents were found at Mr Kilaj's residence on 2 November 2023, they had never been used by him to target Witness 4 for interference. The fact they had been torn up for disposal is powerful evidence of the lack of Mr Kilaj's intent to interfere, or attempt to interfere, with Witness 4's testimony.

90. There is no relationship between the contents of any handwritten notes found at Mr Kilaj's residence on 2 November 2023 and the 6 October visit. The SPO's attempt to create a link is based on speculation, not on evidence.

91. At no point was Mr Kilaj's making or possession of handwritten notes pursuant to an agreement to interfere, or attempt to interfere, with the testimony of any Case 6 witness, or in order to assist anyone to attempt to interfere with the testimony of any Case 6 witness, with the requisite intent.

92. Similarly, there is no evidence of a connection between the existence of any confidential material allegedly found on Mr Kilaj's MacBook laptop and any attempt to interfere with the testimony of any Case 6 witness with the requisite intent.

93. **Paragraph 154** It is true that Mr Kilaj was interviewed under caution by the SPO. He told the truth when stating that he had not spoken to Witness 3 or Witness 4 about their testimony. Evidence obtained from Mr Kilaj's iPhone support this contention.

94. **Paragraphs 216-218 and 226** For the reasons set out above, the allegations in paragraphs 216-217 are denied in their entirety.

95. **Paragraphs 253, 264 and 266** Mr Kilaj did not assist Mr Thaçi to commit contempt of court, as alleged. Mr Kilaj had no knowledge of the Case 6 Protocol or of any protective measures decisions. Mr Kilaj did not engage with instructions to be conveyed to Witness 4, or any Case 6 witness with the requisite intent. Nor did he "accept confidential information" from Mr Thaçi with the requisite intent.

96. **Paragraph 273** Mr Kilaj did not assist Mr Thaçi to commit the offences in Counts 14 and 15 merely by visiting Mr Thaçi on 6 October 2023, merely by providing advice or feedback (which in any event is not admitted), or merely by discussing, receiving or keeping confidential information or documents (which in any event is not admitted).

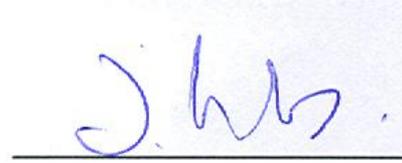
97. The Defence notes that the SPO does not suggest that Mr Kilaj contacted or met with SPO witnesses in line with any alleged instructions after the 6 October visit, or otherwise convey any alleged instructions from Mr Thaçi.

Respectfully submitted,



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The Hague, The Netherlands

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