

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

Date: 11 March 2026

Language: English

Classification: Public

**Public Redacted Version of Thaçi Defence Response to Prosecution
Supplemental Motion for Judicial Notice of Facts of Common Knowledge**

Specialist Prosecutor's Office

Kimberly P. West

Specialist Counsel for Hashim Thaçi

Sophie Menegon

Luka Mišetić

Specialist Counsel for Bashkim Smakaj

Jonathan Elystan Rees KC

Huw Bowden

Specialist Counsel for Isni Kilaj

Iain Edwards

Joe Holmes

Specialist Counsel for Fadil Fazliu

David A. Young

Specialist Counsel for Hajredin Kuçi

Alexander Admiraal

I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby responds to the “Prosecution Supplemental Motion for Judicial Notice of Facts of Common Knowledge” (“Supplemental Motion”).¹ The Supplemental Motion requested that Rule 157(1)² judicial notice be taken regarding four records from Case 06³ KSC-BC-2020-06 (“Additional Proposed Facts”). The Defence opposes that request.

II. CLASSIFICATION

2. This filing is classified as confidential pursuant to Rule 82(4) as it responds to a confidential filing and discusses confidential disclosed material. A public redacted version will be filed in due course.

III. PROCEDURAL HISTORY

3. On 13 February 2026, the Single Trial Judge (“STJ”) granted an Specialist Prosecutor’s Office (“SPO”) motion for judicial notice of a number of facts of common knowledge arising from Case 06 records,⁴ dismissing the objections raised by the Defence (“Judicial Notice Decision”).⁵
4. On 2 March 2026, the SPO filed the Supplemental Motion.

¹ KSC-BC-2023-12/F00769, Prosecution Supplemental Motion for Judicial Notice of Facts of Common Knowledge, 2 March 2026, confidential (public redacted version 11 March 2026) (“Supplemental Motion”), with Annex 1, confidential (“Supplemental Motion Annex”).

² 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, unless otherwise specified.

³ KSC-BC-2020-06.

⁴ KSC-BC-2023-12/F00740, Single Trial Judge, [Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge \(F00629\)](#), 13 February 2026, public, with Annex 1, confidential. *See also* KSC-BC-2023-12/F00629, [Prosecution Motion for Judicial Notice of Facts of Common Knowledge](#), 17 December 2025, public, with Annexes 1-2, confidential.

⁵ KSC-BC-2023-12/F00659, Thaçi Defence, Smakaj Defence, and Kilaj Defence, Joint Defence Response to Prosecution Motion for Judicial Notice of Facts of Common Knowledge (F00629), 12 January 2026, confidential ([public redacted version](#) 15 January 2026) (“Joint Defence Response F00659”), paras 34-43.

5. On 3 March 2026, the STJ varied the deadline for the filing of responses to the Supplemental Motion to 11 March 2026.⁶

6. On 4 March 2026, the SPO filed an addendum to the Supplemental Motion.⁷

IV. APPLICABLE LAW

7. Rule 157(1) prescribes that “[t]he Panel shall not require proof of facts of common knowledge but shall take judicial notice thereof”. Facts of common knowledge are facts that are notorious, or not reasonably subject to dispute, in that they are commonly accepted, universally or widely known, or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources.⁸

8. For a fact to be judicially noticed pursuant to Rule 157(1), it must: (i) be relevant; (ii) not be subject to reasonable dispute; (iii) be sufficiently well-defined; (iv) not include any findings or characterisation that are essentially legal in relation to the proceedings in which they are to be noticed; and (v) not attest to the criminal responsibility of the accused.⁹

⁶ [REDACTED]

⁷ [REDACTED]

⁸ *Prosecutor v. Shala*, KSC-BC-2020-04/F00538, Trial Panel I, [Decision on the Prosecution Motion for Judicial Notice of Facts of Common Knowledge and Adjudicated Facts](#), 8 June 2023 (“Case 04 Judicial Notice Decision”), para. 16; ICTR, *Semanza v. Prosecutor*, ICTR-97-20-A, Appeals Chamber, [Judgment](#), 20 May 2005 (“*Semanza* Appeal Judgment”), para. 194; ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-AR73(C), Appeals Chamber, [Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice](#), 16 June 2006 (“*Karemera et al.* Judicial Notice Appeal Decision”), para. 22; ICTR, *Prosecutor v. Bikindi*, ICTR-01-72-A, Appeals Chamber, [Judgment](#), 18 March 2010 (“*Bikindi* Appeal Judgment”), para. 99.

⁹ [Judicial Notice Decision](#), para. 8; [Case 04 Judicial Notice Decision](#), para. 17; SCSL, *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, Appeals Chamber, [Fofana – Decision on Appeal against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”](#), 16 May 2005 (“*Fofana* Judicial Notice Appeal Decision”), para. 28.

V. SUBMISSIONS

A. ISSUES COMMON TO THE ADDITIONAL PROPOSED FACTS

9. The Defence opposes the taking of judicial notice of the Additional Proposed Facts as facts of common knowledge because (i) they are not suitable for such judicial notice, as they do not constitute facts of “common knowledge”, as submitted previously, and (ii) the SPO has failed to demonstrate their relevance.

i. Suitability for Judicial Notice under Rule 157(1)

10. The Defence recognises that in the Judicial Notice Decision, the STJ decided to take judicial notice under Rule 157(1) of Case 06 filings and evidence.¹⁰ The Defence maintains its objections to that approach,¹¹ noting that judicial notice must not be used to circumvent the Rules governing the admissibility of evidence.¹² The Defence considers that Case 06 filings and evidence, including the Additional Proposed Facts, are not suitable for judicial notice under Rule 157(1). However, in light of the Judicial Notice Decision, the Defence will not repeat its submissions on these matters.

ii. Relevance

11. In order for a Panel to take judicial notice of a fact, it must be relevant to the case.¹³ Facts subject to judicial notice must “relate to the matter at issue in the

¹⁰ [Judicial Notice Decision](#), paras 23-32.

¹¹ Joint Defence Response F00659, paras 34-43.

¹² E.g., ICTY, *Nikolić v. Prosecutor*, IT-02-60/1-A, Appeals Chamber, [Decision on Appellant’s Motion for Judicial Notice](#), 1 April 2005, para. 17; [Semanza Appeal Judgment](#), para. 189; ICTY, *Prosecutor v. Simić*, IT-95-9-A, Appeals Chamber, [Decision on Blagoje Simić’s Motion for Admission of Additional Evidence, Alternatively for Taking of Judicial Notice](#), 1 June 2006 (“*Simić* Judicial Notice Appeal Decision”), para. 26; ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-A, Appeals Chamber, [Decision on Anatole Nsengiyumva’s Motion for Judicial Notice](#), 29 October 2010, para. 8.

¹³ [Judicial Notice Decision](#), para. 8; [Case 04 Judicial Notice Decision](#), para. 17; [Karemera et al. Judicial Notice Appeal Decision](#), para. 23, fn. 32; [Fofana Judicial Notice Appeal Decision](#), para. 28; ICTR, *Prosecutor v. Nshogoza*, ICTR-07-91-T, Trial Chamber III, [Decision on Defence Motion for the Trial Chamber to Take Judicial Notice of the Value of the Rwandan Currency](#), 16 April 2009 (“*Nshogoza* Judicial Notice Decision”), para. 6. See also ICTY, *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, Trial Chamber II, [Final Decision on Judicial Notice of Adjudicated Facts](#), 20 April 2004, p. 9.

current proceedings, i.e., [...] to *the events charged in the Indictment* against the Accused".¹⁴ The SPO has failed to establish the relevance of the Additional Proposed Facts to any event charged in the Case 12 Indictment. The Defence thus requests the STJ to decline to take judicial notice of the Additional Proposed Facts as irrelevant to the present case.¹⁵

12. The SPO argues that all four Additional Proposed Facts are relevant to [REDACTED].¹⁶ Yet, the SPO fails to identify any information contained in the four records underpinning the Additional Proposed Facts which are reflected in any discussion between Mr Thaçi and any of his visitors.
13. It is not alleged that Mr Thaçi discussed [REDACTED] in any of the visits charged in the Indictment. Indeed, with respect to relevance, the SPO refers only to paragraphs of its Pre-Trial Brief concerning a pair of uncharged Detention Centre visits by Mr Milaim Ahmetaj on 15 and 22 September 2023,¹⁷ during which Mr Thaçi is not alleged to have referenced any of the Case 06 materials underpinning the Additional Proposed Facts.¹⁸
14. The SPO further submits that the Additional Proposed Facts are relevant "as they pertain to when the Case 6 Thaçi Defence received relevant [REDACTED] material as disclosed and made available through Legal Workflow, and the

¹⁴ ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber III, [Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006](#), 7 September 2006, para. 22 (emphasis added). See also [Nshogoza Judicial Notice Decision](#), para. 6; ICTY, *Prosecutor v. Perišić*, IT-04-81-PT, Trial Chamber I, [Decision on Prosecution Motion for Judicial Notice of Srebrenica Intercepts with Confidential Annexes](#), 1 September 2008, para. 6.

¹⁵ ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1473, Trial Chamber VII, [Decision on Prosecution Request for Judicial Notice](#), 9 November 2015 ("*Bemba et al.* First Judicial Notice Decision"), para. 6; ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1805, Trial Chamber VII, [Decision on 'Defence Request for Judicial Notice'](#), 13 April 2016, para. 6; ICC, *Prosecutor v. Yekatom and Ngaiisona*, ICC-01/14-01/18-2193, Trial Chamber V, [Decision on Prosecution Request for Judicial Notice pursuant to Article 69\(6\)](#), 7 November 2023, para. 8.

¹⁶ Supplemental Motion Annex, Items 1-4.

¹⁷ Supplemental Motion, para. 3, fn. 5; Supplemental Motion Annex, Items 1-4.

¹⁸ KSC-BC-2023-12/F00459/COR/A01, Annex 1 to Corrected Version of 'Prosecution Submission of Pre-Trial Brief, Witness and Exhibit List, 6 October 2025 (original: 19 September 2025), confidential, paras 170-71

underlying contents of this disclosed material”.¹⁹ However, this reasoning is circular. It ties the relevance of the Additional Proposed Facts to their relation to the disclosure and contents of “*relevant* [REDACTED] material”.²⁰ In other words, the SPO justifies the relevance of the Additional Proposed Facts on the basis of an a priori assumption of the underlying Case 06 evidence’s relevance. It fails to establish the relevance of the underlying Items, but relies on this relevance in justifying that of the Additional Proposed Facts.

15. The SPO additionally submits “the Additional Proposed Facts are referenced in the [REDACTED] [...] further underscoring the relevance of these Additional Proposed Facts to this case”.²¹ As the Defence has repeatedly submitted, the SPO has and continues to fail to show any connection between the so-called [REDACTED] and the charges in the Indictment.²² The [REDACTED] was not found on Mr Thaçi’s computer and there is no evidence that it was Mr Thaçi who printed this document. While the SPO claims that the document [REDACTED],²³ material tendered by the SPO (admitted as Exhibit P00103) demonstrates that Mr Thaçi *did not* print any documents on 19 September 2023.²⁴ The Defence maintains these arguments as put forward in its prior submissions concerning the [REDACTED].

¹⁹ Supplemental Motion, para. 3.

²⁰ Supplemental Motion, para. 3 (emphasis added).

²¹ Supplemental Motion, para. 3, *referring to* KSC-BC-2023-12/F00641/A01, Annex 1 to Independent Counsel Transmission of Extracted Document pursuant to Decision F00627, 8 January 2026, confidential (original: 22 December 2025).

²² KSC-BC-2023-12/F00776, Thaçi Defence, Kuçi Defence, Kilaj Defence, and Smakaj Defence, Joint Defence Response to SPO Supplementary Motion for Admission of Material through the Bar Table with Confidential Annexes 1-2, 5 March 2026 (public redacted version 6 March 2026) (“Joint Defence Response F00776”), paras 19-23; KSC-BC-2023-12/F00697, Thaçi Defence and Kilaj Defence, Joint Defence Response to Prosecution Request for Amendment of the Exhibit List (F00676), 26 January 2026, confidential ([public redacted version](#) 4 February 2026), paras 22-30; KSC-BC-2023-12/F00561, Thaçi Defence Response to Prosecution Request for Second EFC Follow-up (F00545), 20 November 2025, confidential (public redacted version 25 November 2025), paras 26-38.

²³ [REDACTED].

²⁴ Joint Defence Response F00776, paras 21-22.

16. Lastly, the SPO notes that the addition of the [REDACTED] to the SPO Exhibit List was recently granted, arguing that this “further underscore[s] the relevance of these Additional Proposed Facts to this case.”²⁵ However, to justify late admission of a document to an exhibit list, a document *inter alia* need only be “*prima facie* relevant”.²⁶ The STJ’s approval of the addition of the [REDACTED] to the SPO Exhibit List is by no means determinative of the document’s relevance.²⁷
17. On the basis of the above, the Defence submits that the STJ should deny the Supplemental Motion and decline to take judicial notice of the Additional Proposed Facts pursuant to Rule 157(1).

B. ISSUES RELATING TO ITEMS 1 AND 2 OF THE ADDITIONAL PROPOSED FACTS

18. The SPO submits that Items 1 and 2 of the Additional Proposed Facts are an [REDACTED].²⁸
19. However, regardless of their disclosure in Case 06,²⁹ Items 1 and 2 do not include sufficient indica of their authenticity and relevance to be judicially noted.

²⁵ Supplemental Motion, para. 3.

²⁶ KSC-BC-2023-12/F00678, Single Trial Judge, [Decision on “Prosecution Request for Rule 102\(1\)\(b\) Disclosure & Amendment of the Exhibit List”](#), 19 January 2026, public (“Decision F00678”), para. 13; *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F03457, Trial Panel II, [Decision on Thaçi Defence Request to Amend the Exhibit List](#), 10 September 2025 (“Case 06 Decision F03457”), para. 11; *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F01995/RED, Trial Panel II, [Public Redacted Version of Decision on Prosecution Request to Amend the Exhibit List \(F01844\)](#), 8 December 2023 (“Case 06 Decision F01995”), para. 26.

²⁷ KSC-BC-2023-12/F00709, Single Trial Judge, Decision on Prosecution Request for Amendment of the Exhibit List (F00676), 30 January 2026, confidential ([public redacted version](#) 17 February 2026), para. 11 (“Regarding the [REDACTED], [...] [t]he Single Trial Judge considers that these submissions sufficiently establish relevance on a *prima facie* basis, which in no way pre-judges the document’s admissibility. The Single Trial Judge expects the Parties to make submissions at the appropriate time, in respect of the admissibility of pattern evidence, and the relevance (if any) of the notice of these matters provided by the SPO’s Pre-Trial Brief”). See also [Decision F00678](#), para. 14 (“the grounds raised [by the Defence] (such as redundancy with other evidence, *post facto* creation, marginal significance, or impermissibly exceeding the scope of the case) are more suitable for consideration of admissibility or weight”); [Case 06 Decision F03457](#), para. 11; [Case 06 Decision F01995](#), para. 26.

²⁸ Supplemental Motion Annex, Items 1 and 2 [REDACTED].

²⁹ The fact that an item has been released in Legal Workflow, in this case or in another, is not sufficient to confer authenticity to this item. *Contra* Supplemental Motion, para. 4.

20. Recalling that judicial notice cannot be used to circumvent the Rules governing the admissibility of evidence,³⁰ the admission of evidence under Rule 138 requires that a document bear sufficient indicia of authenticity in order for it to be deemed reliable.³¹ If a document proffered as a fact of common knowledge does not meet this standard, judicially noting it under Rule 157(1) would, in effect, circumvent the authenticity requirement of Rule 138.
21. Items 1 and 2 do not bear even “basic features indicative of *prima facie* authenticity”.³²
22. Item 2 (the English original) consists of [REDACTED]. Item 1 is an SPO Albanian translation of Item 2.³³ [REDACTED].
23. Items 1 and 2 have been assigned Legal Workflow metadata by the SPO which gives their originator as [REDACTED]. Yet this does not correspond to any internal indication within the documents as to their origination. Nothing in either Items 1 or 2 provide any indication as to their authorship, date, or publication.³⁴ If the document is, in fact, [REDACTED], it lacks such indicia of authenticity as logos, a letterhead, a date, or other markings or formatting typical of official documents.³⁵ Moreover, the document does not contain, either in its English or Albanian forms, any indication as to (i) what the [REDACTED] is, (ii)

³⁰ See footnote 8 above and references cited therein.

³¹ KSC-BC-2023-12/F00737, Single Trial Judge, Decision on the Specialist Prosecutor’s Motion for Admission of Material through the Bar Table, 12 February 2026, confidential, para. 8; *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F01716, Trial Panel II, [Fourth Decision on Specialist Prosecutor’s Bar Table Motion](#), 8 August 2023, para. 14; *Prosecutor v. Gucati and Haradinaj*, KSC-BC-2020-07/F00334, Trial Panel II, [Decision on the Prosecution Request for Admission of Items Through the Bar Table](#), 29 September 2021, para. 13.

³² ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.16, Appeals Chamber, [Decision on Jadranko Prlić’s Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence](#), 3 November 2009, para. 34.

³³ [REDACTED].

³⁴ Compare *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F01983, Trial Panel II, [Sixth Decision on Specialist Prosecutor’s Bar Table Motion](#), 5 December 2023 (“Case 06 Sixth Bar Table Decision”), para. 30.

³⁵ E.g., *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F01596, Trial Panel II, [Second Decision on Specialist Prosecutor’s Bar Table Motion](#), 9 June 2023 (“Case 06 Second Bar Table Decision”), para. 55; [Case 06 Sixth Bar Table Decision](#), paras 49, 54, 59, 64, 76.

what its purpose or scope was, (ii) how it was prepared, (iii) what information it is based on, or (iv) when it was prepared.

24. If a document does not, on its face, contain sufficient indicators of authenticity, it is for the tendering party to provide indicators of the document's authenticity.³⁶ With respect to documents tendered in Case 06, which originated from an international organization but "contain[ed] no letterhead or logo", Trial Panel II held that it was incumbent upon the SPO to "establish the basis, origin and authorship of these documents", denying their admission under Rule 138 accordingly.³⁷ The SPO has not provided indicators of authenticity with respects to Items 1 and 2. It should not be permitted, therefore, to circumvent the requirement of demonstrating authenticity under Rule 138 by seeking judicial notice of Items 1 and 2 under Rule 157(1).
25. Besides, while the SPO alleges that Items 1 and 2 contain [REDACTED]. The SPO has thus failed to establish both the authenticity and relevance of Items 1 and 2.
26. On this basis, if the STJ does not decline to take judicial notice of the Additional Proposed Facts as a whole, he should decline to take judicial notice of Items 1 and 2 of the Additional Proposed Facts.

VI. SCOPE OF JUDICIAL NOTICE

27. If the STJ decides to take judicial notice of the Additional Proposed Facts pursuant to Rule 157(1), the Defence submits that he must only take notice of the existence, dates, and contents of their underlying documents, to the extent that they are accessible to the parties in Case 12, not the truth-value of their contents.³⁸

³⁶ E.g., KSC-BC-2023-12/F00642, Single Trial Judge, [Decision on the Conduct of Proceedings](#), 22 December 2025, public, para. 18(iii); [Case 06 Second Bar Table Decision](#), para. 56; *Prosecutor v. Gucati and Haradinaj*, KSC-BC-2020-07/F00334, Trial Panel II, [Decision on the Prosecution Request for Admission of Items Through the Bar Table](#), 29 September 2021, para. 13.

³⁷ [Case 06 Sixth Bar Table Decision](#), para. 71. See, similarly, ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Trial Chamber, [Decision on Prosecution Bar Table Motion](#), 28 November 2013, para. 113.

³⁸ [Judicial Notice Decision](#), para. 30. See also [Bemba et al. Clarification Decision](#), para. 6; [Bemba et al. First Judicial Notice Decision](#), para. 4.

VII. RELIEF SOUGHT

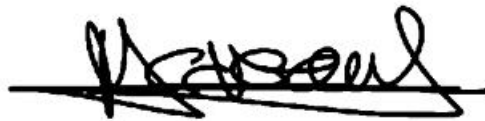
28. The Defence requests that the STJ:

DENY the Supplemental Motion for judicial notice of the Additional Proposed Facts as facts of common knowledge.

[Word count: 3,288 words]

Respectfully submitted,

11 March 2026

A handwritten signature in black ink, appearing to read 'Sophie Menegon', written over a horizontal line.

Sophie Menegon

Counsel for Hashim Thaçi

Paris, France