

**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

**Date:** 2 April 2026

**Language:** English

**Classification:** Public

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**Public Redacted Version of “Kilaj Defence Motion for the Admission of Non-Testimonial Evidence”**

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## I. INTRODUCTION

1. Pursuant to Articles 37 and 40(6)(h) of the Law,<sup>1</sup> Rules 137 to 139 of the Rules,<sup>2</sup> and the Single Trial Judge's Scheduling Order,<sup>3</sup> the Defence for Mr Isni Kilaj ("Defence") hereby requests the admission into evidence of three items disclosed by the SPO: (i) 125790-125798 / 125790-125798\_added partial ET; (ii) SPOE00368530-00368530 RED; and (iii) SPOE00368535-00368535 RED (collectively, "Items"). The Items are all relevant, have probative value and sufficient indicia of authenticity, and their probative value is not outweighed by any prejudicial effect.

## II. APPLICABLE LAW

2. Rule 138(1) provides that "[u]nless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect".

3. In order to be admitted, evidence must meet the four cumulative requirements of Rule 138(1). With regards to relevance, evidence is deemed to be relevant if it is connected, directly or indirectly, to elements of the offence(s) or mode(s) of liability pleaded in the Indictment or to other facts or circumstances material to the case. Evidence is deemed to be authentic if it is what it purports to be in origin or authorship. Evidence has probative value when it tends to prove or disprove an issue relevant to the case.<sup>4</sup>

4. In the "Decision on the Conduct of Proceedings", the Single Trial Judge ordered

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<sup>1</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("Law"). All references to 'Articles(s)' are to the Law, unless otherwise specified

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('KSC'), KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' are to the Rules, unless otherwise specified

<sup>3</sup> Scheduling Order, KSC-BC-2023-12/F00790, 13 March 2026, public, para. 11(v)

<sup>4</sup> See e.g. *Prosecutor v. Hysni Gucati and Nasim Haradinaj*, Decision on the Prosecution Request for Admission of Items Through the Bar Table, KSC-BC-2020-07/F00334, 29 September 2021, public, paras 12-14

that any request to admit non-testimonial evidence by way of written submission shall: (i) provide a short description of each proposed exhibit; (ii) specify the relevance of the proposed exhibit including, if appropriate, by reference to the relevant paragraph(s) of the Amended Confirmed Indictment, and the basis of its probative value; and (iii) provide indicators of the proposed exhibit's authenticity.<sup>5</sup>

### III. CLASSIFICATION

5. Pursuant to paragraph 15 of the Order Regarding (Re)classification of Filings,<sup>6</sup> and Rules 82(3) of the Rules, these submissions are confidential because they refer to confidential Prosecution material. A public redacted version will be filed in due course.

### IV. SUBMISSIONS

6. The Items meet the requirements of Rule 138 and are suitable for admission by way of written submission. The Items are relevant to show that Mr Kilaj is not criminally responsible for the crimes alleged in Counts 14 and 15, specifically that he did not have the requisite criminal intent.

*i) 125790-125798 / 125790-125798\_added partial ET (Item 1)*

7. Item 1 is a Cellebrite extraction of messages between Messrs Kilaj and Vllaznim Kryeziu covering the period from 2 September 2023 to 2 November 2023, obtained from [REDACTED]<sup>7</sup> which was [REDACTED].

8. [REDACTED] pursuant to a judicial order from the Single Judge Panel issued

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<sup>5</sup> Decision on the Conduct of Proceedings, KSC-BC-2023-12/F00642, 22 December 2025, para. 18

<sup>6</sup> Order Regarding (Re)classification of Filings, KSC-BC-2023-12/F00111, 14 January 2025, confidential

<sup>7</sup> Google Pixel 7 Pro, Evidence bag number E215623

on 20 October 2023.<sup>8</sup> The data contained therein is [REDACTED].<sup>9</sup>

9. Item 1 is relevant as it demonstrates the absence of any contact between Messrs Kilaj and Kryeziu in the weeks preceding and following the 6 October 2023 visit with Mr Thaçi, indicating any attempt to commit, or consistent with any intention to commit or attempt to commit, obstruction of official persons. Similarly, Item 1 demonstrates the absence of any intention to assist Mr Thaçi, or anyone else, to commit contempt of court, in the days preceding and following the 6 October visit. Further, the item is corroborative of the Cellebrite extraction of messages between the two interlocutors from Mr Kilaj's phone and establishes that there were no deleted messages.

10. Since Item 1 is an extract from evidence that was obtained as a result of the SPO's own forensic investigations and disclosed by the SPO itself under Rule 102(1)b), the SPO no doubt considers that this evidence is authentic, relevant, and has probative value. The Single Trial Judge can, in these circumstances, be satisfied that Item 1 is indeed authentic, relevant, and has probative value which is not outweighed by any prejudicial effect.

*ii) SPOE00368530-00368530 RED (Item 2)*

11. Item 2 is a table of results for terms searched for [REDACTED] call data records for the period between 1 September 2023 and 4 June 2024. It was prepared by the SPO using call data records obtained pursuant to an order of the Single Judge Panel.<sup>10</sup>

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<sup>8</sup> Second Lesser Confidential Redacted Version of Decision Authorising Search and Seizure and Special Investigative Measures, KSC-BC-2018-01/F00484/CONF/RED3, 27 August 2025 (date of original: 20 October 2023) (a public redacted version was filed on 22 August 2024)

<sup>9</sup> 129914-129921 / 129914-129921-added partial ET which was admitted through [REDACTED] (see Transcript of Trial Hearing dated 4 March 2026, KSC-BC-2023-12, confidential, p. 672, lines 12-15)

<sup>10</sup> Confidential Redacted Version of Decision on Prosecution Request for Call Data Records with Annexes 1 and 2, KSC-BC-2023-12/INV/F00183/CONF/RED, 8 September 2025, *ex parte* marking lifted pursuant to instructions contained in CRSPD118 of 11 September 2025 (a public redacted version was filed on 11 December 2025)

12. Item 2 is relevant because it shows the lack of contact between Witness 4 and persons of interest in this case, most importantly Mr Kilaj. It shows that Mr Kilaj did nothing to influence, or to attempt to influence, the Case 6 testimony of Witness 4 with the requisite intent, or at all. It constitutes compelling evidence of the lack of Mr Kilaj's intent to interfere or attempt to interfere with Witness 4's testimony. It further supports the contention that Mr Kilaj spoke the truth when stating to the SPO during his interview under caution on 2 November 2023 that [REDACTED].<sup>11</sup>

13. Similarly, Item 2 demonstrates the absence of any intention to assist Mr Thaçi, or anyone else, to commit contempt of court, in the days preceding and following the 6 October visit.

14. Since Item 2 records the results of investigations of search terms applied by the SPO to the call data records of its own witness and was disclosed by the SPO itself under Rule 102(3), the SPO no doubt considers that this evidence is authentic, relevant, and has probative value. In light of the above, Item 2 satisfies the criteria of authenticity, relevance, and probative value, and there is no basis to conclude that its probative value is outweighed by any prejudicial effect.

*iii) SPOE00368535-00368535 RED (Item 3)*

15. Item 3 is a table of results for terms searched for in Mr Kilaj's call data records for the period between 1 September 2023 and 2 November 2023. It was prepared by the SPO using call data records obtained pursuant to an order of the Single Judge Panel.<sup>12</sup>

16. Item 3 is relevant as further evidence of the lack of contact between Mr Kilaj and persons of interest, including Witness 4 and multiple other Case 6 witnesses. It

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<sup>11</sup> 116809-TR-AT-ET, Part 2, p. 4, lines 13-15

<sup>12</sup> Confidential Redacted Version of Decision on Prosecution Request for Call Data Records with Annexes 1 and 2, KSC-BC-2023-12/INV/F00183/CONF/RED, 8 September 2025, *ex parte* marking lifted pursuant to instructions contained in CRSPD118 of 11 September 2025 (a public redacted version was filed on 11 December 2025)

shows that Mr Kilaj did nothing to influence, or attempt to influence, the testimony of Case 6 witnesses with the requisite intent or at all. It constitutes compelling evidence of the lack of Mr Kilaj's intent to interfere or attempt to interfere with the testimony of Case 6 witnesses. As with Item 2, Item 3 demonstrates the absence of any intention to assist Mr Thaçi, or anyone else, to commit contempt of court, in the days preceding and following the 6 October visit.

17. Item 3 is corroborative of multiple items in the case record indicating a lack of contact between Mr Kilaj and Case 6 witnesses, including Item 2.

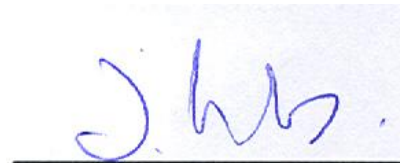
18. Since Item 3 records the results of investigations of search terms applied by the SPO to the call data records of its own witness and was disclosed by the SPO itself under Rule 102(3), the SPO no doubt considers that this evidence is authentic, relevant, and has probative value. In view of the foregoing, Item 3 fulfils the applicable admissibility criteria.

## V. CONCLUSION

19. For the foregoing reasons, the Defence respectfully requests that the Single Trial Judge admit the Items into evidence.



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2 April 2026

The Hague, Netherlands

**Word count: 1497**