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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 Hajredin Kuçi
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Public redacted version of 'Kuçi Defence Final Trial Brief'

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I. INTRODUCTION

1. On 29 November 2024, the Pre-Trial Judge confirmed[1] the indictment. Mr Kuçi arrived in The Hague on the 8th of December 2024. By means of this submission, the Kuçi Defence hereby submits its final trial brief[2] and respectfully requests your Honourable Single Trial Judge, to acquit Mr Kuçi of both charges due to a total lack of evidence.

2. The SPO's line of reasoning and apprehension is that Mr Thaçi attempted to influence witnesses in Case 6. This is essentially what Case 12 is about. In doing so, the SPO presumed that Thaçi must have used intermediaries to approach, speak with, and actually influence certain witnesses. This is how Mr Kuçi came into the SPO's crosshairs. Despite a highly extensive investigation, not a shred of evidence has been found against Mr Kuçi that could even suggest he engaged in any criminal conduct.

3. The initial suspicion[3] against Mr Kuçi was that he had obstructed official persons in the performance of their official duties. As follows from the 'Decision on the Confirmation of the Indictment'[4] dated 29 November 2024 and the 'Decision on the Specialist Prosecutor's Appeal Against the Decision on the Confirmation of the Indictment'[5] dated 3 April 2025, the statutory requirements under Kosovar law for the offence of obstructing an official person in the performance of official duties were not met with respect to Mr Kuçi.

[1] KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment,* 29 November 2024.
[2] KSC-BC-2023-12, FF00974, Single Trial Judge, *Third Scheduling Order,* 3 August 2026.
[3] KSC-BC-2023-12, F00017, Specialist Prosecutor's Office, *Submission of Amended Indictment for confirmation*, 27 June 2024 & KSC-BC-2023-12, F00028, Specialist Prosecutor's Office, *Submission of Further Amended Indictment for confirmation*, 12 November 2024.
[4] KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment,* 29 November 2024.
[5] KSC-BC-2023-12/IA002, F00012, Panel of the Court of Appeals Chamber, *Decision on the Specialist Prosecutor's Office's Appeal Against the Decision on the Confirmation of the Indictment,* 3 April 2025.

4. The underlying theory—apparently based on the SPO's interpretation of Mr Kuçi's visit to Thaçi on 3 September 2023[6]—was, and remains, that Mr Kuçi obstructed the administration of justice, or at least intended to do so. The Defence must at least give the SPO credit for deploying every conceivable investigative and coercive measure to bring these alleged crimes to light. The Defence believes that the SPO expected and hoped to find evidence against Mr Kuçi, but that hope has proven to be in vain.

5. Indeed, the SPO has failed entirely to substantiate these allegations against Mr Kuçi. The remaining charges—two counts of contempt of court—are, in the view of the Defence, highly contrived and far-fetched. The question that continuously recurs for the Defence throughout these proceedings is what interest the SPO believes it is serving by prosecuting Mr Kuçi. This is especially true given that it has in no way been established that Mr Kuçi had any forbidden contact with witnesses, let alone that he attempted to influence them.

6. Lawyers and prosecutors are masters at complicating simple matters. Does a certain conduct fall under a specific criminal provision or not? Is it in breach of a protocol in a specific case or not? Does it constitute 'intent' or not? And so forth. In doing so, we sometimes risk losing sight of the bigger picture and forgetting what this is really about—or at least, what it ought to be about. And that is the question of whether Mr Kuçi intentionally attempted to frustrate the KSC proceedings in any way?

7. From an evidential point of view, that question is easily answered: there is no evidence for this—not in the form of emails, written documents, messages, recorded confidential conversations, nor in the form of witness statements. The Defence was therefore surprised that the SPO pursued the case against Mr Kuçi, and that, unfortunately, there appears to be no progressive insight. Not even after it emerged that the SPO had translated the short message (count 19) incorrectly—an insight that

[6] KSC-BC-2023-12, F00702, Specialist Prosecutor's Office, *Prosecution submission of amended exhibit list,* 28 January 2026, Item no. 73, *Transcript of Detention Centre Visit between Hashim THACI, Hajredin KUCI, Hysni GUCATI and others on 3 September 2023.*

should have led to the withdrawal of the charges against Mr Kuçi, at least for count 19.

8. As a former Minister of Justice, professor of law, and former member of the Veseli Defence team, protecting the rule of law was, and remains, of paramount importance to Mr Kuçi. In fact, throughout his entire professional life—up until the present day—he has been dedicated to establishing and strengthening the rule of law in Kosovo. As head of the Constitutional Commission, he played a crucial role in drafting the Constitution of Kosovo following the declaration of independence in 2008.

9. Even more relevant to this case: as Minister of Justice and Deputy Prime Minister (2011–2016), Mr Kuçi was closely involved in the establishment of the Kosovo Specialist Chambers. He was responsible for coordinating the legal reforms necessary to accommodate the Specialist Chambers within the Kosovar legal system, and was also deeply engaged in the political negotiations with international partners (the EU and the US) regarding the structure and mandate of the Specialist Chambers.
Mr Kuçi was the Co-chair of the Steering Committee for the rule of law together with the EULEX Chairman and EU Commission Representative.

10. The fact that he, of all people, is now being prosecuted for 'contempt of court' is a bitter pill for Mr Kuçi to swallow. This is especially true now that we can, and will, demonstrate through arguments that these charges are entirely groundless and find no support in the evidence provided by the SPO.

11. Between September 2021 and 29 November 2023, Mr Kuçi was part of the Veseli Defence Team in Case 6.[7] He is mentioned as "consultant".[8]
Mr Kuçi was aware of the SPO's objections regarding his role in the Veseli defence. In short, the SPO's apprehension was that his presence could potentially influence witnesses.

[7] KSC-BC-2023-12, F00459, Specialist Prosecutor's Office, *Prosecution Pre-Trial Brief,* 19 September 2025, p. 44, par. 79. See footnote 259 for further references.
[8] KSC-BC-2020-06 20230403 ENG, p. 2141.

12. Despite the fact that this apprehension was (and remains) groundless in the view of the Defence, Mr Kuçi chose to have absolutely no involvement with witnesses or potential witnesses in Case 6. He was never present during investigative interviews with witnesses, witness preparation sessions, etc. We explicitly emphasise this because—had Mr Kuçi wished to influence witnesses—his role in Case 6 would have allowed him to speak with witnesses confidentially. Yet, Mr Kuçi explicitly refrained from doing so. This in itself is a strong indication that he never had any intention to commit contempt of court and/or to influence witnesses.

13. What has all the investigation into Mr Kuçi actually yielded? Exactly one Whatsapp-message and one recorded conversation with Mr Thaçi. Absolutely nothing else. In its opening statement,[9] the SPO said next to nothing about Mr Kuçi, and the witnesses called by the SPO are irrelevant to the assessment of the charges against him. What the SPO did say about Mr Kuçi is incorrect and/or finds no support in any objective evidence. The SPO case lasted for four days. Regarding the alleged role of Mr Kuçi, the SPO stated the following:

> *"In Accused Hajredin Kuci's case, Kuci repeatedly provided his own suggestions on what the targeted witnesses should say in order to benefit Thaci. Indeed, Kuci was well placed to make such suggestions as he, at the time, had been representing co-accused Kadri Veseli in Case 06 for over a year.*[10]
>
> *(…)*
>
> *The fourth, Mr. Kuci, is charged with contempt of court for agreeing on his own with Mr. Thaci to execute his instructions, and also, separately, for committing contempt of court in his own right by blatantly violating a Court order. As the evidence will show, when Mr. Kuci schemed with Thaci to interfere with witness testimony, he knew the relevant rules he*

[9] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript.
[10] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 268-289.

was breaking because he was also working as a Defence team member for Kadri Veseli.[11]

(…)

In Mr. Kuci's case, Thaci did not rely on a group. Instead, he used a non-privileged visit with a member of another Case 06 Defence team member to try and interfere with multiple witnesses, including two KLA insiders and an alleged victim of mistreatment by the KLA.[12]

(…)

Now regarding Mr. Kuci. In his case, Thaci showed that he was so determined to interfere with Case 06 proceedings that he actually turned to a Defence team member of another Case 06 accused to assist him.
We see this in Kuci's visit to Thaci on 3 September 2023 as charged in the indictment. On that day, Kuci met with Thaci alone in the detention centre for three hours. By this time, Kuci had been a member of Kadri Veseli's team for nearly two years. And as Thaci's decades-long friend who also had unfettered access to all disclosed witness information in Case 06, Mr. Kuci was perfectly positioned to be another tool of witness interference and contempt of court.
The September visit shows Thaci engaging in the same witness targeting as the other examples I just discussed. After first talking about everyday topics, Thaci and Kuci started whispering about what really mattered to Thaci: getting Case 06 witnesses to testify the way he wanted.
He gave Kuci detailed instructions for at least three different witnesses. Two were KLA insiders, including again Bislim Zyrapi, and the third was another crime base witness who was anticipated to testify about his alleged unlawful mistreatment by the KLA.
As with each of the other co-accused in this case, Kuci willingly agreed to execute Thaci's interference orders, and provided his own advice on what

[11] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 270-271.
[12] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 275.

the witnesses needed to say to best help Thaci's case. To make sure that there was no confusion and that his instructions were followed properly, Thaci told Kuci to write down what Thaci was telling him. Kuci agreed. And in the case of the victim witness, known as Witness 6 in this case, Thaci insisted that Mr. Kuci needed to act urgently because the witness was expected to testify soon. Thaci was so concerned about this timing that he told Kuci to start the work on the witness as soon as he landed back in Kosovo at midnight on September 6th. Kuci agreed, and his phone records show that he did as he was told.
In addition to committing contempt of court by agreeing to unlawfully contact witnesses for Thaci, Kuci is also charged with a separate contempt of court for contacting Rrustem Mustafa in April 2023, just as Case 06 was starting. This contact was a direct violation of the Case 06 witness contact protocol. In his message, Kuci passed on to Mustafa the congratulations of an unnamed person for his "clear ideas about the country and the war." Ideas which notably align with the interference instructions Thaci issued to Mr. Fazliu during their 24 July visit.[13]

(…)

From Thaci and Kuci, the contempt charges in this case arise primarily from the Case 06 Protocol, which is a decision issued by the Case 06 Trial Panel concerning the handling of confidential information by parties and participants in that case. At all relevant times, Thaci was an accused in Case 06 while Kuci was a member of the Veseli Defence team. Notably, this protocol applied to all contacts with the witnesses of an opposing party, including after their testimony. As the protocol was upheld on appeal, it was unquestionably a final decision. Relevant to the contempt charges, the Case 06 Protocol prohibited a party or participant in Case 06 from: providing confidential information to third parties, unless strictly necessary and subject to strict conditions; revealing to third parties the involvement of any protected witness with the KSC or SPO; and

[13] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 280-282.

contacting the opposing party's witnesses outside of the framework implemented therein.[14]

(…)

Similarly, as charged in Count 9, Thaci agreed with Kuci to commit contempt of court when, at Thaci's direction, they agreed that Kuci should contact SPO witnesses outside of the Case 06 Protocol, and Kuci took substantial steps to implement that agreement.[15]

(…)

Simultaneously, and under Count 18, Kuci agreed with Thaci to commit contempt by way of their agreement to contact SPO witnesses outside of the Case 06 Protocol. This agreement includes substantial acts to implement, such as Kuci's initiative to immediately meet with at least one targeted witness upon his return to Kosovo following the 3 September visit. Further, Kuci agreed to write down Thaci's instructions during their visits, provided his own suggestions on what targeted Case 06 witnesses should say, and even indicated that he had already spoken to one or more witnesses.
Again, as with all of the crimes charged, the efforts of Kuci and Thaci to obscure their agreement to commit contempt by whispering during the 3 September visit further establishes that they knew their conduct was prohibited by the Case 06 Protocol.
Similarly, Kuci committed contempt of court due to his clear and intentional violation of the Case 06 Protocol, as charged in Count 19. More specifically, Kuci's direct contact with a Case 06 witness on 12 April 2023, in violation of the Case 06 Protocol, results in the commission of contempt. This contact is clear and indisputable. Further, the fact that Kuci, a trained lawyer and, at the relevant time, Case 06

[14] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript p. 307.
[15] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 308.

Defence team member, knew that this conduct was in violation of the Case 06 Protocol cannot reasonably be disputed.[16]

14. The conclusion is that during those four days, a maximum of ten minutes was spent discussing the allegations made against Mr Kuçi. In the view of the Defence, that in itself speaks volumes. Mr Kuçi has been has been shoehorned into this case.

II. COUNT 19

15. Before addressing the facts, I would like to note the following. Pursuant to Article 12 of the Law on Specialist Chambers and Specialist Prosecutor's Office (the Law), the substantive criminal law of Kosovo shall apply in proceedings before the KSC. The Defence will, inter alia, rely on Articles 1 and 11 of the KCC, which concern substantive law.

16. Confirmation that substantive law from the KCC applies is also found in Article 6 KCC, which stipulates that "*the provisions of the general part of the Code shall apply to all criminal offences defined by the laws of the Republic of Kosovo*", and is therefore also applicable to the Law on Specialist Chambers. Articles 1 and 11 form part of the general part of the KCC and are consequently applicable to all criminal offences. Nowhere in the Law is the application of Articles 1 and 11 excluded.

17. Finally, I wish to draw attention to Article 2 of the KCC, which provides that in the event of ambiguity, the definition of a criminal offence is to be interpreted in favour of the person against whom proceedings are conducted.

18. The Defence has chosen to address the facts in chronical order and will therefore begin by addressing count 19. Under Count 19, Mr Kuçi is charged with:

[16] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 308-309.

> CONTEMPT OF COURT, between on or about 12 April 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21 and 393, and Articles 15(2) and 16(3) of the Law.

19. As previously announced, the Defence will request the Single Trial Judge to acquit the client of the offence charged under Count 19 due to a lack of evidence. The following arguments are submitted in support of this request.

20. On 12 April 2023, witness 1 received the following message:

> "*Shoq, te pergezoi per profesionalizem, per idete e qarta per vendin dhe luften dhe per guximin. Te lumte*"[17]

21. The SPO incorrectly had this message translated as follows:

> "*Friend, he congratulated you for your professionalism, for your clear ideas about the country and the war, and for your courage. Bravo*"[18]

22. The correct translation, also according to the LSU (following a Defence request for the translation of this message), reads as follows:

> "*Friend, I congratulate you for your professionalism, for your clear ideas about the country and the war, and for your courage. Bravo.*"[19]

23. In the context of assessing the allegation, you might think: what exact difference does this translation make? After all, the SPO's position is that by sending this message, Mr Kuçi contacted the witness in violation of

[17] KSC-BC-2018-01, F00451/A02, *Evidence number a50186037 – seized phone Rrustem MUSTAFA – Apple iPhone 13Pro.*
[18] KSC-BC-2018-01, F00451/A02, *Evidence number a50186037 – seized phone Rrustem MUSTAFA – Apple iPhone 13Pro.*
[19] LSU Verification Memo, F00871 in KSC-BC-2023-12, 22 April 2026.

the 'Case 6 protocol'.[20] Well, it does matter, especially when we listen to the SPO's rhetoric. They suggest that the congratulations originated from Mr Thaçi, or at least from an 'unidentified person', thereby fitting the frame desired by the SPO—namely, that Mr Thaçi was actively trying to influence witnesses through Mr Kuçi (and that the client allowed himself to be used for this purpose). This is what the SPO stated about this in its opening statement:

> *"In addition to committing contempt of court by agreeing to unlawfully contact witnesses for Thaci, Kuçi is also charged with a separate contempt count for contacting Rrustem Mustafa in April 2023, just as Case 06 was starting. This contact was a direct violation of Case 06 witness contact protocol. In his message, Kuçi passed on to Mustafa the congratulations of an unnamed person for his "clear ideas about the country and the war." Ideas which notably align with the interference instructions Thaci issued to Mr. Fazliu during their 24 July visit."*[21]

24. The Defence makes no allegation of bad faith; it observes only that the translation was demonstrably incorrect and that this error materially coloured the assessment. Unlike the interpretation/translation of the recorded conversations during the client's visit to Thaçi, there is absolutely no doubt about the text that Mr Kuçi sent (after all, it is a text message). The question arises whether, had the translation been correct, the SPO would still have felt the need to prosecute Mr Kuçi for contempt of court. That seems difficult to imagine.

25. For an assessment of this allegation, it is important to know the following about Mr Kuçi and Witness 1, Mr Mustafa. They have known each other since the early 1990s. They were concurrently members of parliament and members of the Democratic Party of Kosovo. Since 1999, they have been practically neighbours, with their homes located just 150

[20] KSC-BC-2020-06, F00854, Pre Trial Judge, *Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant,* 24 June 2022.
[21] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 282.

meters apart. They spoke to each other daily, and at the very least weekly. A close friendship that goes back more than 30 years.

Is the Case 6 protocol a final order?

26. The first question the Defence wishes to raise is whether a protocol issued by a pre-trial judge can and should be construed as a final order, ruling, or decision within the meaning of Article 393 of the KCC. Based on the legislative history and case law, the Defence takes the position that the 'Case 6 protocol' does not qualify as a final order within the meaning of Article 393 of the KCC, and that Mr Kuçi must be acquitted for this reason alone. After all, the criminal liability for Mr Kuçi's alleged conduct ceases to exist if the Single Trial Judge agrees with the Defence that the 'Case 6 Protocol' is not a final order/ruling/decision.

27. In its Pre-Trial Brief[22], the SPO takes the position that the 'Case 6 Protocol' does indeed constitute a final decision within the KSC framework. Reference is made in this regard to Article 45 of the Law, Rules 77 and 170 of the Rules, and to Article 485(1) of the KCPC.

28. Indeed, Article 485(1) of the KCPC provides that a judgment becomes final 'when it may no longer be contested by an appeal or when no appeal is permitted.' Furthermore, it is correct that the decision of the Pre-Trial Judge regarding the 'Case 6 Protocol' was no longer subject to appeal—at least not following the decision dated 27 December 2022.

29. Concurrently, we must observe that almost a year later, specifically on 27 November 2023, the Trial Panel went on to modify the terms of the 'Case 6 Protocol'. This, of course, raises the logical question of whether it can still be considered a 'final decision' within the spirit of Article 393 KCC.

30. The short answer is no; it is not a 'final decision' within the meaning of Article 393 KCC. A comparison with the Dutch criminal justice system forces itself upon us. In the Netherlands, we are familiar with the system

[22] KSC-BC-2023-12, F00459, Specialist Prosecutor's Office, *Prosecution Pre-Trial Brief,* 19 September 2025, p. 8-9.

of closed remedies (*stelsel van gesloten rechtsmiddelen*). This implies, for instance, that certain defences regarding the lawfulness of the arrest (procedural flaws during the pre-trial investigation) must be presented to the examining magistrate rather than the trial judge. However, this principle has since been abandoned by the Dutch Supreme Court. In 2025,[23] the Supreme Court considered that the trial judge, while respecting the rules of a fair trial, should as much as possible render a substantive judgment on the accusation against a suspect, and that the judge must be able to take into account everything relevant to the final decision. Therefore, even if the unlawfulness of the arrest—to stay with that example—was not raised before the examining magistrate, it may still be brought forward before the trial judge, who must then respond to or take account of it. Therefore, a ruling by a pre-trial judge in the Netherlands is not a 'final decision', as the trial court ultimately holds final authority.

31. Before the Kosovo Specialist Chambers, a system of closed remedies applies to a certain extent as well. The 'Case 6 Protocol' was issued by the Pre-Trial Judge, and an avenue for appeal was subsequently established within the Pre-Trial Stage. During the Pre-Trial Stage, neither the Defence nor the SPO can take any further action against, for instance, an unfavourable legal framework. However, as soon as the case enters the Trial Stage, the Pre-Trial Judge loses his jurisdiction (30 days after the Trial Panel has been appointed pursuant to Article 33 of the Law), and the mandate rests with the Trial Panel from that moment onward. Consequently, the Trial Panel can modify such a legal framework, which is precisely what in fact occurred in Case 6. This means that while, from a formal standpoint, one might have spoken of a 'final decision' during the Pre-Trial phase, substantively speaking, it cannot be considered a 'final decision' at all. After all, this Protocol could be—and simply was—amended by the newly competent judges during the Trial Stage.

[23] Dutch Supreme Court 9 December 2025, ECLI:NL:HR:2025:1868.

32. For instance, it is provided that the Pre-Trial Judge shall prepare a Handover Document containing, *inter alia*, a list of the orders and decisions rendered by the Pre-Trial Judge (see Rule 98(1)(c)(iii)). More importantly, Rule 116(4) shows that the Trial Panel may issue orders or decisions on any matter as necessary to ensure a fair and expeditious trial. Rule 116 explicitly mentions under (c) that this includes communication between Parties and witnesses.

33. The trial proceedings commenced on 3 April 2023, and from that moment onward, the Trial Panel was therefore the competent court. Mr Kuçi is alleged to have committed contempt of court on 12 April 2023 and between 1 and 13 September 2023, specifically by violating the 'Case 6 Protocol'. It is almost absurd for the SPO to believe it can characterize this Protocol as a 'final decision', particularly given that the SPO itself notes in its Pre-Trial Brief that this very same 'Case 6 Protocol' was still amended on 27 November 2023. This is thus after the alleged conduct by Mr Kuçi. By definition, it can therefore never be considered a 'final decision'. If the Single Trial Judge accepts the Defence's position on this matter, the Single Trial Judge must acquit Mr Kuçi, as there was no 'final order' within the meaning of Article 393 KCC.

34. For a proper understanding, it is important to first consider why Article 393 KCC was established. In Kosovo, court orders were rarely, if ever, complied with or obeyed. This was, and still is, particularly an issue in civil matters—for instance, where Party A has been ordered by the court to fulfil a payment obligation to Party B. When such an obligation, in the form of an irrevocable judgment from a competent court, is not complied with, it now constitutes a criminal offence: contempt of court.

Who are the addressees of the norm?

35. The 'Case 6 Protocol' is of a completely different nature than the example mentioned above. First of all, it is useful to clarify for whom the 'Case 6 Protocol' is intended—who are the addressees of the norm? They are 'the Parties' and 'participants'. The Pre-Trial Judge ordered these Parties to comply with the 'Case 6 Protocol'. In section II, under (a) of the 'Case 6

Protocol', the Pre-Trial Judge refers in the footnote[24] to Article 2 of the Code of Conduct. This article specifies who does or does not form part of the team, or at least how that should be understood. Mr Kuçi was part of the Veseli Defence Team; this is not contested by the Defence.

36. However, it is advisable to closely examine the Code of Conduct. Looking at the Purpose and Scope of the Code of Conduct, Article 1 states the following:

> "*The Code of Conduct is adopted in order to regulate professional conduct in judicial proceedings before the Specialist Chambers and any activity related thereto, as well as to ensure the integrity of the proceedings and the fair and proper administration of justice*."

37. As is evident from the SPO's Opening Statement, this is precisely what the case revolves around:

> "*The conduct of the accused strikes at the very heart of the Rule of Law and this Court itself, which exists within the Kosovo judicial system, to ensure independent and fair proceedings. That is why we are here*."[25]

38. Returning to the Code of Conduct. This code applies to Counsel and Prosecutors. Article 6(d) provides that Counsel shall act within and in compliance with the legal framework and any decision or order of a Panel. If Counsel fails to comply with this, they may be subject to disciplinary action (a reprimand, a fine, or even a permanent ban from acting as Counsel before the Kosovo Specialist Chambers). According to Article 34 of the same Code of Conduct, Counsel may also be held liable for the actions of their Co-Counsel who falls under their supervision. No such provision exists for the actions of 'other' team members.

[24] KSC-BC-2020-06, F00854, Pre Trial Judge, *Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant,* 24 June 2022, p. 87, footnote 300.
[25] KSC-BC-2023-12, *Procedural Matters (Open Session) (Opening Statements – Trial Hearing)*, 27 February 2026, Transcript, p. 265.

39. This raises the question of what the consequences are for Team Members if they fail to comply with the legal framework. The Defence submits that a reasonable interpretation of the Code of Conduct and the discretionary authority of, among others, the Registrar implies that a Team Member can be removed from the Team and denied access to the Kosovo Specialist Chambers.

40. The Defence also submits that this is the proper course of action that should have been pursued by the SPO, which could, of course, have filed a complaint with the Registrar regarding Mr Kuçi's alleged conduct and requested the termination of his contract or employment.

41. The position of the Defence is that the 'Case 6 Protocol' is directed at the 'Parties' and that Mr Kuçi does not fall into this category. It is true that the Pre-Trial Judge also mentions that 'participants' are addressed by the 'Case 6 Protocol', explicitly referring to the Code of Conduct. While that Code of Conduct indeed explains who forms part of a Team, it does not apply to individuals other than the Prosecutor, Counsel, or Co-Counsel. Given that Mr Kuçi is none of these three, the Defence submits that— despite the Pre-Trial Judge's attempt to make him so— Mr Kuçi was not (and is not) one of the addressees of the norm under the 'Case 6 Protocol', which constitutes a legal framework within the meaning of Article 6(d) of the Code of Conduct.

42. Consequently, Mr Kuçi could not have committed contempt of court since—even if the Court were to find that there was a final decision—this decision did not apply to Mr Kuçi (but only to Counsel, Co-Counsel and Prosecutor). Therefore, Mr Kuçi should be acquitted.

Criminal law as an ultimum remedium: the principle of subsidiarity

43. Should you consider that the 'Case 6 Protocol' did apply to Mr Kuçi, the defence submits that Mr Kuçi should not have been involved as a suspect in these criminal proceedings. Subjecting Mr Kuçi to prosecution is unlawful, and this unlawfulness intensifies with each day that the prosecution continues.

44. Criminal law is a last resort, an *ultimum remedium*. Only when all other social and legal remedies prove insufficient does criminal law offer a solution. This principle can be traced back to the ideas of Enlightenment thinkers such as Cesare Beccaria. He considered a society to be just only if it adheres to the infallible principle that people should be subjected to as little harm as possible.[26] Anthony Modderman, the intellectual father of the Dutch Criminal Code, believed that only that which constitutes a wrong and cannot be properly contained by any other means may be punished.[27] This principle is also reflected in Article 1 of the KCC.

45. Criminal law is characterized by restraint. This is especially true with respect to individuals who, like Mr Kuçi, find themselves under a magnifying glass by virtue of their position. The Defence invites the Single Trial Judge to assess whether the criminalisation of the conduct alleged against Mr Kuçi—even if one could speak of unlawful acts, which the Defence expressly disputes—is appropriate and just. As far as the Defence is concerned, this question can only be answered in the negative.

46. The principle that criminal law is not applied when a rule can be enforced through other means is also known as the principle of subsidiarity. The concept of criminal law as an *ultimum remedium* inherently contains an element of lawfulness. Employing criminal law at a point when it is not yet a last resort inflicts unnecessary, and therefore unlawful, suffering.

47. This legal concept underpins criminal justice systems across the globe, including that of Kosovo, which is ultimately what the case against Mr Kuçi revolves around. This is explicitly expressed in Article 1 of the Criminal Code of the Republic of Kosovo. The article reads as follows:

[26] C. Beccaria, *Over misdaden en straffen,* Den Haag: Boom juridische uitgeverij 2016 (*Dei delitti e delle penne* 1764).
[27] H.J. Smidt, *Geschiedenis van het Wetboek van Strafrecht: volledige verzameling van regeeringsontwerpen, gewisselde stukken, gevoerde beraadslagingen, [etc],* Haarlem: H.D. Tjeenk Willink 1881, p. 16.

1) *Criminal offences and criminal sanctions are foreseen only for those actions that infringe and violate the freedoms, human rights and other rights and social values guaranteed and protected by the Constitution of the Republic of Kosovo and international law* ***to the extend that is not possible to protect these values without criminal sanctions****.*

2) *The criminal offences and the types of measures and the severity of the criminal sanctions for the perpetrators of criminal offences* ***are based on the necessity of criminal justice enforcement*** *and the proportionality of the level and nature of the danger for human rights and freedoms and social values*.

48. It follows clearly from this statutory provision that, under Kosovar law as well, the principle of subsidiarity is not directed solely at the legislature. Both at the legislative and enforcement levels, the principle of subsidiarity must be kept in mind when assessing the desirability of deploying criminal law.

49. The Defence explicitly refrains from arguing that the Kosovar legislature could not reasonably have decided to criminalise 'contempt of court'. However, the mere fact that the legislature chose to criminalise this conduct does not mean that the deployment of criminal law as an enforcement vehicle is a given in every single case. Consequently, the emphasis in this case shifts to the concept of *ultimum remedium* at the enforcement level. In fact, that is where the crux of the matter lies. The Defence acknowledges that situations are indeed conceivable where the prosecution of participants in criminal proceedings under Article 393 of the Criminal Code of Kosovo is necessary. However, it is of the opinion that the unsubstantiated suspicion against Mr Kuçi does not warrant such an approach.

50. The SPO has failed to provide any justification for resorting to criminal law in this specific case. Nowhere does it appear that the use of an alternative, less restrictive measure was ever considered. This is despite the fact that a reasonable alternative presented itself on a silver platter: the Codes of Conduct for Counsel and Prosecutors before the Kosovo

Specialist Chambers.[28] These codes of conduct are more than just a reasonable alternative; they are the appropriate instrument in this case. As is evident from the SPO's opening statements, Case 12 revolves essentially around ensuring an independent and fair administration of justice before the KSC. Specifically, it concerns the integrity of the proceedings in Case 6. And it is precisely such an independent and fair administration of justice that is protected by the codes of conduct applicable to the participants in proceedings before the Kosovo Specialist Chambers, as explicitly follows from Article 1 of the Code of Conduct, cited above in paragraph 36.

51. The fact that Mr Kuçi's alleged conduct, by any stretch of the imagination, might also qualify as a criminal offence under Kosovar law does not relieve the SPO of her obligation to choose the path of least harm. In this regard, it should be noted that the underlying rationale of the penal provision in Article 393 of the Criminal Code of Kosovo is of a different nature than ensuring an independent and fair administration of justice, as demonstrated above in paragraph 33. If there were any blameworthy conduct on the part of Mr Kuçi in the performance of his duties as a 'consultant' within the Veseli Defence Team, it would have been incumbent upon the SPO to draw from the arsenal of sanctions available under the Code of Conduct. It goes without saying that disciplinary intervention constitutes a less restrictive measure than criminal prosecution.

52. Resorting to criminal law in this case is akin to using a sledgehammer to crack a nut. Yet, the SPO has proceeded to do so completely unjustly and without any reasonable ground. As far as the Defence is concerned, this constitutes a violation of Article 1 of the Criminal Code of Kosovo. It was entirely possible to protect the underlying legal interest—an independent and fair administration of justice—without resorting to criminal law, namely through the codes of conduct. The SPO has failed to demonstrate that it gave any consideration to the potential

[28] KSC-BD-07-Rev1, The Registrar, upon approval by the President, Kosovo Specialist Chambers, *Code of Professional Conduct – for Counsel and Prosecutors Before the Kosovo Specialist Chambers*, 28 April 2021.

applicability of the codes of conduct in this matter, let alone provide a reasoned justification as to why that route was not the appropriate path to a just outcome. The Single Trial Judge is therefore requested to declare the prosecution's case inadmissible.

Case 6 Protocol

53. In the event that the Single Trial Judge should hold a different view on this matter, the Defence notes the following. For a proper assessment, it is essential to have a clear understanding of the 'Case 6 protocol'[29]. On or about 12 April 2023, the 'Case 6 protocol' read as follows:

II. Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant

a. Except under the conditions specified herein, prior to testimony, Parties and participants shall not contact or interview a witness of another Party or participant if the intention to call the witness to testify or to rely on his or her statement has been notified to the opposing Party or participant.

b. If an opposing Party or participant wishes to interview a witness of another Party or participant, it shall notify the calling Party, the Court Management Unit ("CMU") and, in relation to dual status witnesses, Victims' Counsel at least ten days prior to the intended interview. The calling Party shall ascertain in good faith if the witness consents to being interviewed by the opposing Party and shall also inform the witness of the possibility of having a representative of the calling Party, a legal representative of the witness, Victims' Counsel in relation to dual status witnesses and/or a WPSO representative present during the interview. In exceptional circumstances, a Party or participant may, after having consulted sufficiently in advance with the Registry, apply to the Panel to additionally require the presence of Registry representatives. The calling Party shall inform the opposing Party whether the witness consents. In addition, where the calling Party believes

[29] KSC-BC-2020-06, F00854, Pre Trial Judge, *Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant,* 24 June 2022.

that the safety and security of a witness may be at stake, or for other legitimate reason, it may request the Panel to permit it to attend any meeting between the opposing Party and the witness regardless of the witness's expressed preferences. If the calling Party seizes the Panel or indicates to the opposing Party that it shall do so, the opposing Party shall refrain from interviewing the witness until the Panel has issued its decision. The procedure in this section shall not apply to an interview conducted by the SPO with an opposing Party witness concerning other cases unless the SPO plans to ask questions at that interview that are relevant to the charges in this case.

c. *If a Party or participant contacts an opposing Party or participant witness inadvertently or during WPSO-organized courtesy meetings, the Party or participant shall refrain from any discussion of the case and shall under no circumstances seek the witness's consent to be interviewed directly. A witness's consent to be interviewed may be obtained only through the procedure set out in the previous subparagraph.*

54. The Defence believes that the scope and intent of the aforementioned protocol are clear. It is intended to prevent contact with witnesses of the opposing party for the purpose of discussing the case with them—namely, Case 6.

55. The message sent by the client is clear: two sentences, 18 words. There is absolutely no discussion of the case within the meaning of the aforementioned protocol. Furthermore, the message does not seek consent from Witness 1 to be directly interviewed. Although the SPO, and by extension the Pre-Trial Judge,[30] contend that the client discussed the substance of the case in this manner—that is, by sending this single text message—this assertion finds no support in the aforementioned protocol. Primarily, it is submitted that the message falls outside the scope of the Case 6 Protocol, given that it constitutes neither a 'contact or interview' within the meaning of the protocol nor substantive case-related communication.

[30] KSC-BC-2023-12, F00036, Pre Trial Judge, *Decision on the Confirmation of the Indictment*, p. 114-117.

56. The Pre-Trial Judge in Case 6 does not explain what exactly is meant by 'inadvertently'. A reasonable interpretation of 'inadvertently' could, for instance, include spontaneously sending a single message to a close friend—who is also a neighbour—whom you have just seen giving an interview on television. Mr Kuçi 's position is that, at that moment, he did not realize that sending this message could potentially conflict with the aforementioned protocol.

57. In this regard, the Defence wishes to emphasise from its own experience the vast volume of documents provided in proceedings before this Court, and that it is highly conceivable, even for a member of one of the defence teams, that they would not immediately have all protocols sharply in mind when sending a short message. In Case 6, more than 3,000 filings can be found in Legal Workflow. Defence teams are buried in filings, disclosures, and emails.

58. As stated, the Defence primarily contends that the exception within the meaning of paragraph c applies, and that for this reason there is no violation of the protocol and, mutatis mutandis, there can be no question of contempt of court. In addition, it must be emphasised that the Pre-Trial Judge, in her decision to provisionally rule that a violation of the Case 6 protocol had occurred, relied on an incorrectly provided translation by the SPO. This incorrect translation wrongfully gave that message an entirely different connotation.

59. Should you consider that the message does not fall under the category of 'inadvertently' contacting [the witness], it is, of course, the position of the Defence that there can be no question of 'intent' within the meaning of Article 21 of the KCC.

60. The Pre-Trial Judge[31] noted the following in her decision on the confirmation of the indictment:

[31] KSC-BC-2023-12, F00036, Pre Trial Judge, *Decision on the Confirmation of the Indictment*, p. 116.

> "*Regarding the mental element of the offence, the Pre-Trial Judge refers to the deliberate and purposeful manner in which Mr Kuçi contacted Witness 1, an SPO witness, in the context of the Witness 1 WhatsApp Exchange. The Pre-Trial Judge notes, in particular, that (i) decision KSC-BC-2020-06/F00854, containing the Case 06 Contact Protocol, was formally notified to Mr Kuçi, who was a direct addressee of the orders contained therein as a member of the defence team of Mr Veseli in the Thaçi et al. trial; and (ii) by 30 January 2023 at the latest, Witness 1 had been identified as a SPO witness in the Thaçi et al. trial in disclosures to the defence teams in that case. The Pre-Trial Judge finds that the foregoing demonstrates Mr Kuçi's awareness of the prohibited nature of his conduct*."

61. With all due respect to the Pre-Trial Judge, the Defence wishes to note the following in this regard. There is a distinction between theoretical logic and actual reality. Let me give an example: I fit into my coat, my coat fits into my bag, and therefore, I fit into my bag. On paper, this appears to be a correct representation, but we all understand that reality is different, and not quite so simple.

62. The defence respectfully requests that the Single Trial Judge exercise the utmost care and caution when assessing this case, which is of profound importance to Mr Kuçi. The finding that Mr Kuçi was aware of the prohibited nature of his conduct relies on an unsustainable inference regarding his state of mind, and that conclusion cannot stand.

63. The submission is not that Mr Kuçi sent a message by mistake; the submission is that at the time of sending the message—nearly a year after receiving the aforementioned protocol—Mr Kuçi inadvertently failed to realize that this could potentially constitute a violation of that protocol. The Pre-Trial Judge's characterization that Mr Kuçi sent a single message in a 'deliberate and purposeful manner' is an interpretation for her own account; it finds no support in any evidence and strikes the Defence as exaggerated.

64. Furthermore, the Defence cannot shake the impression that the Pre-Trial Judge reached this provisional conclusion due to the connotation the

SPO sought to attach to the message, including through an incorrect translation. With a proper understanding of the facts, and at the current stage of the proceedings, the Defence is convinced that the Pre-Trial Judge would have ruled quite differently. In this regard, it would go too far even for the Defence to suggest that the SPO 'deliberately and purposefully' had the aforementioned message translated incorrectly. Mistakes are, after all, only human. We ask you to look at Mr Kuçi's actions and his position on the matter with the same open mind.

65. Even if the Single Trial Judge were to consider that sending this single message conflicted with the protocol, it can under no circumstances be characterized as contempt of court within the meaning of Article 393 of the KCC. The evidentiary threshold for that is far higher; after all, it must be established beyond reasonable doubt that Mr Kuçi intentionally committed contempt of court.

Direct intent

66. For direct intent, the perpetrator must have acted with awareness of, and desire for, disobeying any final order, ruling, decision or judgment of any court in Kosovo, including the SC Panels.

Eventual intent

67. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, he or she would fail to obey any final order, ruling, decision or judgment of any court in Kosovo, including the SC Panels, and the perpetrator acceded to the occurrence of that result.

68. The SPO has failed to provide evidence of 'direct intent'. Moreover, the SPO does not even seem to be interested in doing so, especially considering that the SPO did not bother to ask Mr Kuçi a single question regarding his intentions. This is remarkable, particularly given the fact that in Kosovo, a suspect can only be prosecuted if they have been interviewed by the prosecution regarding the allegation(s). The Defence believes there can be little debate about the fact that only Mr Kuçi can

testify as to his 'direct intent'. Neither the SPO, nor the Court (or the Defence), can read his mind. No evidence of 'direct intent' has been demonstrated, nor does it emerge from other evidence such as statements, messages, or covertly recorded conversations.

69. The question that then remains is whether the SPO has been able to provide sufficient evidence demonstrating 'eventual intent'. This requires that Mr Kuçi was aware that, as a consequence of his actions, he would fail to comply with a decision of the Pre-Trial Judge in Case 6, and that he accepted the realization of that consequence.

70. An extract from the messages sent and received on the 'March Phone' tells us the following.[32] Between 9 April 2023 and 15 April 2023, Mr Kuçi sent an average of 43 messages per day. Daily, he received approximately 59 messages:

- 9 April 2023: 15 messages sent and 27 messages received;
- 10 April 2023: 44 messages sent and 71 messages received;
- 11 April 2023: 30 messages sent and 38 messages received;
- 12 April 2023: 51 messages sent and 63 messages received;
- 13 April 2023: 53 messages sent and 53 messages received;
- 14 April 2023: 59 messages sent and 86 messages received;
- 15 April 2023: 52 messages sent and 78 messages received.

71. It is highly conceivable—in fact, the Defence believes that the Single Trial Judge must take this as a starting point—that a message can be sent in a fraction of a second, without having regard to a decision made months earlier in Case 6 regarding contact with SPO witnesses.

72. Furthermore, the Defence wishes to recall that, as stated, Mr Kuçi and Witness 1 have been close friends for many years, independent of the decisions made in Case 6, and that Mr Kuçi had just seen Witness 1 give an interview on national television. In this regard, it is the Defence's experience that mistakes stemming from 'old habits' are easily made; we

[32] 9 April 2023 – 15 April 2023 March Phone Chat Messages.

see this recurring in many cases involving contact bans, especially when such a ban targets family members or close acquaintances.

73. That Mr Kuçi sent a WhatsApp message to Witness 1 on 12 April 2023 is an established fact. It is also established, in the view of the Defence, that this did not constitute a violation of the Case 6 protocol, and consequently, no breach of the provisions of Article 393 of the KCC. In any event, 'intent' within the meaning of Article 21 of the KCC is lacking on the part of the client.

74. The SPO has attempted to link this message to subsequent visits to Thaçi by individuals other than Mr Kuçi, during which, according to the SPO, statements by Witness 1 were allegedly discussed. These meetings took place six months after Mr Kuçi sending a message. This demonstrates once more that the SPO appears to maintain an unprecedented tunnel vision in this case, attempting to fit everything into its narrative that Mr Thaçi was actively trying to influence witnesses. Even if the latter were true, it is entirely irrelevant to the allegations made against Mr Kuçi.

75. Honorable Judge, the only just decision regarding this allegation is an acquittal. Furthermore, the Defence contends that it cannot be established beyond reasonable doubt that, at the time of sending the message, Mr Kuçi realised (awareness) that this could potentially conflict with a protocol published months prior, let alone that he possessed direct or indirect intent to ignore this protocol and commit contempt of court.

III. COUNT 18

76. Under Count 18, Mr Kuçi is charged with:

> CONTEMPT OF COURT, between at least 1 and 13 September 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC

ADMINISTRATION, punishable under KCC Articles 21, 35 and 393, and Articles 15(2) and 16(3) of the Law.

77. The evidence presented by the SPO for Count 18 consists exclusively of its most incriminating transcript and translation of the conversation on 3 September between Mr Kuçi and Mr Thaçi. Before addressing the SPO's interpretation of that conversation, the Defence will first argue that the transcript (and translation) is entirely inadmissible as evidence against Mr Kuçi. Crucial to this submission is the report and testimony of expert witness Professor Helen Fraser. Professor Fraser has—in substance—testified[33] under oath that the submitted translations (including the latest version from the LSU) are "completely unreliable." To this end, she presented the following general compelling arguments (this is a summary by the Defence):

- The transcription of contentious material must not be conducted by anyone who has an interest, or who can be presumed to have an interest, in how the spoken text is interpreted. If it is necessary for the police to produce their own transcriptions of contentious material, these must be thoroughly verified by an independent expert before being presented to a court.

- When a recording is of such poor quality that the transcription is likely to be challenged, the transcription must be carried out by someone with expertise in linguistics and phonetics.

- When there are disputes regarding specific words or phrases within a transcription, these generally cannot be resolved simply through an acoustic analysis of the individual disputed sounds. This requires reference to the context within longer stretches of speech, and a careful linguistic and phonetic analysis by a qualified expert.

[33] KSC-BC-2023-12, *Procedural Matters (Open Session) (Witness Testimony of Helen Fraser (DHT-03) – Trial Hearing)* 11 May 2026, Transcript & KSC-BC-2023-12, *Procedural Matters (Open Session) (Witness Testimony of Helen Fraser (DHT-03) – continued – Trial Hearing)* 12 May 2026, Transcript.

- A transcription of contentious material must indicate, for each section of the transcript, the transcriber's degree of certainty and/or possible alternative interpretations.

- When reliability is very low—for instance, when a recording is both of poor quality and very brief, when a disputed word or phrase is isolated from its context (e.g., due to extreme background noise, tampering, or equipment failure), or when the overall quality is not uniformly poor but shows inconsistencies in recording conditions—the material is generally best declared untranscribable.

78. Professor Fraser has reported[34] extensively on forensic transcription and translation, drawing important scientific conclusions based on the audio files provided by the Thaçi Defence. On 22 May 2026 the Single Trial Judge accepted that Professor Fraser's Expert Report and testimony both fall within the accepted expertise of the expert witness and are otherwise appropriate for admission:[35]

> "*Her Expert Report and testimony establish her expertise in general, and that her Expert Report is based on that expertise. The methodological issues in dispute between the Parties in their post-testimony submissions, and the applicability (or otherwise) of Professor Fraser's opinions to the transcripts and translations at issue in the present case, are matters that go to the weight to be accorded to her Expert Report and testimony, which will be assessed in light of all the evidence. Accordingly, Professor Fraser's Expert Report and testimony meet the threshold of relevance and probative value required for admission pursuant to Rules 149 and 138(1), and these factors are not outweighed by any prejudicial effect*."

[34] DHT1201286-01309 ("Expert Report"), 27 March 2026.
[35] KSC-BC-2023-12, F00923, Single Trial Judge, *Decision on the Admission of Expert Evidence of Professor Fraser (DHT-03),* 22 May 2026.

79. In the Defence's opinion, the samples examined by Professor Fraser are representative of the quality of all the audio files. The Defence shares the impression of Professor Fraser, which entails that the quality ranges from unclear to indistinct:

> "*In some sections the voices are loud enough that I would expect the content to be mostly intelligible to skilled listeners familiar with the language. Other sections feature low-amplitude or whispered speech which I expect would be indistinct even for skilled listeners (i.e. liable to be transcribed and/or translated differently by practitioners who have been primed with different contextual information). This of course is the kind of audio that is particularly easy to mis-hear under the influence of misleading contextual or textual priming*."

80. Professor Fraser's considerations regarding the process and quality control of the transcriptions and translations are crystal clear. There is no report specifying the process followed in producing the transcripts and translations. Item 3.4d gives no detail about the practitioners' training or tested skill in forensic transcription, nor about the expertise of the case manager or the processes they followed. Yet, in light of Professor Fraser's report on the matter, this is essential information for assessing the reliability of the transcription(s) and/or translation(s) provided by the SPO.

81. Professor Fraser applies the same critical view regarding the nature of the transcripts. According to Professor Fraser the nature of the transcripts makes it almost impossible for the Defence to conduct a responsible review. There are no timestamps and the transcripts are written out as text with multiple interspersed comments:

> "*These factors make it difficult bordering on impossible to follow the transcript carefully against the audio for more than a few lines from the start of the audio*."

The Defence concurs with this view. It has not been possible to reconcile the transcription with the audio. She also rightly points out that the lack

of any indication of variable confidence in transcription of different parts of the audio, which would be expected given the variable quality, is notable.

82. It will therefore come as no surprise that the Defence fully endorses the conclusions of Professor Fraser:

- There has been no attempt to follow any kind of good practice for handling indistinct audio evidence.
- There has been no recognition of any of the issues raised by the many references cited in Professor Fraser's report.
- There has been no awareness of the caution required in producing, evaluating and using forensic transcripts and translations to assist the Single Trial Judge in determining the content of indistinct surveillance recordings.
- The translations cannot be relied upon as accurate to the level of certainty appropriate for use as forensic evidence in criminal trial.
- The translations could well be thoroughly misleading, specifically in ways that support the SPO's case.
- Professor Fraser doesn't believe the Single Trial Judge is any more able to assess their reliability than she is.
- Since that external evidence must have influenced the transcripts, there is a serious risk of circular reasoning of the kind that has created injustice via multiple kinds of forensic evidence in the past, including speech evidence.

83. The Defence requests the Single Trial Judge to exclude all translations and/or interpretations of the 3 September visit from the evidence. If the Single Trial Judge agrees with the Defence on this matter, it leads to the inevitable conclusion that there is insufficient evidence available to support a conviction on Count 18. After all, the SPO has presented no

other 'evidence' that would demonstrate Mr Kuçi committed the alleged offence. Therefore it is impossible to assess the SPO's translations in light of all the evidence, given the absence of any other evidence.

84. If, however, the Single Trial Judge is of a different opinion, the Defence respectfully submits the following points. Even assuming the most incriminating translation/interpretation of the conversation Mr Kuçi had with Mr Thaçi on 3 September, it could at most be inferred that Mr Thaçi asked Mr Kuçi to give instructions to certain witnesses. In that same version, Mr Kuçi – according to the SPO – also indicates that he had already spoken to Witness 5, Sylejman Selimi.

85. First and foremost, the relationship between Mr Thaçi and Mr Kuçi must be taken into account. Mr Thaçi was the former President of Kosovo and commanded—and still commands—great respect in Kosovo. He was also President when Mr Kuçi served as Minister of Justice, making him the individual to whom Mr Kuçi was accountable. Furthermore, at the time of the visit in question on 3 September 2023, Mr Thaçi had already been in detention for a considerable period, facing serious charges carrying lengthy prison sentences. Both facts are of significance. After all, there is a certain power dynamic involved—call it respect—but also the reality of a long-term detainee who was clearly in distress at the time of the visit.

86. Mr Kuçi wanted to reassure Thaçi as much as possible during their conversation. The fact that he did not immediately react dismissively to certain requests—insofar as any were even made—is by no means a criminal offence; in fact, in the view of the Defence, it is perfectly understandable. Take, for instance, Mr Kuçi 's statement that he had spoken to a witness. The entire investigation demonstrates that this statement was false, and that Mr Kuçi had never seen or spoken to this witness. What the SPO is actually asking you to do is to criminalize thoughts. And not even verified thoughts, but rather the SPO's own interpretation of those thoughts. That is not what criminal law is intended for.

87. Unlike the SPO, the Defence views the discussion in light of the aforementioned circumstances. These are two old friends, former colleagues, discussing their thoughts and recollections of events from the distant past. In this regard, it must be noted that it has in no way been established that those recollections are incorrect. The SPO may hold that opinion, but that is not equivalent to establishing it as a matter of law.

88. The Defence can readily imagine that, upon reading the translation, the impression forced itself upon the SPO that Mr Kuçi might approach witnesses on Thaçi's instructions. That the SPO subsequently initiated an investigation into this matter is therefore also understandable. However, if the ultimate conclusion is that this impression cannot be anchored in lawful evidence in any way, the prosecution must be discontinued.

> "*An agreement to commit a criminal offence, within the meaning of Article 35 of the KCC, requires that (i) the perpetrator agrees with one or more other persons to commit a criminal offence, and (ii) one or more of these persons undertakes any substantial act towards the commission of the criminal offence.*
>
> *Pursuant to Article 35(2) of the KCC, a "substantial act towards the commission of a crime" need not be a criminal act but must amount to a substantial preparatory step towards the commission of the criminal offence which the persons have agreed to commit.*"

89. Criminal liability under Article 35 thus requires the existence of so-called 'substantial preparatory steps towards the commission of the criminal offence'. In the context of the current allegation—namely, contempt of court for violating the Case 6 protocol by contacting witnesses—this means that the aforementioned 'substantial acts' can only be established if actual steps were taken by the client to contact SPO witnesses. And of that, Honorable Judge, there is no evidence whatsoever.

90. I recall that it is for the SPO to provide proof, and not for Mr Kuçi to prove his innocence. The assertion or suggestion in the SPO's opening

statement that Mr Kuçi immediately contacted a witness upon his arrival in Kosovo after the 3 September meeting is a shot in the dark by the SPO.

91. The SPO stated the following in its opening statement:

> "*Thaci was so concerned about this timing that he told Kuci to start to work on the witness (witness 6) as soon as he landed back in Kosovo on midnight September 6th. Kuci agreed, and his phone records show that he did as he was told*."

92. The SPO cannot substantiate this damaging and incriminating suggestion in any way; it cannot indicate who Mr Kuçi is alleged to have contacted, let alone provide evidence for it (either in the form of a witness statement or in the form of telephone contact with a number that can be attributed to a Case 6 witness). In principle, the Defence could leave it at that, as this alone leads to the inevitable conclusion that the charge cannot be proven.

93. According to the SPO, during Mr Kuçi's visit to Mr Thaçi on September 3, 2023, the discussion concerned three witnesses in Case 6: Sylejman Selimi (Witness 5), Bislim Zyrapi (Witness 2), and "[REDACTED]" (Witness 6). A malevolent reader of the English translation of the transcript might believe that Mr Thaçi was indeed giving instructions to Mr Kuçi on how those witnesses should testify. However, what matters is what Mr Kuçi did next. And we can actually be brief and crystal clear about that: Mr Kuçi did nothing after the conversation of September 3, 2023. There is absolutely no evidence of any actions by Mr Kuçi that come anywhere near the potential influencing of witnesses, or even (attempting to) establish contact with one or more witnesses. The evidence is simply not there.

Sylejman Selimi[36]

[36] KSC-BC-2023-12, Specialist Prosecutor's Office, Translation of 115009 030923-072219-101409-TR-AT Revised 3 (Case 12 – Exhibit 73), pp. 56–90.

94. According to the SPO, Mr Thaçi allegedly specified three distinct points on how Witness 5 should adjust his testimony:

(i) his appointment in May 1998 as commander of the Drenica Operational Zone was made upon the nomination of the 'point commanders' and not the General Staff;
(ii) Qopa was a "bedridden patient", was therefore out of circulation, and played no role whatsoever; and
(iii) the Kosovo Liberation Army was disrupted during the summer of 1998 until October 1998.

95. Mr Thaçi also allegedly gave the following instructions:

(i) authority lay with the Operational Zones and not with the General Staff;
(ii) from the moment Witness 5 was appointed commander, he convened no meetings and at a certain point voluntarily stepped down from his position in favour of Agim Çeku;
(iii) Witness 5 should adjust his testimony to state that the presence of Mr Thaçi did not boost the morale of the Kosovo Liberation Army;
(iv) the headquarters of the General Staff was not in Likovac;
(v) the General Staff provided no financial support, nor did it deliver weapons or supplies to the Operational Zone commanders;
(vi) the 'communiques' had no meaning;
(vii) the power to be elected lay with the zone commanders;
(viii) and the General Staff was not functioning.

96. The Defence submits that there is no indication whatsoever that Mr Kuçi actually made any preparations to contact Witness 5 in order to convey the aforementioned instructions to him, let alone that he had already held a conversation with him prior to the meeting on September 3, 2023.

97. The SPO's arguments in this regard cannot stand. Mr Kuçi allegedly spoke of "good communication" only once. However, it is not clear whether Mr Kuçi was supposed to ensure good communication, and it remains completely unknown whether this would then pertain to

communication with Witness 5. Furthermore, the words of Mr Thaçi are completely contrived. These concern potentially coercive phrases about delivering instructions nicely, influencing someone, making phone calls, and taking notes. Yet, the SPO is entirely silent on any further words spoken by Mr Kuçi. Even if Mr Thaçi did utter all those instructions, there is nothing to suggest that Mr Kuçi actually sought contact with Witness 5 after the meeting with Mr Thaçi, let alone that Mr Kuçi attempted to have Witness 5 testify differently or, if you will, in favour of Mr Thaçi.

98. Furthermore, the allegation that Mr Kuçi stated he had already been in contact with Witness 5 previously is not supported by any objective evidence. In addition, the comment in question is completely irrelevant to the accusation levelled against Mr Kuçi. Specifically, it is unclear whether Mr Kuçi is referring to Witness 5 here. Even if Mr Kuçi had been in contact with him prior to the meeting on September 3, the transcript does not indicate what he would have discussed with Witness 5, let alone that this related to influencing his testimony. Nor does it follow when this contact would have taken place; it could just as well have been prior to the issuance of the Case 6 Protocol and/or prior to the announcement that Witness 5 would become an SPO witness. In that regard, the Defence further points to the fact that Selimi was searched immediately and nothing of relevance was found on him.

99. In conclusion, there is simply nothing to suggest that Mr Kuçi, acting on the instructions of Mr Thaçi, influenced Witness 5 with regard to the testimony he was to give, or at the very least, made any substantial acts toward the commission of the crime. The Defence requests that Mr Kuçi be acquitted in this respect due to the absence of legal and convincing evidence.

Bislim Zyrapi[37]

[37] KSC-BC-2023-12, Specialist Prosecutor's Office, *Translation of 115009 030923-072219-101409-TR-AT Revised 3* (Case 12 – Exhibit 73), pp. 91 t/m 109.

100. Next, Mr Thaçi allegedly proceeded to give instructions regarding the influencing of Bislim Zyrapi (Witness 2). According to the allegation, Mr Thaçi outlined around ten points during the conversation with Mr Kuçi on how Witness 2 should testify:

(i) until November 1998, Mr Thaçi and Mr. Veseli handled media affairs regarding the Kosovo Liberation Army, during which period they were not part of the General Staff;
(ii) Mr Thaçi, Mr. Veseli, and Mr. Zyrapi joined the General Staff in November 1998;
(iii) as of November 1998, Mr Thaçi was part of the 'Political Directorate', but did not rank above the General Staff;
(iv) Mr Thaçi and Mr. Veseli were abroad from November 1998 until March 1999;
(v) Mr Thaçi was nominated but not formally elected as Prime Minister of the Provisional Government of Kosovo;
(vi) Mr Thaçi did not have the power to start and/or stop the war;
(vii) the Kosovo Liberation Army was completely disrupted in May 1998;
(viii) power lay with the 'zone commanders', who elected 'Syla' and without whose consent Mr Thaçi's signature on the Rambouillet Accord was worthless;
(ix) the Kosovo Liberation Army consisted of volunteers;
(x) that the witness spoke in his previous witness statement about how things were supposed to go, but that the reality was different.

101. In the Defence's view, the allegation regarding the purported agreement to influence Witness 2 falls entirely into the category of wishful thinking. The SPO bases this allegation solely on the words spoken by Mr Thaçi and his attempts to verify with Mr Kuçi whether he understood it all. Additionally, the sound of paper can allegedly be heard. Whether this actually concerns paper and/or what its purpose was remains unclear, and in this regard, I refer to the statements and report of Professor Fraser. Subsequently, Mr Kuçi allegedly stated that Witness 2 'has the will.' Does that provide evidence that Mr Kuçi was

already in contact with him or that an attempt would be made later to influence him? Of course not. Finally, Mr Thaçi allegedly asked Mr Kuçi to read Witness 2's 'interview.' What criminal conduct this is supposed to constitute remains entirely unclear to the Defence. The Defence therefore requests that Mr Kuçi be acquitted of the purported agreement to commit contempt of court in respect of this witness due to insufficient evidence.

"[REDACTED]"[38]

102. Finally, there is the alleged influencing of Witness 6. Mr Thaçi discusses four points to be raised by Witness 6 in his testimony:

(i) "[REDACTED]"
(ii) "[REDACTED]"
(iii) "[REDACTED]"
(iv) "[REDACTED]"

103. The SPO bases this allegation on the notion that Mr Thaçi and Mr Kuçi agree during the conversation that Mr Kuçi, upon his arrival in Kosovo a few days later, would contact Witness 6 directly. The conversation allegedly continued regarding making certain phone calls and instructing individuals to undertake certain actions. It is becoming rather repetitive, Your Honour, there is absolutely no evidence that this was actually carried out by Mr Kuçi.

104. The SPO commissioned an investigation into the data carriers seized from Mr Kuçi. The most critical items concern the so-called March and December Phones. However, the review conducted by Independent Counsel "[REDACTED]"yielded no supporting material whatsoever for the charges brought against Mr Kuçi.

105. On 19 December 2025, all parties to the proceedings in Case 12 received both the original and translated messages for the period from

[38] KSC-BC-2023-12, Specialist Prosecutor's Office, *Translation of 115009 030923-072219-101409-TR-AT Revised 3*, p. 139-147.

11 August 2023 up to and including 18 September 2023 that were stored on the 'Kuçi March Phone'. Based on the translated messages, the SPO concludes that Mr Kuçi travelled to The Hague on 2 September 2023 with his son. On 5 September 2023, Mr Kuçi discusses his return to Pristina, Kosovo, in a group chat presumably with his wife and children. Mr Kuçi's wife asked, among other things, what time she should come to pick him up from the airport. Mr Kuçi replied that he had also asked "someone else" to pick him up. In the early morning of 6 September 2023, Mr Kuçi's wife messages that she is at the airport. Shortly after Mr Kuçi indicates that he has landed, he sends "you can go". On this basis, the SPO grounds its conclusion that Mr Kuçi followed Mr Thaçi's instructions and engaged in acts of influencing immediately upon arrival in Pristina. In a subsequent additional request, the SPO sought an extract of the call history from Mr Kuçi's phone in order to ascertain whom Mr Kuçi had been in contact with prior to and immediately after his arrival in Pristina.[39]

106. In her "Ninth Provision of Preliminary Results", the Independent Counsel addresses the call history of Mr Kuçi on and around his arrival in Pristina on 6 September 2023. The call history is attached to the provision as Annex 7.[40] The SPO has failed to demonstrate that even a single one of the four phone numbers with which Mr Kuçi was in contact can be linked to Witness 6, or to any of the other witnesses whom Mr Kuçi allegedly influenced according to the SPO. Furthermore, there is no exchange of messages whatsoever that offers any support for the allegation that Mr Kuçi took Mr Thaçi's instructions to heart and approached the witnesses in order to influence them.

107. On the basis of the foregoing, the Defence respectfully requests to acquit Mr Kuçi for Count 18.

[39] KSC-BC-2023-12, F00689, Specialist Prosecutor's Office, *Prosecution notification regarding investigative activities and request related to the Independent Counsel's review,* 23 January 2026, p. 9-10.
[40] KSC-BC-2023-12, F00741, Independent Counsel, *Independent Counsel Ninth Provision of Preliminary Results,* 16 February 2026.

IV. IN THE FURTHER ALTERNATIVE: ACT OF MINOR SIGNIFICANCE AND SENTENCING

108. The submissions in this chapter are advanced in the further alternative only. They arise for consideration solely in the event that the Single Trial Judge rejects the submissions advanced at paragraphs above. The Defence maintains, primarily, that Mr Kuçi must be acquitted on both counts: because the Case 6 Protocol is not a final decision within the meaning of Article 393 KCC; because Mr Kuçi was not an addressee of that decision; because the message of 12 April 2023 did not violate the Protocol; because the mental element is not established; because the transcripts and translations of the 3 September 2023 conversation are unreliable and must be excluded; and because no substantial act towards the commission of any offence was undertaken.

109. The Defence emphasises that the submissions in this chapter are not inconsistent with those primary submissions. Article 11 KCC applies precisely where an act "has the characteristics of a criminal offense as defined by law". Its invocation therefore presupposes nothing, concedes nothing, and cannot be read as an acknowledgement that any element of either offence is established. The same applies to the submissions on sentence at paragraphs 120 to 124 below, which are advanced only in the event of conviction.

Article 11 KCC: the applicable framework

110. Article 11 KCC provides:

> "*An act shall not constitute a criminal offense even though it has the characteristics of a criminal offense as defined by law if it is an act of minor significance. The act shall be deemed to be of minor significance when the danger involved is insignificant due to the nature or gravity of the act; the absence or insignificance of intended consequences; the circumstances in which the act was committed; the low degree of criminal liability of the perpetrator; or, the personal circumstances of the perpetrator*."

111. Three features of that provision are of importance. First, Article 11 KCC is not a sentencing provision. It operates at the level of the offence itself: where it applies, no criminal offence exists and the appropriate disposition is an acquittal. Second, the provision presupposes that the constituent elements of the offence are made out; it is precisely for such cases that it exists. Third, the five circumstances listed in the second sentence are, on the face of the provision, disjunctive: the danger may be found to be insignificant on the basis of any one of them. The Defence submits, however, that in respect of Counts 18 and 19 it need not rely on that construction, because each of the five circumstances points in the same direction.

112. The Defence further submits that Article 11 KCC forms part of the substantive criminal law of Kosovo applied by these Chambers pursuant to Articles 12 and 15(2) of the Law, and that the Single Trial Judge is therefore required to consider its application.

Count 19: the nature and gravity of the act

113. The conduct charged under Count 19 consists of a single message of eighteen words, comprising two sentences, sent within seconds of Mr Kuçi having watched Witness 1 give an interview on national television. The message contains no reference to Case 6, no reference to the anticipated testimony of Witness 1, no request, no instruction, no suggestion as to the content of any evidence, and no reference to any person other than the sender and the recipient. Properly translated, and as confirmed by the LSU, it reads: "*Friend, I congratulate you for your professionalism, for your clear ideas about the country and the war, and for your courage. Bravo.*" Whatever else may be said of that message, it lies at the very lowest end of the spectrum of conduct capable of amounting to contempt of court.

Count 19: the absence of intended consequences

114. No consequence of any kind followed. Witness 1 testified. There is nothing on the record — no evidence, and no assertion by the SPO — to suggest that his testimony was affected in any respect by the message of

12 April 2023. The interest which Article 393 KCC exists to safeguard, namely obedience to the decisions of courts, sustained no injury whatsoever. The SPO has not pleaded, still less established, any actual or potential prejudice to the proceedings in Case 6.

Count 19: the circumstances in which the act was committed

115. The message was sent spontaneously, immediately upon watching a television broadcast, to a man whom Mr Kuçi has known since the early 1990s, with whom he served in Parliament, who lives 150 metres from his home, and with whom he spoke daily or at least weekly. It was one of 51 messages sent by Mr Kuçi on that day, in the course of a week in which he sent an average of 43 messages and received an average of 59 messages daily. It was sent nearly a year after the notification of the Case 6 Protocol, in proceedings in which more than 3,000 filings have been made.

Count 19: the low degree of criminal liability

116. The Defence has submitted at paragraphs 66 to 75 above that neither direct nor eventual intent is established. Should the Single Trial Judge conclude otherwise, the Defence submits in the alternative that any intent capable of being established on this record would lie at the very lowest end of eventual intent within the meaning of Article 21 KCC: a momentary failure, in the course of an ordinary exchange between old friends, to advert to a procedural framework notified eleven months earlier. That is precisely the low degree of criminal liability contemplated by Article 11 KCC.

Count 19: the personal circumstances of the perpetrator

117. As set out at paragraphs 8 and 9 above, Mr Kuçi is a former Minister of Justice of the Republic of Kosovo, a professor of law, and the former Chair of the Constitutional Commission which drafted the Constitution of Kosovo following the declaration of independence in 2008. As Minister of Justice and Deputy Prime Minister between 2011 and 2016 he was responsible for coordinating the legal reforms required to accommodate these Chambers within the Kosovar legal order, and

served as Co-Chair of the Steering Committee for the Rule of Law together with the EULEX Chairman and the Representative of the European Commission. He has no prior convictions.

118. The Defence therefore submits that, should the Single Trial Judge find the elements of Count 19 to be established, the conduct nevertheless constitutes an act of minor significance within the meaning of Article 11 KCC and does not constitute a criminal offence. Mr Kuçi must accordingly be acquitted on Count 19.

Count 18

119. The Defence advances the same submission, more briefly and in the further alternative, in respect of Count 18. The Defence recognises that a submission under Article 11 KCC is less readily made in respect of an agreement under Article 35 KCC concerning three witnesses than in respect of a single message to a friend, and it does not overstate its position.

120. The submission rests principally on the second of the five circumstances: the absence of intended consequences. The Defence has demonstrated at paragraphs 87 to 105 above that nothing whatsoever followed the conversation of 3 September 2023. There was no contact with Witness 5, no contact with Witness 2, and no contact with Witness 6. None of the four telephone numbers with which Mr Kuçi was in contact on and around his arrival in Pristina on 6 September 2023 can be linked to any witness. The complete review of the March and December Phones by the Independent Counsel produced no supporting material of any kind. More than two years elapsed thereafter in which nothing occurred.

121. Should the Single Trial Judge find that a substantial act within the meaning of Article 35(2) KCC was nevertheless undertaken, the Defence submits that an act which produced no contact with any witness, which is not reflected in any message or in any call record attributable to any witness, and which was followed by complete inactivity, is an act in

respect of which the danger involved is insignificant. Taken together with the circumstances in which the conversation took place — a three-hour visit between two men who have known each other for decades, one of whom had by then been in detention for a considerable period and was evidently in distress — and with the personal circumstances of Mr Kuçi set out above, the Defence submits that Article 11 KCC applies to Count 18 also.

Sentence: in the further alternative and in the event of conviction

122. In the event that the Single Trial Judge rejects the submissions above and convicts Mr Kuçi on either or both counts, the Defence advances the following submissions on sentence.

123. Article 1(1) KCC provides that criminal offences and criminal sanctions are foreseen only for those actions that infringe protected values "to the extent that is not possible to protect these values without criminal sanctions". Article 1(2) KCC provides that the type of measure and the severity of the sanction are based on "the necessity of criminal justice enforcement and the proportionality of the level and nature of the danger" to the protected values. Those provisions are binding statutory requirements, not aspirations, and they are directly relevant to the determination of sentence.

124. Three matters are of particular significance. First, the interest which the SPO says is at stake — the integrity of proceedings before these Chambers — is the interest which the Code of Professional Conduct exists to protect, as Article 1 of that Code expressly states. The SPO could have brought Mr Kuçi's alleged conduct to the attention of the Registrar, who disposes of a graduated range of measures including removal from a defence team and withdrawal of access to the Chambers. Nothing on the record indicates that this course was considered, still less that reasons were given for rejecting it. The Defence does not invite the Single Trial Judge to substitute his own view for that of the Specialist Prosecutor as to whether Mr Kuçi ought to have been prosecuted; it submits only that where a proportionate response lay in the disciplinary

domain and was not pursued, that is a matter properly reflected in sentence.

125. Second, no harm of any kind resulted from the conduct alleged on either count. Witness 1 testified without any demonstrated influence. No witness was contacted following the conversation of 3 September 2023. The protected value sustained no injury. Article 1(2) KCC requires the sanction to be proportionate to the level and nature of the danger to that value; where the danger was, on the evidence, nil, the proportionate sanction is correspondingly minimal.

126. Third, Mr Kuçi's personal circumstances are exceptional. He is a man of 55 years with no prior convictions, who has devoted his professional life to the establishment of the rule of law in Kosovo, who was instrumental in the creation of these very Chambers, and who has already suffered consequences of a gravity wholly disproportionate to the conduct alleged: an investigation of extraordinary scope, indictment, transfer to The Hague, and a public trial. The Defence submits that the process itself has constituted a substantial penalty. Accordingly, and in the event of conviction, the Defence respectfully requests the Single Trial Judge to impose no penalty at all. In the alternative, and if the Single Trial Judge considers that some sanction must be recorded, the Defence submits that a fine is the only proportionate disposition, and requests that any fine be set at the lowest end of the range available.

IV. CONCLUSION

127. For the reasons set out above, the Defence respectfully requests the Single Trial Judge:

Primarily, to acquit Mr Kuçi on Count 19 and on Count 18 for the reasons set out at paragraphs 15 to 105 above;

In the alternative, to find that the conduct alleged constitutes an act of minor significance within the meaning of Article 11 KCC and to acquit Mr Kuçi on that basis;

In the further alternative, and in the event of conviction on either count, to impose no penalty;

In the further alternative still, to impose a fine at the lowest end of the available range.

[Word count: 13697 words]

Respectfully submitted,



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24 August 2026

Amsterdam, the Netherlands