PUBLIC
Date original: 24/08/2026 11:24:00
Date public redacted version: 17/11/2026 08:32:00

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 Bashkim Smakaj
Date:	24 August 2026
Language:	English
Classification:	**Public**

Public Redacted Version of the Smakaj Final Trial Brief

Specialist Prosecutor's Office
Kimberly P. West

Specialist Counsel for Hashim Thaçi
Sophie Menegon
Luka Mišetić

Specialist Counsel for Bashkim Smakaj
Jonathan Elystan Rees KC
Huw Bowden

Specialist Counsel for Isni Kilaj
Iain Edwards
Joe Holmes

Specialist Counsel for Fadil Fazliu
David A. Young

Specialist Counsel for Hajredin Kuçi
Alexander Admiraal

I. INTRODUCTION

1. On 5 August 2026, the Single Trial Judge ("STJ"), by way of the Order Closing Evidentiary Proceedings[1], invited the parties to file any Final Trial Briefs by Monday 24 August 2026 at 4pm, in accordance with Rule 134(b) of the Rules[2].

2. In contrast to Pre-Trial Briefs, the content of which is prescribed by Rule 96 of the Rules, there is no rule prescribing the content of Final Trial Briefs.

3. The Accused hereby voluntarily files a Final Trial Brief pursuant to the invitation of the STJ.

4. This Final Trial Brief is intended to assist the court in its preparation for the Closing Statements.

5. At the Closing Statements, the defence for the Accused will address in full the admitted evidence and its reliability, the credibility of witnesses, the record of the proceedings and the applicable law, in accordance with Rule 135(2) of the Rules. The defence for the Accused will also address sentencing at the Closing Statements, in accordance with paragraph 6 of the Order Closing Evidentiary Proceedings.

II. THE COUNTS FACED BY THE ACCUSED

[1] KSC-BC-2023-12/F00975, Order Closing Evidentiary Proceedings, STJ, 5 August 2026, Public at paragraph 10(c)
[2] KSC-BD-03/Rev3

6. The Accused faces two counts[3]:

- Count 12 – attempted obstruction of official persons performing official duties, by participating in the common action of a group, between at least 9 September and 30 October 2023, punishable under KCC Articles 17, 21, 33, 35 and 401(2); and

- Count 13 – contempt of court, between at least 9 September and 30 October 2023, punishable under KCC Articles 21, 33 and 393.

Intent

7. Article 21 of the Kosovo Criminal Code 2019 ('KCC')[4] provides that a criminal offense may be committed with direct or eventual intent. A person acts with direct intent when he or she is aware of his or her act and desires its commission. A person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrent.

8. In relation to Count 12 only, the Indictment invokes Article 17 KCC, which provides in Article 17(1) KCC that a criminal offense may be committed intentionally or negligently. Article 17(2) KCC however clarifies that a person may commit an offense negligently *only* when this has been explicitly provided for by law. In the present case, neither Article 401(2) KCC nor Article

[3] KSC-BC-2023-12/F00264/A01, *Amended Confirmed Indictment*, SPO, 16 April 2025, Confidential
[4] Code No.06/L-074

393 KCC provides for negligence as a basis for liability. Accordingly, both offenses require intent.

Count 12 – attempted obstruction

9. Article 401(2) KCC provides that whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties shall be punishable.

10. The Indictment does not allege KCC Article 28 liability for 'attempt'. The Indictment does allege KCC Article 35 liability for 'agreement'.

11. Article 35(1) KCC provides that whoever agrees with one or more other persons to commit a criminal offense and one or more such persons does any substantial act towards the commission of the criminal offense, shall be punished as provided for the criminal offense. For the purposes of Article 35 KCC, it is stated that the term "substantial act towards the commission of a crime", need not be a criminal act, but shall be a substantial preparatory step towards the commission of the crime which the persons have agreed to commit (Article 35(2) KCC).

12. However, Article 35(2) KCC must be read together with Article 27(1) KCC[5] which excludes preparation of a criminal offense, including agreeing, planning or organizing with another person the commission of a criminal

[5] To the extent that there is a tension between Articles 27 and 35, it must be resolved in favour of the Accused: i) in accordance with the principle of legality as set out in Article 2(3); ii) Article 35 must be subordinate to Article 27 because the alternative proposition, that Article 27 is subordinate to Article 35, would render Article 27 redundant.

offense, as a basis for criminal liability unless the criminal offense expressly provides for preparation as a mode of liability:

> "Whoever intentionally prepares a criminal offense shall be punished only if expressly provided for by law".

13. Article 401 KCC does *not* expressly provide for preparation as a basis of criminal liability[6].

14. Accordingly, Article 27(1) KCC excludes criminal liability for agreeing, planning or organizing with another person the commission of the offence contrary to Article 401(2) KCC.

Count 13

15. Article 393(1) KCC provides that whoever fails to obey any final order, ruling, decision or judgment of any Court in the Republic of Kosovo shall be punished. Thus, Article 393(1) KCC is specifically limited to disobedience to an order, ruling, decision or judgment and does not apply to any wider restriction (such as breach of an agreement, legislation, policy or practice direction).

[6] Contrast with the offences contrary to Article 131(1) KCC, Article 138(1) KCC, Article 173 KCC,

16. The Indictment accordingly particularises the orders to which Count 13 is said to relate to be the court orders in the *Thaçi et al* decision KSC-BC-2020-06/F00854[7].

17. Article 33(1) KCC provides that whoever intentionally assists another person in the commission of a criminal offense shall be punished more leniently than the perpetrator of the offense.

18. It follows that, as the Prosecution are required to prove intentional assistance, the Prosecution must prove, at a minimum, that the Accused was aware of the court orders in KSC-BC-2020-06/F00854.

III. THE BURDEN AND STANDARD OF PROOF; AND THE APPROACH TO EVIDENCE

19. Guilt must be proved beyond reasonable doubt (Rule 140(1) of the Rules).

20. Proof can only be by way of such material as is admitted as evidence, or agreed fact, during the course of the evidentiary proceedings.

21. Statements/assertions made by the SPO are not evidence. Nor do descriptions given to exhibits by the SPO or the Registrar on bar table motions, or in submissions, or on exhibit lists, or on 'surrogate sheets', or on bags, amount to evidence. The evidence is the exhibit itself – nor the label or description given to it.

[7] KSC-BC-2023-12/F00264/A01, *Amended Confirmed Indictment*, SPO, 16 April 2025, Confidential at paragraph 32

22. The standard of proof beyond reasonable doubt shall be applied to all the facts on which the conviction depends (Rule 140(2) of the Rules).

23. In determining the weight to be given to the testimony of a witness, a Panel shall assess the credibility of the witness and the reliability of his or her testimony (Rule 139(4) of the Rules). The panel shall take into account the manner in which the evidence was collected and the effect that this might have on the course and fairness of the proceedings (Rule 139(7) of the Rules).

24. In respect of circumstantial evidence, the standard of proof beyond reasonable doubt is only satisfied if the inference from that evidence is the only reasonable one that could be drawn from the evidence presented (Rule 140(3) of the Rules).

25. If the evidence allows for other reasonable conclusion(s) to be drawn, the standard of proof beyond reasonable doubt is not satisfied (Rule 140(3) of the Rules).

26. Circumstantial evidence shall be assessed with caution and reasoned findings shall be provided, in particular regarding the consistency and intrinsic coherence of such evidence where the Panel bases a conviction solely or to a decisive extent on such evidence (Rule 139(5) of the Rules).

27. As set out in Rule 140(a) and (b) of the Rules, a conviction may not be based solely or to a decisive extent on the:

    (a) The statement of a witness whom the Defence had no opportunity to cross-examine; or

(b) The evidence of witnesses whose identity was not disclosed to the Defence.

IV. ARGUMENT

28. Both counts rely wholly on the Prosecution proving that the Accused participated in those parts of conversations allegedly recorded on 9 September 2023 and 7 October 2023 which the Prosecution allege are incriminating.

29. The Prosecution have failed to so prove, to the criminal standard of proof or at all, and the Accused should be acquitted of both counts accordingly.

30. The Single Trial Judge has already ruled that SPO's attribution of speaker identities in the transcriptions and translations, as well as its descriptions of speaker tone or non-verbal sounds heard on the audio, has no evidential value as such and no weight will be placed on these attributions or descriptions[8].

31. The relevant transcripts in English are:

(a) P00108_ET (ERN 115189 090923-071500-101500-TR-AT Revised 4-ET) as amended by P00108_LSU; and

(b) P00110_ET (ERN 116083 071023-113000-135500-TR-AT Revised 2-ET) as amended by P00110_LSU.1, P00110_LSU.2 and P00110_LSU.3

[8] KSC-BC-2023-12/F00789, *Decision on Smakaj Request for Redaction of Admitted Material*, STJ, 12 March 2026, Public at paragraph 9

32. The evidential worth of the transcripts only exists in the transcription and interpretation of the words uttered as can be heard on the audio recordings. There is no other probative value in the exhibited transcripts.

33. The real evidence is the audio recordings themselves – P00108 and P00110.

34. There is no agreed fact as to when and where the audio recordings were made, nor as to who can be heard speaking on them.

No voice identification evidence

35. There is no witness evidence (whether expert or lay recognition or at all) identifying the Accused's voice on the transcripts (or other persons for that matter).

36. There is no agreed representative sample of the Accused's speech (or others) from which the STJ might properly and safely compare, and reach his own untrained conclusions as to voice identification - or even as to the number of distinct voices heard at any one time - not least because the voices recorded on P00108 and P00110 are speaking in a language other than the STJ's own language[9].

When/where were the audio recordings made?

[9] See Crown Court Compendium Part I March 2026 § 15-7 Identification by Voice pages 15-28 to 15-32 as to the inherent dangers of voice identification, particularly by the tribunal of fact itself

37. There is no evidence on the record as to when and where the audio recordings were made.

38. The SPO has not adduced any oral evidence as to when the audio recordings were made and where.

39. The only SPO officer to give oral evidence, Witness 7, confessed that he knew nothing about how the recordings were made[10].

40. The audio recordings themselves say nothing about the date on which they were made.

41. The audio recordings themselves say nothing about where they were made.

42. Whereas the exhibited visitor log[11] shows that the Accused visited 'Unit 4' on 9 September 2023 and 7 October 2023, that does not prove that the recordings were made on that date or that they were made within 'Unit 4'.

43. If they were made within the KSC Detention Unit, the audio recordings themselves say nothing about where within the KSC Detention Unit they were made (and Witness 7 could not assist[12]).

44. Nor does the visitor log demonstrate where the Accused went within 'Unit 4' on those dates, and at what times he was in different parts of 'Unit 4' on those dates.

[10] Transcript page 340 line 16
[11] P00036
[12] Transcript pages 437 to 448

45. P00047 merely records Smakaj as visitor to "unit 4" between 0905 and 1215 on 9 September 2023, with no evidence to explain the relevance of "unit 4", what it is, or where it is.

P00108

46. If the recording P00108 was made on 9 September 2023 at the KSC Detention Unit, P00047 also demonstrates that there were a number of other visitors to "unit 4" present on 9 September 2023 [REDACTED], plus detainees.

47. It is the SPO's own case that at least eleven different voices are heard on the recording P00108.

48. It is the SPO's own case that the noises heard on the recording suggest persons frequently entering and leaving the area where the recording is taken place (at least 29 times during the duration of the recording).

49. The word 'Bashkim' is mentioned during the recording P00108 only 18 times in total[13].

50. The name 'Smakaj' is never mentioned during the recording.

51. The word 'Bashkim' is both a name and a word meaning 'union' or 'reunion'. Where it is used here as a name, it cannot be determined whether it relates to a single individual or to different individuals[14].

[13] P00108_ET page 1 line 18, page 7 line 4, page 9 line 5, page 12 line 4, page 40 line 22, page 40 line 25, page 41 line 17, page 42 line 20, page 44 line 15, page 45 line 16, page 59 line 25, page 94 line 15, page 104 line 17, page 109 line 6, page 198 line 13, page 198 line 16, page 280 line 23, page 281 line 23
[14] For example, see P00108 page 104

52. There is nothing about the references to 'Bashkim' that include any particular knowledge or otherwise which would indicate that the reference relates to the Accused.

53. Only 11 references to 'Bashkim' appear to be direct (i.e. addressing a person named 'Bashkim') – 7 mentions of the name 'Bashkim' appear to be referring to 'Bashkim' indirectly (i.e. referring to a person who is not present at that time)[15]:

54. The key passages in recording P00108 occur by reference to the English translation between pages 189 and 216, and pages 293 and 294. Both passages are bookended (that is, occurring at both the respective beginnings and endings) by noises indicating movement of persons into and out of the area where the recording is taking place.[16]

55. There is no direct reference to 'Bashkim' (i.e. addressing a person named 'Bashkim') heard on the recording after the time which corresponds to page 94 of the English translation.

56. Given the number of people heard at different times on the recording, and the apparent frequency with which people were coming and going from the area where the recording was made, the SPO simply cannot assert that the Accused *must* have been present and participating in the conversation at the relevant times.

[15] P00108_ET page 42 line 20, page 59 line 25, page 104 line 17, page 109 line 6, page 198 lines 13 and 16
[16] P00108_ET page 163 line 11, P00108_ET page 167 line 18, P00108_ET page 167 line 18 and P00108_ET page 177 line 8; and P00108_ET page 216 line 2, P00108_ET page 292 line 16; and P00108_ET page 294 line 19

P00110

57. Similarly, if the recording P00110 was made on 7 October 2023 at the KSC Detention Unit, P00073 also demonstrates that there were a number of other visitors to "unit 4" present on 7 October 2023 [REDACTED] plus detainees.

58. It is the SPO's own case that at least eleven different voices are heard on the recording P00110.

59. It is the SPO's own case that the noises heard on the recording suggest persons frequently entering and leaving the area where the recording is taken place (at least 15 times during the duration of the recording)[17].

60. The word 'Bashkim' is mentioned during the recording only 22 times in total[18].

61. The name 'Smakaj' is never mentioned during the recording.

62. The word 'Bashkim' is both a name and a word meaning 'union' or 'reunion'. Where it is used here as a name, it cannot be determined whether all references relate to a single individual or to different individuals[19].

63. Although there are references to a son who is studying at Bonn University[20], sounds on the recording indicate that frequent movement to and from the area of the recording occurred thereafter before any relevant conversation occurs[21].

[17] P00110_ET pages 3, 6, 20, 22, 43, 44, 48 (x 2), 88, 89, 91, 152, 154, 229, 230
[18] P00110_ET page 11 line 15, page 22 line 12, page 42, line 13, page 44 line 2, page 55 line 5, page 55 line 7, page 65 line 9, page 83 line 20, page 87 line 1, page 87 line 9, page 90 line 3, page 98 line 14, page 111 line 24, page 115 line 14, page 130 line 17, page 135 line 2, page 145 line 10, page 169 line 14, page 170 line 20, page 175 line 9, page 179 line 17, page 184 line 12, page 229 line 8
[19] For example, see P00110 page 90 line 1
[20] P00110 pages 8-10
[21] P00110 pages 20, 22, 43 and 44

64. The references to 'Bashkim' are both direct and indirect.

65. The key passage in recording P00110, occurring by reference to the English translation from page 44 onwards, is characterised by the SPO as overlapping conversations, which indicates at least four persons involved (A-B and C-D, *at least*), with sounds indicative of movement to and from the area where the recording is taking place.

66. Given the number of people heard at different times on the recording, and the apparent frequency with which people were coming and going from the area where the recording was made, the SPO simply cannot assert that the Accused *must* have been present and participating in the relevant conversation at the relevant time.

67. Further, and contrary to the SPO's case (at Opening – check), there is no evidence on the recording that a person has asked to take papers off Thaçi[22].

68. Further, and contrary to the SPO's case (at Opening – check), there is no evidence on the recording that a person has told Thaçi that they would put an item or items in their pocket[23].

69. In relation to both P00108 and P00110, therefore, there is no established continuity of persons present that might be able to prove voice attribution to the criminal standard of proof.

AAOR4213NL

[22] P00110_LSU.1 and P00110_LSU.2
[23] P00110_LSU.1 and P00110_LSU.2

70. The document AAOR4213NL does not assist the Prosecution in establishing the Accused's presence and participation in the relevant parts of P00108 and P00110.

71. In the first instance, the evidence is insufficient to prove the Accused's association with AAOR4213NL (scanned in P00125).

72. There is no DNA evidence connecting the Accused with AAOR4213NL.

73. There is no fingerprint evidence connecting the Accused with AAOR4213NL.

74. There is no witness evidence of the Accused ever having been seen with AAOR4213NL in his hands.

75. The Prosecution deliberately elected not to carry out DNA or fingerprint examinations, seemingly after Witness 2 confirmed that the Accused had *not* shown him the document.

76. The sixth notification of additional agreed fact provides that:

> "On 6 December 2023, the SPO informed the NFI that no fingerprint examination or DNA examination work was requested related to 2023.11.02.101 – F00483 A02 (a reference to item AAOR4213NL, evidence reference number B30976344). The SPO made no (subsequent) request to the NFI for fingerprint or DNA examination related to 2023-11.02.101 – F00483 A02, and no such work was performed by the NFI."

77. That was the same day upon which the SPO interviewed Witness 2[24] - it is an agreed fact that witness 2 was interviewed on 6 December 2023 and, when asked whether the Accused had shown him a document at their meetings in October, he said no, also explicitly rejecting the suggestion that the Accused had spoken to him about his upcoming testimony.

78. As far as the documents that are visible in pages 5 and 6 of P00126 is concerned, there is no evidence as to:

    (a) The identity of the photographer;

    (b) the date on which these documents were photographed; or

    (c) the time on which these documents were photographed.

79. Although pages 1 and 8 of P00126 appear to be images of a car registered to the Accused (see P00185 page 3), there is no evidence on the record to establish:

    (a) The address where the car is photographed; or

    (b) That the two documents seen at pages 5 and 6 of P00126 were photographed within the car visible in pages 1 and 8 of P00126.

80. Although there appears to be another person, in addition to the photographer, present in the first and eighth photograph, that person cannot be identified

[24] KSC-BC-2023-12/F00756/A01, *Annex 1 to Third Notification of Additional Agreed Fact*, SPO, 24 February 2026, Confidential

from the images (save that it does not appear to be the Accused), and there is no other evidence as to who that person was or why there were there.

81. Although it is an agreed fact that "on 30 October 2023, the SPO conducted a search and seizure operation at Bashkim Smakaj's residence in Prishtinë/Priština, Kosovo", there is no evidence on the record that the photographs P00126 were obtained during the course of that search.

82. Moreover, there is no evidence on the record to establish that the two documents that appear at pages 5 and 6 of P00126 *and* AAOR4213NL (P00125) are one and the same:

    (a) only two pages are visible in P00126, whereas AAOR4213NL consists of ten pages; and

    (b) there is no evidence to establish that the two pages visible in P00126 are in fact the same two pages which correspond to them within AAOR4213NL (P00125), as opposed to facsimiles.

83. In any event, the evidence does not establish the origin and journey of AAOR4213NL to the criminal standard, such as would be required if the STJ was to safely draw a trail from origin to destination.

84. In the first instance, minimal weight, if any, should be accorded to the evidence of Witness 8 as to the origins of AAOR4213NL for the reasons set out by the Single Trial Judge in F00825.

85. The Single Trial Judge has properly recognised that deficiencies as to the transparency of sources or methodology will seriously impair the assessment of probative value of opinion evidence, such that the weight to be afforded to any such opinion, if admitted, will be diminished[25].

86. In the present case, Witness 8 "did not describe systematically in his Report or his direct examination [REDACTED]" in order to reach his conclusions[26]. None of the [REDACTED] by Witness 8 were reproduced in his Report or otherwise disclosed[27]. [REDACTED]that Witness 8 says he created to visually [REDACTED] have not been produced or shown to the Court[28].

87. These omissions constitute serious deficiencies in the transparency of Witness 8's methodology[29]. They directly concern the [REDACTED] analysis performed by Witness 8 to reach his conclusion[30]. The undisclosed items were [REDACTED] and formed an essential part of, the analysis leading to his conclusion[31]. The information omitted, to adopt Witness 8's own [REDACTED] analogy, is tantamount to a failure to provide the [REDACTED] any meaningful explanation or description of how [REDACTED] or the nature of [REDACTED].

[25] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraphs 21 and 22
[26] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 27
[27] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 28
[28] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 28
[29] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 29
[30] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 29
[31] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 29

88. These deficiencies were not remedied by the disclosure of [REDACTED] used by Witness 8 to the defence: [REDACTED] in no way reveal the [REDACTED] that [REDACTED] defence does not bear the burden of disproving (or for that matter confirming) an expert opinion that is facially deficient in its exposition of its sources or methods; presumably, any defence expert would be met by the SPO with the assertion that they did not have access to the same secret and confidential information as Witness 8, and was thus in some way inferior, or they would be bound by the same confidentiality restrictions and thus unable to be any more transparent as to methodology[32].

89. Witness 8 repeatedly refused to answer questions based on these purported confidentiality obligations[33]. Witness 8 confirmed that he relied upon purportedly confidential information as part of his analysis[34]. Witness 8 was unable or refused to provide information about the origin, nature and scope of these confidentiality obligations[35]. Witness 8 testified that [REDACTED].

90. The Single Trial Judge – and the defence - has no way of ascertaining whether Witness 8 has properly interpreted the scope of any such confidentiality obligations[36]. There are several indications that he has not, which only increases the possibility that he has declined to answer at least some of the questions that he refused to answer without a proper lawful basis[37]. A witness' refusal to answer questions on cross-examination in the absence of a proper

[32] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 31
[33] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 27
[34] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 34
[35] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 35
[36] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 36
[37] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 36-42

lawful basis is prejudicial to the cross-examining party; the duty of witnesses to answer questions by all parties under the control of the judge is:

> *A basic principle of this judicial institution, and goes to the heart of the notion of justice. It ensures that the evidence required of the proper administration of justice is available; and therefore this duty is subject to very few exceptions. The decision on whether a proposed witness falls under these exceptions is to be exercised solely by the Chamber, and not by the witness*[38].

91. Witness 8's refusal to answer questions was not limited to unimportant or clearly irrelevant matters: Witness 8 refused to answer questions about his methodology; he had not [REDACTED] the basis of his report; he had not [REDACTED] he could not confirm [REDACTED] or the existence of a [REDACTED] In relation to [REDACTED] the Single Trial Judge does not have sufficient information, based precisely on Witness 8's refusal to answer questions, to reject it as irrelevant – on the contrary, "the failure of an expert to perform another available method of analysis within the same expertise, and which purportedly would have produced more information, is a matter that meets the threshold of relevance"[39]. These serious deficiencies diminish the weight that Witness 8's report should be accorded[40].

92. The Single Trial Judge has already found as a matter of fact that Witness 8 failed to reproduce in his evidence or otherwise disclose:

[38] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 44
[39] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 50
[40] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 32

(a) [REDACTED];

(b) The method by which he rendered [REDACTED];

(c) [REDACTED] and;

(d) The nature and basis of the proposition [REDACTED].

93. These elements, however, are essential before any real weight should be given to Witness 8's evidence[41]. Any suggestion that the weight to be given to Witness 8's evidence can be assessed with reference to other evidence in the case is misplaced[42]. Witness 8's conclusion is based purely on a [REDACTED] He relied on no other evidence in the case. As such, any potential corroboration provided by evidence of other types does not assist the Single Trial Judge in coming to a view as to the probative value that he should assign to the evidence of Witness 8[43].

94. The technique, "comparative microdot analysis", does not appear to have been the object of significant academic publication or validation[44]. Indeed, in Witness 8's view, the absence of any such validation was a necessary corollary of the confidentiality that he said limited the scope of his testimony[45]. Witness

[41] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 53
[42] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 54
[43] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 54
[44] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 54
[45] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 61

8 himself could not recall that had he "ever appeared before an investigating judge with respect to microdots"; was not sure how his previous reports on microdot analysis had been used or treated in other investigations; and did not know whether they had been relied upon, let alone accepted, as expert opinions in any Dutch proceedings[46].

95. These serious deficiencies, individually and cumulatively, diminish the weight that Witness 8's evidence should be accorded[47]. In the circumstances, Witness 8's should be given minimal, if any, weight.

96. Even if AAOR4213NL had been printed within the Detention Unit, the 'per avokatet.doc' file, which the Prosecution seeks to prove to be the digital origin of AAOR4213NL, appears to have been printed from [REDACTED] on seven different occasions in October and November 2023, including twice on 27 October 2023 – just three days before the SPO conducted a search and seizure operation at the Accused's residence in Prishtinë[48] - each time containing an "exact identical copy of the relevant document"[49].

97. If the documents visible in pages 5 and 6 of P00126 (photographed on a non-specified date) are printed pages from the 'per avokatet.doc' file *and* if they were printed from [REDACTED] from within the Detention Unit, there is no evidence on the record which can prove on which of the multiple days during October and November 2023 they were printed.

[46] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 60
[47] KSC-BC-2023-12/F00825, *Decision on the Admission of Expert Evidence of Witness 8*, STJ, 27 March 2026, Confidential at paragraph 32
[48] P00128 at page 13
[49] P00137 at paragraph 51 – to the extent that there is inconsistency in her report, the defence have had no opportunity to cross-examine her to seek clarification

98. Likewise, if the pages in AAOR4213NL (P00125), created/received by the NFI on 14 November 2023[50], are printed pages from the 'per avokatet.doc' file and that they were printed from [REDACTED], there is no evidence on the record which can establish on which of the multiple days during October and November 2023 they were printed.

99. If AAOR4213NL was printed within the Detention Unit, the evidence does not establish to the criminal standard of proof who printed it. P00102, provided by the Registrar, states:

> "6. … the DMU confirms that there was only one printer ('Subject Printer') in the Detention Facilities for Detainee printing, connected to one standalone laptop ('Printing Laptop)', both located in [REDACTED]'.6
>
> 7. As concerns point 23(f) of the SPO Request, the DMU confirmed that the Subject Printer was installed in the Detention Facilities on 14 July 2022. [REDACTED]"

100. So, [REDACTED].

101. P00102 continues:

> "8. Finally, with regards to point 23(h) of the SPO Request, the DMU wishes to clarify that both Detainees and Detention Officers could operate the Printing Laptop to print during the Relevant Period (and at present), following the process explained below. 9. During the Relevant Period (and at present), Detainees could print data from a CD-R/DVD. Detainees can obtain CD-Rs/DVDs from their Defence team7 [REDACTED]. Detainees

[50] P00237

> can copy relevant data/documents on a CD-R/DVD using the desktop computer available in their cell. There is no other option for Detainees to burn CD-Rs/DVDs. The Detainee would then take the CD-R/DVD containing the data one wishes to print with them and request a Detention Officer's assistance to print. The Detention Officer would accompany the Detainee to the cell the printer is located in, [REDACTED] and remain with the Detainee until the printing is finalised. [REDACTED]. One would thereafter select the relevant data/documents and send to print, after which the Detainee would pick up the CD-R/DVD from the Printing Laptop and the printed papers from the Subject Printer, which is located in the same cell. [REDACTED]. The procedure is for Detention Officers to then mark the occurrence in the Wing Journal."

102. It follows that no printing of the 'per avokatet.doc' can have taken place without the digital file being placed under the control of a Detention Officer (and therefore outside the control, at that point, of the detainee).

103. In fact, P00103 (presumably the Wing Journal, although not identified specifically as such) merely records under the name Thaçi:

    (a) [REDACTED];

    (b) [REDACTED]; and

    (c) [REDACTED].

104. There is, therefore, evidence of only one specific occasion where Thaçi is recorded as using the printing machine itself.

105. There is no specific record as to who "used the printing machine" at 10:02:40 on 07/10/2023 to print the "per avokatet.doc".

106. Intriguingly, there is no record at all as to who used the printing machine, or was in the vicinity of the printing cell even, when the "per avokatet.doc" file was printed on each of the following days which preceded the receipt of AAOR4213NL by the NFI on 14/11/2023:

(a) 25/10/2023 at 18:19:34,

(b) 27/10/2023 at 07:45:05,

(c) 27/10/2023 at 07:48:42,

(d) 31/10/2023 10:59:03,

(e) 07/11/2023 at 06:25:39

(f) 07/11/2023 at 06:30:42.

107. Therefore, there is no continuity of control of the 'per avokatet.doc' file such that the Prosecution can assert that it *can only* have been printed by Thaçi and no one else, and *can only* have reached the car of the Accused (if indeed it did) by passing from Thaçi to the Accused.

108. The 'docs1.docx' file, allegedly recovered from a laptop belonging to the Accused, is of no assistance to the Prosecution either.

109. The evidence establishes that the file was created on 21/12/2021[51] - nearly two years before the indictment period.

110. Although the last accessed date states 24/02/2023 (8 months plus before the indictment period) it does not require user input: the last accessed date can simply be a record of when *the operating system* last examined the file[52].

111. What is the relevance then of a two-year-old electronic document on a laptop, which had not been accessed by user or operating system for at least 8 months?

No opportunity to cross-examine

112. The effect of the above submissions is that, in a case which is wholly circumstantial, it cannot be asserted that the only reasonable inferences that can be drawn are those that the Prosecution ask the court to draw. For example, the evidence in relation to AAOR4213NL clearly allows for the possibility that it travelled from its digital origin in the 'per avokatet.doc' file from a detention officer to the hands of the SPO and then the NFI without the passing through the possession of the Accused at all. In accordance with Rule 140(3) of the Rules, no adverse inference should be drawn against the Accused accordingly.

113. The unfairness inherent in otherwise drawing an adverse inference against the Accused in these circumstances, as the Prosecution invites the court to do, is highlighted by Rule 140 of the Rules, and the fact that the SPO's case relies decisively on the action (both in terms of reliability and credibility) of the

[51] P00211 page 1
[52] Transcript page 726-727

following persons who the defence have had no opportunity to cross-examine:

(a) Any Detention Officer present during;

(b) The alleged finder of the document in photographs P00126;

(c) The alleged photographer (if different);

(d) Any alleged person who it may be suggested prepared a record of the search (though no search record has been exhibited);

(e) Any custody officer who was involved in the use of the printer in the Detention Unit;

(f) The member(s) of the DMU who provided the exhibited account as to printing process within the Detention Unit

(g) Any of the interpreter/translators involved in the preparation of P00108 and P00110; or

(h) Counsel who reviewed the data extracted from printers.

114. The unfairness is compounded by the additional fact that the identities of the majority of those persons listed in paragraph 113 above have been withheld from the defence.

115. In these circumstances, both Rules 139 and 140 provide the court with further reason to reject the Prosecution's case and acquit the Accused.

Aside from the Issue of Presence and Participation

116. The height of the SPO case, as opened against the Accused, was that he was present when the words, "tell him, 'simplify it, don't get mixed up'" were uttered[53]. Even at its highest, that allegation cannot amount to an improper instruction to interfere with the testimony of a witness. Does the SPO suggest that witnesses should give 'mixed up' testimony? The allegation is inconsistent with the SPO's proposition in opening that the actions of the Accused were "intended to compromise the KSC and the SPO's ability to effectively investigate and prosecute crimes, particularly securing relevant and truthful witnesses"[54]. On the contrary, instructions to keep answers short, keep things simple, speak clearly etc. are consistent with the KSC and the SPO's ability to effectively investigate and prosecute crimes, particularly securing relevant and truthful witnesses. They are, in fact, requests routinely made to assist witnesses by judges and lawyers the world over.

117. Moreover, there is no evidence that the Accused did tell any witness 'simplify it, don't get mixed up' or make any other attempt to discuss testimony with a witness. On the contrary, the evidence is that the Accused did *not* do any such thing. As set out above, Witness 2 has repeatedly stated to the SPO that, whereas he did have contact with the Accused (in circumstances where the Accused was not in law or in fact prohibited from having contact with Witness

[53] Transcript page 269 line 22
[54] Transcript page 301 line 22

2), they never discussed his testimony, and the Accused never showed him any document related to it.

118. Thus, in addition to the failure of the Prosecution to prove to the criminal standard the participation of the Accused in the relevant conversations within P00108 and P00110:

(a) The Prosecution has adduced no evidence in relation to Count 12 which can amount to more than agreeing, planning or organizing with another person the commission of the offence contrary to Article 401(2) KCC. As set out above, agreement, planning or organizing with another is excluded as a basis of criminal liability for the offence contrary to Article 401(2) KCC by Article 27(1) KCC. Accordingly, the Accused ought to be acquitted of Count 12 on this basis alone; AND

(b) In relation to Count 13, the Prosecution has adduced no evidence that the Accused was aware of the court orders in KSC-BC-2020-06/F00854. Accordingly, the Accused cannot be convicted of intentionally assisting another to disobey them.

V. CONCLUSION

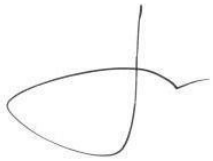
119. For the reasons set out above, it will be submitted in Closing Statement that the Accused should be found Not Guilty of both Counts 12 and 13.

VI. CLASSIFICATION

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

PUBLIC
Date original: 24/08/2026 11:24:00
Date public redacted version: 17/11/2026 08:32:00

Word count: 6772 words



JONATHAN ELYSTAN REES KC

Specialist Counsel for Mr Smakaj

HUW BOWDEN

Specialist Co-Counsel for Mr Smakaj

16th November 2026

London, United Kingdom