

1 Monday, 9 December 2024

2 [Open session]

3 [Initial Appearance]

4 [The Accused Kuci entered the courtroom]

5 --- Upon commencing at 10.00 a.m.

6 JUDGE MASSELOT: Good morning and welcome, everyone, to this
7 Initial Appearance hearing.

8 Madam Court Officer, could you please call the case.

9 THE COURT OFFICER: Good morning, Your Honour. This is file
10 KSC-BC-2023-12, The Specialist Prosecutor versus Hashim Thaci,
11 Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuci.

12 JUDGE MASSELOT: Thank you, Madam Court Officer.

13 Before we start the hearing, I would like to give the
14 photographer the opportunity to take some pictures.

15 Please proceed, Mr. Photographer.

16 Thank you, Mr. Photographer.

17 And before asking those present in the courtroom to introduce
18 themselves, I would like to remind everyone of the rules that must be
19 observed at all times in order to facilitate the smooth conduct of
20 the proceedings.

21 Please ensure that you activate your microphone before speaking
22 and that you switch it off as soon as you are finished. Talk slowly
23 and clearly as we have interpretation from and to Albanian and
24 Serbian. Wait five seconds before responding to me or a party in
25 order to allow the interpreters to finish the interpretation.

1 I would also like to remind you that certain information in this
2 case is subject to confidentiality. Confidential information shall
3 not be disclosed in open session. If any party wishes to refer to or
4 discuss any confidential information, please request to go into
5 private session.

6 Now I would kindly ask the parties to introduce themselves,
7 starting with the Specialist Prosecutor's Office.

8 MR. HAFETZ: Good morning, Your Honour. Josh Hafetz on behalf
9 of the Specialist Prosecutor's Office. And joining here today as
10 well are the Specialist Prosecutor seated behind me, Kim West; seated
11 to my left, Earl Sullivan; and Fabian Unser-Nad seated behind him.
12 Thank you.

13 JUDGE MASSELOT: Thank you.

14 Now the Defence, please.

15 MR. ADMIRAAL: Good morning, Your Honour. Alexander Admiraal
16 representing Mr. Hajredin Kuci as a Duty Counsel.

17 JUDGE MASSELOT: Thank you, counsel. And for the record, I note
18 that your client, Mr. Kuci, is also present in the courtroom.

19 MR. ADMIRAAL: [Microphone not activated].

20 JUDGE MASSELOT: I now turn to the Registry, please.

21 MR. NILSSON: Good morning, Your Honour. And good morning,
22 colleagues. For the Registry today, Whitney Price, legal counsel,
23 and myself, Jonas Nilsson, Deputy Registrar. Thank you.

24 JUDGE MASSELOT: Thank you.

25 And last, for the record, I am Marjorie Masselot,

1 Pre-Trial Judge for this case.

2 The accused is appearing today for the first time before the
3 Specialist Chambers following confirmation of the indictment against
4 him on 29 November 2024.

5 Mr. Kuci, will you please stand. And turn on your microphone.

6 And could you please state your full name, date, and place of
7 birth.

8 THE ACCUSED KUCI: [Interpretation] Hajredin Kuci, born on
9 2 January 1971 in Lutogllave of Peje. I live in Prishtine.

10 JUDGE MASSELOT: Thank you. Could you tell us what's your
11 citizenship or what your citizenships are?

12 THE ACCUSED KUCI: [Interpretation] I am Albanian, a citizen of
13 Kosovo republic, but I do have also citizenship from Albanian
14 republic.

15 JUDGE MASSELOT: Thank you. Could you also please tell us what
16 is your current profession?

17 THE ACCUSED KUCI: [Interpretation] Professor at Prishtine
18 University.

19 JUDGE MASSELOT: Thank you, Mr. Kuci. You may be seated. And
20 please turn off your microphone.

21 Before we proceed any further, Mr. Kuci, I have to make sure
22 that you can follow the proceedings in a language that you understand
23 and speak. Can you please confirm that you understand and speak
24 Albanian?

25 THE ACCUSED KUCI: [Interpretation] Yes, I speak Albanian. I

1 understand it. It's my mother tongue.

2 JUDGE MASSELOT: Thank you. By this I am satisfied that you can
3 follow -- just please turn off your microphone. Thanks.

4 By this I am satisfied that you can follow the proceedings in
5 Albanian, a language that you understand and speak, in accordance
6 with Rule 92 of the Rules of Procedure and Evidence.

7 If at any moment in the course of the proceedings you are not
8 receiving interpretation, Mr. Kuci, please draw my attention to it
9 immediately.

10 You may now be seated.

11 And I will give a short procedural history to introduce today's
12 initial hearing.

13 On 29 November 2024, in my capacity as Pre-Trial Judge, I
14 partially confirmed the indictment submitted by the
15 Specialist Prosecutor against Messrs Hashim Thaci, Bashkim Smakaj,
16 Isni Kilaj, Fadil Fazliu, and Hajredin Kuci, charging Mr. Kuci with
17 two counts of contempt of court.

18 I also issued a summons to appear for Mr. Kuci on the same day
19 ordering him to appear today before me in court.

20 On 5 December 2024, the SPO served Mr. Kuci in Kosovo with a
21 summons to appear and the Confirmed Indictment translated into
22 Albanian.

23 Now allow me to recall the specific purpose of this Initial
24 Appearance for the benefit of Mr. Kuci.

25 Mr. Kuci, today's hearing is not a trial. No evidence will be

1 presented or debated, nor will the guilt or innocence of yourself be
2 discussed or decided.

3 The very purpose of this Initial Appearance hearing is regulated
4 by Article 39(5) of the Law and Rule 92 of the rules. According to
5 these provisions, as a Pre-Trial Judge, I shall:

6 Have the charges in the Confirmed Indictment, which you've
7 received, read to you;

8 Confirm that you understand the indictment;

9 Satisfy myself that the rights of the accused, in particular his
10 right to counsel, are respected;

11 Inform the accused that within 30 days of today's hearing, he
12 will be called upon to admit guilt or plead not guilty on each charge
13 set out in the indictment. If the accused wishes to do so, and we
14 will get there in a few minutes, he may also immediately admit guilt
15 or plead not guilty.

16 And, finally, I shall set other dates as appropriate in
17 performing my functions as Pre-Trial Judge.

18 These are the matters which will be addressed in turn during
19 today's Initial Appearance. Should either party wish to discuss any
20 other matter not expressly foreseen in the context of the Initial
21 Appearance, I invite you to do so through a filing in written form.

22 First, Mr. Kuci, may I invite you to please stand up again, and
23 may I ask you to confirm that you have received the Confirmed
24 Indictment in a language that you understand and speak? Please turn
25 on your microphone.

1 THE ACCUSED KUCI: [Interpretation] Yes, I received the
2 indictment both in Albanian and in English.

3 JUDGE MASSELOT: Thank you, Mr. Kuci.

4 Before Madam Court Officer reads the confirmed charges against
5 you, I wish to remind you that this is not the time to contest them
6 but simply to acknowledge your understanding thereof. You will have
7 the opportunity to challenge the charges with the assistance of your
8 counsel.

9 I will now ask Madam Court Officer to read out the charges in
10 the Confirmed Indictment as foreseen in Article 39(5) of the Law and
11 Rule 92(2)(b) of the rules.

12 THE COURT OFFICER: Thank you, Your Honour.

13 1. In the Confirmed Indictment, the Specialist Prosecutor
14 charges Mr. Hajredin Kuci with:

15 Count 18: Contempt of court, punishable under Article 393 of
16 the 2019 Kosovo Criminal Code and Article 15(2) of the Law;

17 2. This offence was committed between at least 1 and
18 13 September 2023.

19 Count 19: Contempt of court, punishable under Article 393 of
20 the 2019 Kosovo Criminal Code and Article 15(2) of the Law.

21 3. This offence was committed on or about 12 April 2023.

22 4. In relation to these offences, there is a well-grounded
23 suspicion that Mr. Hajredin Kuci is considerably responsible,
24 pursuant to Article 16(3) of the Law, for:

25 a. Committing the offence of contempt of court under Count 19,

1 pursuant to Article 17 of the 2019 Kosovo Criminal Code; and

2 b. Agreeing to commit with Mr. Hashim Thaci the offence of
3 contempt of court under Count 18, pursuant to Article 35 of the 2019
4 Kosovo Criminal Code.

5 Thank you, Your Honour.

6 JUDGE MASSELOT: Thank you, Madam Court Officer.

7 Mr. Kuci, did you please understand the charges contained in the
8 Confirmed Indictment as just read out to you by Madam Court Officer?

9 THE ACCUSED KUCI: [Interpretation] Yes, I understood them.

10 JUDGE MASSELOT: Thank you, Mr. Kuci. You may be seated.

11 The Law on the Specialist Chambers and the Rules of Procedure
12 and Evidence guarantee you a number of rights, and I will read out
13 the most important ones, especially those relevant at this specific
14 stages of the proceedings.

15 You shall be presumed innocent until proven guilty beyond a
16 reasonable doubt.

17 In the determination of the charges against you, you are
18 entitled to a fair and public hearing, subject to any measure ordered
19 for the protection of victims and witnesses.

20 You have the right to be informed promptly and in detail, in a
21 language which you understand, of the nature and cause of the charges
22 against you.

23 You have the right to have adequate time and facilities for the
24 preparation of your defence, and to communicate with a counsel of
25 your own choosing.

1 You have the right to be tried within a reasonable time.

2 You have the right to be tried in your presence and to defend
3 yourself through your counsel.

4 You have the right to have counsel assigned to you, and without
5 payment, if you do not have sufficient means to pay for it.

6 You have the right to receive the free assistance of an
7 interpreter if you cannot understand or speak the language used in
8 court.

9 You have the right not to be compelled to testify against
10 yourself or to admit guilt.

11 And you have the right to remain silent, and no adverse
12 inference shall be drawn from your silence.

13 Mr. Kuci, I've read to you the most important rights that you
14 enjoy in accordance with the applicable legal framework of the
15 Specialist Chambers. Do you understand these rights?

16 THE ACCUSED KUCI: [Interpretation] Yes, I understand them.

17 JUDGE MASSELOT: Thank you, Mr. Kuci.

18 I then also take note that you are represented by
19 Counsel Admiraal, and I am therefore satisfied that the accused is
20 presently represented by counsel.

21 I will now turn to the right of the accused to enter an
22 immediate plea, if any, in accordance with Rule 92 of the rules.

23 Mr. Kuci, as already mentioned, within 30 days from today, you
24 will be called upon to admit guilt or plead not guilty on the charges
25 in the indictment. If you wish to do so, you may choose to

1 immediately admit guilt or plead not guilty.

2 I would, therefore, like to ask you, Mr. Kuci, if you have had
3 the opportunity to discuss the charges in the Confirmed Indictment
4 with your counsel, and if you are prepared to enter a plea at this
5 time. You have the floor.

6 THE ACCUSED KUCI: [Interpretation] Your Honour, I will plead
7 myself now.

8 JUDGE MASSELOT: This is noted. You still have the floor.

9 THE ACCUSED KUCI: [Interpretation] Your Honour, Prosecutors,
10 ladies and gentlemen, I am completely innocent. This is a very dark
11 moment for me as a moment that -- whose profession is law that I have
12 exercised all my life. I have been a professor of law for over 30
13 years, the chairman of the Constitutional Commission of the Kosovo
14 Republic, the constitution that is still in force.

15 As former deputy prime minister for three terms and minister of
16 justice for two terms, as a member of the defence team of Mr. Veseli
17 in this Court, I see this indictment as a violation of my human,
18 professional dignity and of my reputation. Justice, as a mission and
19 profession -- and vocation, I will continue it for now but from
20 another position but always abiding by the values with which I
21 identify myself.

22 I am very sorry about the problem that this indictment has
23 created to my family, my friends, and colleagues. I declare to them
24 I am the same person I was before 6 December 2024. I will
25 disillusion no one, neither you nor justice.

1 Allow me to be clear: I have committed no criminal offence. I
2 am innocent. And I am fully confident that I will be released from
3 these charges.

4 In this indictment, I am alongside President Thaci. Allow me to
5 say that Hashim is a friend of mine. We have known each other for
6 many years and have worked together. Along all the work we have done
7 together, we have always been guided by the principles of justice,
8 respect for justice, and we have trusted in justice. As a lawyer, I
9 have been led by the slogan: Rule of law. That is the guiding
10 principle, and I am sure that this Court will do the same in its
11 work.

12 I have identified my work with the building of justice in the
13 respect of judicial decisions, in trust in justice, and not fail to
14 respect the judge, the court. Even when I was part of the defence
15 team, when I could, through the law and the protocol of this Court,
16 to meet the witnesses, I never made use of this right. I didn't want
17 people to have some misunderstanding of anything.

18 As I said, justice for me is a mission and a profession. I will
19 do it now and in the future. I believe that all of us here are on
20 the side of justice with the aim being to go to the truth and enhance
21 trust in justice for everyone here and outside these Chambers.

22 Ladies and gentlemen, Your Honour, belief in God and in justice
23 was not -- is not wavered even when you suffered defeats, when it
24 seems that they are on the other side. But I am convinced that I am
25 on its side, on the side of justice. Thank you for your attention.

1 JUDGE MASSELOT: Mr. Kuci, as you have chosen to plead not
2 guilty on both counts, the pre-trial proceedings will continue with a
3 view to preparing this case for trial, pursuant to Rule 95 of the
4 rules.

5 I will thus move now to the working language of the proceedings.
6 You may be seated and turn off your microphone, Mr. Kuci.

7 In the Decision Setting the Date for Initial Appearances and
8 Related Matters, I invited the parties to make oral submissions at
9 today's hearing on the working language to be used in the present
10 case, according to Rule 8 of the rules.

11 Could the parties indicate their preference, for the record,
12 starting with the Specialist Prosecutors, who already mentioned it
13 yesterday several times, but for the record, please, you have the
14 floor.

15 MR. HAFETZ: Our preference remains English, Your Honour. Thank
16 you.

17 JUDGE MASSELOT: For the Defence, Counsel Admiraal.

18 MR. ADMIRAAL: The same. English, Your Honour. Thank you.

19 JUDGE MASSELOT: This is well noted. Thank you.

20 I will issue a decision on this matter in due course.

21 And in the same Decision Setting the Date For Initial
22 Appearances and Related Matters, I also indicated that I intend to
23 schedule the first Status Conference in this case, pursuant to
24 Rule 96 of the rules, on Tuesday, 17 December 2024, at 2.00.

25 I have also invited you to provide oral submissions at today's

1 Initial Appearance on whether counsel and/or the accused intend to
2 participate in the Status Conference in person or via
3 video-conference.

4 And I give you the floor on that issue.

5 MR. ADMIRAAL: Thank you, Your Honour. I was wondering if it's
6 possible to reschedule this meeting because December 17th is not
7 possible for me to attend in person. If it's not possible to
8 reschedule, I'll attend via video-conference. Thank you.

9 JUDGE MASSELOT: The Specialist Prosecutor wishes to take the
10 floor on this matter? I also noticed already that you were available
11 but on this date?

12 MR. HAFETZ: Yes, we're available, Your Honour. And we'd prefer
13 to proceed on the 17th.

14 JUDGE MASSELOT: So this is also on the record now. Thanks.

15 So you will receive a Scheduling Order in due course that will
16 also include the agenda, and in that Scheduling Order I will also
17 provide guidelines on the requirements for attending the Status
18 Conference via video-conference should this be necessary, counsel.

19 At this point, I would then like to ask the parties if there are
20 any other issues strictly related to today's hearing that they would
21 like to raise?

22 MR. HAFETZ: Your Honour, there is one matter for the SPO to
23 raise. And I'm happy to proceed in public to the extent we can, and
24 if necessary we'll request to move into private session.

25 But this regards the conditions Your Honour has imposed at

1 paragraph 4 of the Annex 5 to decision 37, which are the conditions
2 for Mr. Kuci to obey while he's pending trial.

3 And I note that subparagraphs (c) and (d) together could be read
4 to bar contacts, certainly impermissible contacts, with
5 co-perpetrators, but I want to be a little bit more explicit about
6 that, particularly in light of the remarks that were just made in
7 response to Your Honour's -- what I took to be a yes-or-no question.

8 But the entire crux of this case and the charge against -- one
9 of the contempt charges against Mr. Kuci relates directly to his
10 being tasked by Mr. Thaci during a non-privileged visit with
11 Mr. Thaci on September 3rd, 2023, to contact and tell at least one,
12 and likely more than one, but certainly at least one witness exactly
13 how to testify in Case 06. That was the message that was received.
14 That's the basis for the contempt charge. While we take a different
15 view of the number of people that were involved in that, it is clear
16 from the recording of that that it was contemplated that another
17 person would be assisting in that.

18 And so our request, Your Honour, is that Mr. Kuci be barred from
19 speaking with co-perpetrators who are named in this indictment, which
20 he has, he has the indictment, and other individuals who are alleged
21 to have been involved in his transmission or attempted transmission
22 of instructions on behalf of Mr. Thaci.

23 And I'm not going to name those people now. I'm happy to file a
24 written submission naming who we would ask specifically that Mr. Kuci
25 be barred from contacting, but I think that's necessary in this case,

1 in particular where Mr. Kuci, as he pointed out, was already a
2 defence team member of another defence team in Case 06 when he
3 engaged in the conduct that's alleged and now confirmed in the
4 indictment that there's a well-grounded suspicion of.

5 I think this is very necessary. The entire crux of the case is
6 a disobedience and blatant disregard and, as Your Honour has noted,
7 wanton disregard for the rules of this Tribunal.

8 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

9 Does the Defence want to take the floor?

10 MR. ADMIRAAL: No issues.

11 JUDGE MASSELOT: All right.

12 Would the Prosecutor agree to file written submissions today on
13 this matter?

14 MR. HAFETZ: We could file that today, Your Honour, yes.

15 JUDGE MASSELOT: Yes, perfect. And a decision would then be
16 issued in very due course.

17 MR. HAFETZ: Thank you.

18 JUDGE MASSELOT: Is there any other issue that any party wishes
19 to raise at today's hearing? No.

20 This concludes Mr. Kuci's Initial Appearance hearing, and I wish
21 to thank the parties and the Registry for their attendance.

22 And I also wish to thank, as always, our precious interpreters,
23 stenographers, audio-visual technicians, and security personnel for
24 their assistance.

25 The hearing is now adjourned.

1 --- Whereupon the Initial Appearance adjourned
2 at 10.26 a.m.

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