



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-BC-2023-12**
The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,
Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: **Pre-Trial Judge**
Judge Marjorie Masselot

Registrar: Fidelma Donlon

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**Public Redacted Version of Decision on Request for Arrest Warrants and
Related Matters**

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 35(3), 39(3), (4), 41(1), (4)-(7) and 53(1)-(3) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 48, 50(1), 53, 55(1), (4), 86(6)(b), and 200 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 15 December 2023, the Specialist Prosecutor's Office ("SPO") submitted for confirmation an Indictment against Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj ("Mr Smakaj"), Isni Kilaj ("Mr Kilaj"), and Fadil Fazliu ("Mr Fazliu"), along with the evidence in support of the factual allegations, an outline linking each item of evidentiary material to each allegation, and a number of related requests.²

2. On 31 January 2024, the SPO filed before the Pre-Trial Judge the "Requests for Warrants of Arrest and Related Requests" in which it requested, *inter alia*, the issuance by the Pre-Trial Judge of arrest warrants and orders for transfer to the Specialist Chambers ("SC") Detention Facilities for Messrs Smakaj and Fazliu ("*Smakaj and Fazliu Arrest and Transfer Request*").³ The SPO did not request the issuance of arrest warrants and orders for transfer for Messrs Thaçi and Kilaj, noting that, at the time of the SPO request, they were both already detained in the SC Detention Facilities.⁴

¹ KSC-BC-2023-12, F00015, President, *Decision Assigning a Pre-Trial Judge*, 6 June 2024, confidential.

² KSC-BC-2023-12, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests* ("Submission of Initial Indictment"), 15 December 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

³ KSC-BC-2023-12, F00003, Specialist Prosecutor, *Requests for Warrants of Arrest and Related Requests*, 31 January 2024, strictly confidential and *ex parte*, paras 2, 29.

⁴ *Smakaj and Fazliu Arrest and Transfer Request*, para. 1.

3. On 11 March 2024, pursuant to an order of the Pre-Trial Judge,⁵ the SPO submitted a revised Indictment (“Revised Indictment”), together with its accompanying outline.⁶
4. On 18 April 2024, pursuant to another order of the Pre-Trial Judge,⁷ the SPO filed additional submissions on Mr Thaçi, reiterating that an arrest warrant or a summons to appear for him was unnecessary in light of his ongoing detention at the SC Detention Facilities (“Submissions on Thaçi”).⁸
5. On 2 May 2024, following the submission of a notice informing the Pre-Trial Judge of its intention to file an amended Indictment,⁹ and further to an order for submissions of the Pre-Trial Judge thereon,¹⁰ the SPO requested (i) leave to present additional material in support of charges in the Revised Indictment, and (ii) suspension of the Pre-Trial Judge’s assessment thereof until the filing of the additional supporting materials and of said amended Indictment (“Request for Leave and Suspension”).¹¹
6. On 3 May 2024, the Single Judge ordered Mr Kilaj’s release in Kosovo, subject to strict conditions, having found his detention unreasonable, in light of the Request

⁵ KSC-BC-2023-12, F00004, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 22 February 2024, strictly confidential and *ex parte*. See also F00006, Pre-Trial Judge, *Decision on Extension of Time*, 23 February 2024, strictly confidential and *ex parte*.

⁶ KSC-BC-2023-12, F00007, Specialist Prosecutor, *Submission of Revised Indictment for Confirmation*, 11 March 2024, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*.

⁷ KSC-BC-2023-12, F00008, Pre-Trial Judge, *Order for Submissions*, 4 April 2024, strictly confidential and *ex parte*.

⁸ KSC-BC-2023-12, F00009, Specialist Prosecutor, *Prosecution Submissions Pursuant to Order F00008*, 18 April 2024, strictly confidential and *ex parte*.

⁹ KSC-BC-2023-12, F00010, Specialist Prosecutor, *Prosecution Notice*, 19 April 2024, strictly confidential and *ex parte*.

¹⁰ KSC-BC-2023-12, F00011, Pre-Trial Judge, *Order for Submissions*, 24 April 2024, strictly confidential and *ex parte*.

¹¹ KSC-BC-2023-12, F00014, Specialist Prosecutor, *Prosecution Submissions Pursuant to Order F00011*, 2 May 2024, strictly confidential and *ex parte*.

for Leave and Suspension, and thus pending the submission of an amended Indictment against him (“*Kilaj* Release Decision”).¹²

7. On 20 June 2024, the Pre-Trial Judge rejected the Request for Leave and Suspension, and found, *inter alia*, that (i) the Revised Indictment remained operative, and (ii) the timeline for its assessment pursuant to Rule 85(5) of the Rules shall proceed until such time as the SPO either withdraws the Revised Indictment or files an amended Indictment, as the case may be.¹³

8. On 27 June 2024, the SPO submitted for confirmation an amended Indictment against Messrs *Thaçi*, *Smakaj*, *Kilaj*, *Fazliu*, and *Hajredin Kuçi* (“*Mr Kuçi*”), together with the outline of the evidence in its support, and other supporting material (“*Amended Indictment*”).¹⁴

9. On 1 July 2024, the SPO requested the Pre-Trial Judge to issue an arrest warrant and order for transfer for *Mr Kuçi* (“*Kuçi* Arrest and Transfer Request”).¹⁵

10. On 2 September 2024, the SPO filed supplemental submissions to the *Smakaj* and *Fazliu* Arrest and Transfer Request and the *Kuçi* Arrest and Transfer Request (“*First Supplement to Arrest Requests*”).¹⁶

11. On 17 October 2024, pursuant to an order of the Pre-Trial Judge,¹⁷ the SPO filed the “*Prosecution Submissions Pursuant to F00022*”, in which it (i) made

¹² KSC-BC-2018-01, F00658, Single Judge, *Decision on Review of Detention of Isni Kilaj*, 3 May 2024, confidential, paras 64-65, 70(a) and (c). A corrected and public redacted version of the decision was filed on 15 May 2024, F00658/COR and F00658/COR/RED.

¹³ KSC-BC-2023-12, F00016, Pre-Trial Judge, *Decision on Prosecution Requests for Leave to Present Additional Material and for Suspension of Examination of the Indictment*, 20 June 2024, strictly confidential and *ex parte*.

¹⁴ KSC-BC-2023-12, F00017, Specialist Prosecutor, *Submission of Amended Indictment for Confirmation*, 27 June 2024, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

¹⁵ KSC-BC-2023-12, F00018, Specialist Prosecutor, *Request for Arrest Warrant and Related Order*, 1 July 2024, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

¹⁶ KSC-BC-2023-12, F00021, Specialist Prosecutor, *Prosecution Supplemental Submissions Concerning Requests for Arrest Warrants (F00003 & F00018)*, 2 September 2024, strictly confidential and *ex parte*.

¹⁷ KSC-BC-2023-12, F00022, Pre-Trial Judge, *Order for Submissions*, 8 October 2024, strictly confidential and *ex parte*.

supplemental submissions in support of its requests for the arrests of Messrs Smakaj, Fazliu and Kuçi (“Supplemental Submissions on Messrs Smakaj, Fazliu and Kuçi”), and (ii) requested that the Pre-Trial Judge terminate Mr Kilaj’s conditional release and order him to return to the SC Detention Facilities (“*Kilaj Return Request*”) (altogether “Second Supplement to Arrest Requests”).¹⁸

12. On 12 November 2024, pursuant to an order of the Pre-Trial Judge,¹⁹ and further to a decision²⁰ granting an SPO request for an extension of time,²¹ the SPO submitted for confirmation a further amended Indictment (“Further Amended Indictment”) together with its accompanying outline.²²

13. On 14 November 2024, the President of the SC issued a decision invoking a change of venue to the Netherlands (“Host State”).²³

14. On 29 November 2024, the Pre-Trial Judge rendered a decision confirming the Further Amended Indictment against Messrs Thaçi, Smakaj, Kilaj, Fazliu, and Kuçi (“Accused”; “Confirmation Decision”), and ordered the SPO to submit a confirmed Indictment (“Confirmed Indictment”).²⁴

¹⁸ KSC-BC-2023-12, F00023, Specialist Prosecutor, *Prosecution Submissions Pursuant to F00022*, 17 October 2024, strictly confidential and *ex parte*, with Annexes 1-5, strictly confidential and *ex parte*. For the purposes of this decision, Annex 2 to F00023 is referred to as “Annex 2”.

¹⁹ KSC-BC-2023-12, F00025, Pre-Trial Judge, *Order Pursuant to Rule 86(4)(b) of the Rules Relating to Counts 2 and 19 of the Amended Indictment*, 6 November 2024, strictly confidential and *ex parte*.

²⁰ KSC-BC-2023-12, F00027, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time*, 7 November 2024, strictly confidential and *ex parte*.

²¹ KSC-BC-2023-12, F00026, Specialist Prosecutor, *Prosecution Request for Extension of Time*, 7 November 2024, strictly confidential and *ex parte*.

²² KSC-BC-2023-12, F00028, Specialist Prosecutor, *Submission of Further Amended Indictment for Confirmation*, 12 November 2024, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*.

²³ KSC-BC-2023-12, F00031, President, *Decision Invoking a Change of Venue to the Host State* (“Decision on Change of Venue”), 14 November 2024, strictly confidential and *ex parte*.

²⁴ KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, strictly confidential and *ex parte*.

II. SUBMISSIONS

A. ARREST WARRANTS AND TRANSFER ORDERS FOR MESSRS SMAKAJ, FAZLIU, AND KUÇI

15. As regards Messrs Smakaj, Fazliu, and Kuçi, the SPO requests that, along with the confirmation of the charges against them, the Pre-Trial Judge issues for them arrest warrants and orders for their transfer to the SC Detention Facilities.²⁵ To this end, the SPO asserts that the requirements under Article 41(6)(a)-(b) of the Law are satisfied.²⁶ More specifically, the SPO submits that there is a well-grounded suspicion that Messrs Smakaj, Fazliu, and Kuçi, have committed offences within the jurisdiction of the SC.²⁷ The SPO also contends that there are articulable grounds to believe that Messrs Smakaj, Fazliu, and Kuçi: (i) are a flight risk, including, and in particular, in light of a recent decision of the Albanian Supreme Court rejecting a final prosecution appeal against the denial of the extradition of Dritan Goxhaj to the SC (“*Goxhaj Decision*”);²⁸ (ii) will obstruct the progress of criminal proceedings by influencing witnesses, victims, or accomplices;²⁹ and (iii) will repeat the criminal offences or arrange for crimes to be committed against those perceived to be against them.³⁰

16. The SPO also requests that the Pre-Trial Judge: (i) order the transfer of Messrs Smakaj, Fazliu and Kuçi to the SC Detention Facilities in the Host State, pursuant to Rule 50(1)-(2) of the Rules;³¹ (ii) transmit the arrest warrants and transfer orders to the SPO for execution and service, in cooperation with the

²⁵ *Smakaj and Fazliu Arrest and Transfer Request*, paras 1-2, 29(i); *Kuçi Arrest and Transfer Request*, paras 1-2, 23; *First Supplement to Arrest Requests*, paras 1-2.

²⁶ *Smakaj and Fazliu Arrest and Transfer Request*, paras 3-4; *Kuçi Arrest and Transfer Request*, paras 3-4.

²⁷ *Smakaj and Fazliu Arrest and Transfer Request*, para. 3; *Kuçi Arrest and Transfer Request*, para. 3.

²⁸ *Smakaj and Fazliu Arrest and Transfer Request*, paras 4, 5-7; *Kuçi Arrest and Transfer Request*, paras. 4, 5-10; *First Supplement to Arrest Requests*, paras 1-4.

²⁹ *Smakaj and Fazliu Arrest and Transfer Request*, paras 4, 8-10; *Kuçi Arrest and Transfer Request*, paras 4, 11-16, 17.

³⁰ *Smakaj and Fazliu Arrest and Transfer Request*, paras 4, 11-12; *Kuçi Arrest and Transfer Request*, paras 4, 11-16, 17.

³¹ *Smakaj and Fazliu Arrest and Transfer Request*, para. 13; *Kuçi Arrest and Transfer Request*, para. 18.

Registrar;³² and (iii) authorise the SPO to disclose them as necessary and appropriate for this purpose.³³

B. NO REQUEST FOR ARREST WARRANT AND/OR SUMMONS TO APPEAR FOR MR THAÇI

17. Turning to Mr Thaçi, the SPO does not request that an arrest warrant and/or a summons to appear be issued for him. According to the SPO, under Article 39(4) of the Law, neither an arrest warrant nor a summons to appear for Mr Thaçi is envisaged in light of his ongoing detention at the SC Detention Facilities in the proceedings of *The Specialist Prosecutor v. Hashim Thaçi et al.* (KSC-BC-2020-06) (“Case 06”).³⁴ The SPO contends that, relying on her general discretionary power to manage proceedings properly and expeditiously, the Pre-Trial Judge can issue an order to the Registrar for Mr Thaçi to be brought in court from the SC Detention Facilities for the purpose of his initial appearance (“SPO’s Position on Mr Thaçi”).³⁵

C. TERMINATION OF CONDITIONAL RELEASE AND ORDER TO RETURN FOR MR KILAJ

18. Turning to Mr Kilaj, the SPO requests that, in the event of the confirmation of the charges against him, the Pre-Trial Judge terminate his conditional release and order him to return to the SC Detention Facilities.³⁶ In support, the SPO contends that Mr Kilaj’s termination of conditional release, and thus, his detention, is justified and necessary in light of the material changes in the circumstances upon which his release was granted, notably: (i) the filing of the Amended Indictment establishing a well-grounded suspicion that Mr Kilaj has committed offences within the jurisdiction of the SC; and (ii) the consequential exacerbation of the risks he poses under Article 41(6)(b) of the Law.³⁷ The SPO also contends that: (i) no less restrictive

³² *Smakaj and Fazliu Arrest and Transfer Request*, para. 25; *Kuçi Arrest and Transfer Request*, para. 19.

³³ *Smakaj and Fazliu Arrest and Transfer Request*, para. 27; *Kuçi Arrest and Transfer Request*, para. 21.

³⁴ Submissions on Thaçi, para. 4.

³⁵ Submissions on Thaçi, paras 2-4.

³⁶ *Kilaj Return Request*, para. 22.

³⁷ *Kilaj Return Request*, paras 24-26, 27-37, 38, 39, 40-42, 43-46.

measure foreseen in Article 41(12) of the Law or ordered *proprio motu* by the Pre-Trial Judge could, under present circumstances, sufficiently mitigate the risks posed by Mr Kilaj to a degree comparable to that of detention at the SC Detention Facilities; and (ii) his detention, at this juncture, is proportional.³⁸ The SPO also requests that, should Mr Kilaj fail to comply with the Pre-Trial Judge's order to return, he be arrested and transferred to the SC Detention Facilities.³⁹ According to the SPO, similar orders were issued by the ICTY in instances comparable to that of Mr Kilaj in this case, and refers to related authorities ("SPO's Position on Mr Kilaj").⁴⁰

III. APPLICABLE LAW

19. Pursuant to Article 39(2) of the Law, the Pre-Trial Judge shall review the indictment. If satisfied that a well-grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment.

20. Pursuant to Article 39(3) of the Law, at the request of the SPO, the Pre-Trial Judge may issue such orders and warrants for the arrest and transfer of persons to the SC and any other orders as may be required for the preparation of a fair and expeditious trial.

21. Pursuant to Article 39(4) of the Law, a person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the SC, be taken into custody (if not already detained), immediately informed of the charges against him or her and transferred to the SC. If no arrest warrant has been issued and if at liberty, the accused shall be summonsed to appear in person or by video-link at an initial hearing before the SC.

³⁸ *Kilaj* Return Request, para. 47.

³⁹ *Kilaj* Return Request, para. 22.

⁴⁰ *Kilaj* Return Request, para. 25, with references.

22. Pursuant to Rules 48(2) and 53(1) of the Rules, upon request by the SPO or *proprio motu*, a Panel may issue arrest warrants, if it is satisfied that the conditions set out in Article 41(6) of the Law are met, and/or summonses, decisions or orders as may be necessary for the purposes of the preparation and conduct of the proceedings.

23. Pursuant to Article 41(1), (4), and (5) of the Law, the issuance of the arrest warrant must be consistent with the fundamental rights provided for in Chapter II of the Constitution, and the persons concerned must be informed of their rights under the Law with a view to exercising them before the Pre-Trial Judge.

24. Pursuant to Article 41(6) of the Law, the SC shall only order the arrest and detention of a person when: (a) there is a grounded suspicion that the person has committed an offence within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that they have threatened to commit.

25. Pursuant to Rule 53(2) of the Rules, the arrest warrant shall contain: (i) the name of the person and any other relevant identifying information; (ii) a specific reference to the crimes for which the person's arrest is sought; (iii) a concise statement of facts allegedly constituting those crimes; and (iv) where applicable, the SC Detention Facilities to which the person shall be transferred. Pursuant to Rule 53(3) of the Rules, the arrest warrant shall remain in effect until otherwise ordered by the Panel.

26. Pursuant to Article 41(7) of the Law, persons subject to a detention order by the SC may be detained in detention facilities overseen by the SC and managed by the Registry. If proceedings are relocated in part or in whole to the Host State, these detention facilities shall be near the seat of the SC in the Host State.

27. Pursuant to Rule 50(1) of the Rules, where a person is proceeded following a summons, decision or order of the SC or the Specialist Prosecutor, the Panel shall order the competent authorities to transfer the person to the SC without delay, and may include conditions for the transfer and further detention, after consulting with the Registrar.

28. Pursuant to Article 53(3) of the Law, a warrant of arrest issued by the SC shall have the same force and effect as a warrant of arrest issued by any other Kosovo court.

29. Pursuant to Article 35(3) of the Law, the police within the SPO shall have the authority and responsibility to exercise powers given to the Kosovo Police under Kosovo law.

30. Pursuant to Rule 55(4) of the Rules, the Registrar shall make the necessary arrangements for the prompt transfer of the arrested person to a detention facility of the SC with the competent authorities and the Host State.

IV. DISCUSSION

A. SPO'S POSITION ON MR THAÇI

31. As regards the SPO's Position on Mr Thaçi, the Pre-Trial Judge recalls that the right to liberty and security of a person, as guaranteed under Article 29 of the Constitution and Article 5 of the European Convention on Human Rights, is of the highest importance in a democratic society.⁴¹ The Pre-Trial Judge is also mindful

⁴¹ See similarly, among many, KSC-BC-2023-10, IA002/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Haxhi Shala's Appeal Against Decision on Review of Detention* ("H. Shala Detention Appeals Decision"), 12 April 2024, public, para. 24, with references; KSC-CC-PR-2017-01, F00004, Constitutional Court Panel, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("Judgement on Constitutional Referral"), 26 April 2017, public, para. 110 with references.

that any deprivation of liberty for the purpose of bringing a person to trial must conform with the substantive and procedural rules established by law and should be in keeping with the principle of legal certainty, the principle of proportionality and the principle of the protection against arbitrariness.⁴²

32. The Pre-Trial Judge observes that, under Article 39(4) of the Law, following the confirmation of an indictment, the SC legal framework requires that *either* an arrest warrant, *or* a summons to appear be issued on the accused. Either of these two instruments ensure that, *inter alia*, the accused appears before SC, and the pre-trial phase of the proceedings can begin.⁴³ Whether an arrest warrant or a summons is required depends on whether the circumstances set out under Article 41(6) of the Law exist.⁴⁴

33. As to the SPO argument that an arrest warrant is not needed for Mr Taçi in light of his ongoing detention in Case 06,⁴⁵ the Pre-Trial Judge observes that the wording “if not already detained”, preceded by “be taken into custody” in Article 39(4) of the Law pertains to the physical act of taking the accused into custody. In other words, the provision merely postulates that Mr Taçi does not need to be physically arrested and taken into custody because he is already detained by the SC for the purpose of the proceedings in Case 06.⁴⁶ However, the provision does not, as a matter of law, prevent the Pre-Trial Judge from issuing an arrest warrant. This is further supported by Rules 48(1) and 53(1) of the Rules, which

⁴² See *similarly, among many, H. Shala Detention Appeals Decision*, para. 24; *Judgement on Constitutional Referral*, para. 111 with references.

⁴³ See Article 39(4)-(5) of the Law, and Rules 92 and 95(1) of the Rules.

⁴⁴ See Article 41(6) of the Law.

⁴⁵ *Submissions on Taçi*, paras 2-4.

⁴⁶ See *similarly, ICC, Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-1-tENG, *Pre-Trial Chamber II, Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido (“Bemba Gombo et al. Arrest Warrant”)*, 20 November 2013, public. In that case, Pre-Trial Chamber II issued an arrest warrant for Jean-Pierre Bemba Gombo for the alleged commission of offences against the administration of justice, while he was prosecuted and detained in another case for charges involving war crimes and crimes against humanity.

equally do not establish any restrictions to the Panel's powers to issue an arrest warrant, either upon request or *proprio motu*.

34. In the view of the Pre-Trial Judge, any deprivation of liberty of Mr Thaçi *in the present proceedings*, must be based on its own legal basis and authority.⁴⁷ The title to arrest and detain triggers Mr Thaçi's rights enshrined in the Law, including his right to challenge any such authority,⁴⁸ and to have credit for any time served, if convicted.⁴⁹ Mr Thaçi's ongoing detention in the proceedings in Case 06 and related authorities, are distinct from the present proceedings. Trial Panel II's decision to detain Mr Thaçi in Case 06 does not create a legal basis to compel him to attend hearings in the *present* proceedings. By the same token, the SPO's reliance on Article 41(9) of the Law and Rule 59 of the "Registry Practice Direction, Rules of Detention" entitled "Transfer and Transport" is inapposite as they do not constitute a title to either arrest and detain or summons Mr Thaçi.⁵⁰

35. In view of the foregoing, the Pre-Trial Judge finds that the SPO's Position on Mr Thaçi is without merit. Therefore, pursuant to Rules 48(1) and 53(1) of the Rules, the Pre-Trial Judge will issue *proprio motu* an arrest warrant and/or a summons to appear for Mr Thaçi, as the case may be, in light of the conditions set forth under Article 41(6) of the Law.

B. SPO'S POSITION ON MR KILAJ

36. Turning to the SPO's Position on Mr Kilaj, the Pre-Trial Judge recalls that, in the *Kilaj* Release Decision, the Single Judge found that even though Mr Kilaj's detention remained necessary *vis-à-vis* the risks under Article 41(6)(b) of the Law,

⁴⁷ In this regard, the Pre-Trial Judge recalls that the Court of Appeals Panel has previously found that, under the SC legal framework, a decision on arrest forms the basis for the accused's detention, including for any determination of his or her further detention after his first appearance, *see, H. Shala* Detention Appeals Decision, para. 30.

⁴⁸ *See, inter alia*, Articles 21, 41(1)-(5) and 10 of the Law.

⁴⁹ *See*, Rule 163(6) of the Rules.

⁵⁰ KSC-BD-08-Rev1, Registry Practice Direction, Rules of Detention, 23 September 2020.

which could not be sufficiently mitigated by imposing conditions on him,⁵¹ his detention at the time had become unreasonable pending the confirmation of an indictment against him.⁵²

37. The Pre-Trial Judge agrees, in principle, with the SPO's assertion that the Confirmed Indictment provides new grounds for the termination of Mr Kilaj's conditional release. However, the Pre-Trial Judge is not persuaded by the SPO position to order Mr Kilaj to "return" to the SC Detention Facilities.

38. As elaborated in the context of Mr Thaçi, following the confirmation of an indictment, the SC legal framework requires that *either* an arrest warrant, *or* a summons to appear be issued on the accused. Up until today, Mr Kilaj has been on conditional release, *before* formal charges were confirmed against him.⁵³ In the view of the Pre-Trial Judge, ordering Mr Kilaj to return to the SC for the purpose of being detained in the SC Detention Facilities effectively amounts to a new condition to the *Kilaj* Release Decision.⁵⁴ First, the SPO proposal for an order to return to the SC Detention Facilities to be detained is in conflict with the nature of conditional release. Conditions are meant to keep Mr Kilaj released. Second, the Pre-Trial Judge must account for the fact that the Further Amended Indictment has now been confirmed.

39. As a consequence, since charges have been confirmed against Mr Kilaj, his further deprivation of liberty must be based on its own legal basis and authority

⁵¹ In particular, the Pre-Trial Judge notes that in the *Kilaj* Release Decision, the Single Judge found that (i) conditions proposed by Mr Kilaj sufficiently addressed the risk of flight, but (ii) none of the conditions put forth by the Mr Kilaj, nor any other conditions imposed by the Single Judge could fully restrict Mr Kilaj's ability to obstruct the progress of SC proceedings and commit further offences, *see Kilaj* Release Decision, paras 55-57.

⁵² *Kilaj* Release Decision, paras 51, 63-64.

⁵³ *See*, KSC-BC-2018-01, F00489, Specialist Prosecutor, *Urgent Rule 52(1) Notification of Arrest of Isni Kilaj*, 2 November 2023, public; F00503/RED, Single Judge, *Public Redacted Version of Reasons for Continued Detention*, 9 November 2023, public; *Kilaj* Release Decision. In this regard, the Pre-Trial Judge notes that the circumstances underlying the cases referred to in the authorities cited by the SPO are significantly different from those in the present case, *see supra*, para. 18.

⁵⁴ *See*, *Kilaj* Return Request, para. 22 with references; *Kilaj* Release Decision, paras 65(j)-66.

reflecting the charges against him. In this respect, the Pre-Trial Judge considers it appropriate to issue a new arrest warrant.⁵⁵

40. In light of the above, the Pre-Trial Judge rejects the *Kilaj* Return Request and, for the same reasons set out in paragraph 35, will *proprio motu* issue an arrest warrant for Mr Kilaj.

41. Lastly, the Pre-Trial Judge clarifies that, being seized with the case involving Mr Kilaj, she can draw upon the Single Judge's findings relating to Mr Kilaj's arrest, detention and conditional release. With the Confirmed Indictment, the proceedings relating to Mr Kilaj continue before the Pre-Trial Judge.

C. JURISDICTION

42. Without prejudice to subsequent determinations on this matter, the Pre-Trial Judge recalls that pursuant to Articles 6(2) and 15(2) of the Law, the SC have jurisdiction over the offences of violating secrecy of proceedings, contempt of court, and obstructing official persons in performing official duties, under Articles 392, 393 and 401 of the 2019 Kosovo Criminal Code, Code No. 06/L-074 ("KCC"), as they relate to SC official proceedings and officials, offences allegedly committed between at least 12 April 2023 and 2 November 2023.⁵⁶

D. REQUIREMENTS OF ARTICLE 41(6) OF THE LAW

1. Offences Allegedly Committed

43. The Pre-Trial Judge recalls that, when confirming the Further Amended Indictment, she found that there is a well-grounded suspicion that the Accused are criminally responsible, under various modes of liability, for the offences of violating secrecy of proceedings, contempt of court, and obstructing official persons in

⁵⁵ See similarly, *supra*, paras 32-35.

⁵⁶ Confirmation Decision, para. 39. See also KSC-BC-2020-07, F00057, Single Judge, *Decision on Defence Challenges*, 27 October 2020, public, paras 23-26; F00147/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Preliminary Motions*, 8 March 2021, public, paras 28-34.

performing official duties within the meaning of Articles 392, 393 and 401 of the KCC, and Article 15(2) of the Law.⁵⁷ The Pre-Trial Judge therefore finds that the requirement set forth in Article 41(6)(a) of the Law has been met.

2. Necessity of the Arrest

44. The Pre-Trial Judge recalls that the grounds allowing to deprive a person of his or her liberty are in the alternative, and must be articulable.⁵⁸ The Pre-Trial Judge further recalls that, determining the existence of any of these risks, so as to make the arrest of the person necessary, is a matter of assessing the possibility, rather than the inevitability that such risks materialise.⁵⁹

a. Mr Thaçi

45. At the outset, the Pre-Trial Judge clarifies that she assesses the risks under Article 41(6)(b) of the Law independently from the competent Panel in Case 06. In this context it is worth recalling that Mr Thaçi's detention in Case 06 does not fall within the Pre-Trial Judge's remit. That being said, it is clarified that Mr Thaçi's current detention in the Case 06 proceedings, as part of his personal circumstances, can, at this juncture, have a bearing on the assessment of the risks under Article 41(6)(b) of the Law.

46. As regards the flight risk under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge considers that the gravity of the offences with which Mr Thaçi is charged in the present proceedings, together with the potential sentence that these offences

⁵⁷ Confirmation Decision, paras 210-211, 228, 235, 249, 257.

⁵⁸ See KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release ("Veseli Interim Release Appeals Decision")*, 30 April 2021, public, para. 15. See also Articles 19(1.9), 19(1.10) and 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ("KCPC").

⁵⁹ See *Veseli Interim Release Appeals Decision*, para. 17. See similarly, ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Appeals Chamber, *Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba'"*, 11 July 2014, public, para. 107.

could attract,⁶⁰ are important factors in the assessment of the flight risk,⁶¹ and provide Mr Thaçi, in principle, with a motive to evade justice.⁶² Furthermore, seeing the nature of the charges confirmed against him, the Pre-Trial Judge underlines that Mr Thaçi has demonstrated *mala fide* intentions towards the laws and rules of the SC. Having said that, the Pre-Trial Judge is mindful that the risk of flight cannot be gauged solely on the grounds of the severity of the prison sentence faced, but must be assessed with reference to other relevant factors justifying detention.⁶³

47. As regards the opportunity to flee, the Pre-Trial Judge considers that, despite his ongoing detention in the proceedings in Case 06, in principle, Mr Thaçi has the means and the opportunity to flee by travelling freely to jurisdictions without extradition agreements with Kosovo, and therefore, beyond the reach of the SC. [REDACTED],⁶⁴ [REDACTED].⁶⁵

48. Furthermore, the Pre-Trial Judge considers that Mr Thaçi has the means to evade justice. In particular, the Pre-Trial Judge considers that Mr Thaçi's previous positions as President, Prime Minister, First Deputy Prime Minister and Minister of Foreign Affairs of Kosovo, as well as his previous capacities as founding member and Commander-in-Chief of the Kosovo Liberation Army ("KLA"), provide him

⁶⁰ The Pre-Trial Judge observes that the offence of obstructing official persons in performing official duties, in its aggravated form, foresees a sentence of imprisonment up to five (5) years (Article 401(3) and (5) of the KCC). In this regard, the Pre-Trial Judge also notes that Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj"), the two accused in case KSC-BC-2020-07 ("Case 07"), who were also charged with offences against the administration of justice, were finally sentenced to several years of imprisonment.

⁶¹ See similarly, KSC-BC-2020-07, IA002/F0005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention* ("Haradinaj Detention Appeals Decision"), 9 February 2021, public, para. 61; KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release* ("Thaçi Interim Release Decision"), 26 January 2021, public, para. 31; IA004/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release*, 30 April 2021, paras 46-50.

⁶² See similarly, KSC-BC-2023-10, F00123/RED, *Public Redacted Version of Decision on Sabit Januzi's Request for Interim Release* ("Januzi First Detention Decision"), 5 January 2024, para 43;

⁶³ See similarly among many, *Januzi First Detention Decision*, para. 43, with references.

⁶⁴ [REDACTED]. [REDACTED].

⁶⁵ [REDACTED].

with the possibility to access significant funds and to readily obtain support from government officials, including persons with security, police, and intelligence expertise who may assist him to secure him access to significant resources,⁶⁶ funds, information, and documents to flee, including by crossing borders unlawfully.⁶⁷

49. Therefore, in light of the information publicly available, the Pre-Trial Judge finds that Mr Thaçi presents a risk of flight.

50. As regards the risk of obstructing the progress of the proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls, at the outset, her findings in the Confirmation Decision as to the existence of a well-grounded suspicion that Mr Thaçi coordinated with (i) three distinct groups, formed with Messrs Smakaj, Fazliu, Kilaj, and other uncharged individuals, and (ii) Mr Kuçi, to interfere with the testimony of SPO witnesses in the ongoing *Thaçi et al.* trial.⁶⁸ In particular, the Pre-Trial Judge recalls that, in the course of separate visits with Messrs Smakaj, Fazliu, Kilaj and Kuçi, Mr Thaçi deliberately revealed and provided confidential information disclosed to him in the proceedings in Case 06, such as information of the witnesses mentioned in the Further Amended Indictment, and instructed his visitors *to, and how to, unlawfully influence their testimonies.*⁶⁹ The Pre-Trial Judge further recalls that the evidence in support of her findings demonstrates that: (i) Mr Thaçi was the leader of three separate groups which he set up with Messrs Smakaj, Fazliu, Kilaj, respectively, to pursue his obstructive plans; and

⁶⁶ See *infra*, para. 50. See similarly, for example, *Thaçi Interim Release Decision*, para. 31; KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release ("Thaçi First Detention Appeals Decision")*, 30 April 2021, paras 46-50; IA010/F00008/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention ("Thaçi Second Detention Appeals Decision")*, 27 October 2021, public, paras 32-36.

⁶⁷ See similarly, KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 November 2020, public, paras 28-29; *Bemba Gombo et al. Arrest Warrant*, para. 22.

⁶⁸ Confirmation Decision, para. 195.

⁶⁹ Confirmation Decision, paras 184, 196, 221, 223, 224, 232, 233-234, 247, 268, 277, 299-300.

(ii) his actions and conduct are part of a broader pattern of efforts to interfere with the testimony of SPO witnesses in the proceedings in Case 06.⁷⁰ The Pre-Trial Judge considers that the above-described findings show Mr Thaçi's persistence in furthering obstruction efforts in SC proceedings even from within the SC Detention Facilities, including by leveraging his influence over former KLA affiliates who are loyal to him, and persons from his political circles, such as his co-Accused in the present proceedings.⁷¹ In this regard the Pre-Trial Judge also recalls that it has been previously found that Mr Thaçi attempted to undermine the SC, and, through his circles, he offered benefits to persons who were summoned by the SPO to provide information to the SPO/SC.⁷² Furthermore, Mr Thaçi's awareness of the charges and evidence against him provide him further opportunities and incentives to pursue in obstruction efforts in the present proceedings.⁷³

51. The Pre-Trial Judge makes these considerations bearing in mind the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.⁷⁴

⁷⁰ Confirmation Decision, paras 208, 277.

⁷¹ See similarly, *Thaçi Interim Release Decision*, para. 31; *Thaçi First Detention Appeals Decision*, paras 46-50, 76-77; *Thaçi Second Detention Appeals Decision*, paras 32-36; KSC-BC-2020-06, F00994/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Periodic Review of Detention of Hashim Thaçi ("Thaçi Fifth Detention Decision")*, 6 October 2022, public, para. 35; F02642, Trial Panel II, *Decision on Periodic Review of Detention of Hashim Thaçi ("Thaçi Seventeenth Detention Decision")*, 14 October 2024, public, paras 20-24.

⁷² See similarly, among many, *Thaçi First Detention Appeals Decision*, paras 58-75; *Thaçi Fifth Detention Review*, para. 35; KSC-BC-2020-06, F01170/RED, Trial Panel II, *Public Redacted Version of Decision on Periodic Review of Detention of Hashim Thaçi ("Thaçi Sixth Detention Decision")*, 19 December 2022, public, para. 22; *Thaçi Seventeenth Detention Review*, para. 20.

⁷³ See similarly, among many, *Januzi First Detention Decision*, paras 54-55; F00162/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Sabit Januzi ("Januzi Second Detention Decision")*, 8 February 2024, public, para. 27; *Thaçi Second Detention Appeals Decision*, paras 37-43; *Thaçi Fifth Detention Decision*, para. 35; *Thaçi Seventeenth Detention Decision*, paras 20-24.

⁷⁴ See similarly, among many, KSC-BC-2020-04, F00847/RED, Trial Panel I, *Public Redacted Version of Trial Judgment and Sentence ("P. Shala Trial Judgment")*, 24 November 2024, public, para. 97, with Annex 1, confidential; KSC-BC-2020-05, F00494/RED3/COR, *Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment*, public, paras 49-57; KSC-BC-2020-06, F01794, Trial Panel II, *Decision on Periodic Review of Detention of Rexhep Selimi*, 15 September 2023, public, paras 20,

52. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that there is a risk that Mr Thaçi may obstruct the progress of criminal proceedings.

53. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge is of the view that the relevant factors to be considered are the same as those recited in paragraph 50 above with respect to the obstruction of proceedings. The Pre-Trial Judge is mindful that the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, but considers that, seeing the nature of the charges confirmed against Mr Thaçi, the factors underpinning the former are of relevance to the assessment of the latter.⁷⁵ In particular, the Pre-Trial Judge finds that there exists a risk that Mr Thaçi will repeat the offences alleged to have been committed by him.

54. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Thaçi may commit further offences.

55. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is high risk that Mr Thaçi may flee, obstruct the progress of the criminal proceedings, or commit further offences, therefore necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

b. Mr Kilaj

56. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge recalls the Single Judge's previous findings that Mr Kilaj is a flight risk, considering, among others: (i) Mr Kilaj's knowledge of the then potential serious

33; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-581.

⁷⁵ See similarly, among many, KSC-BC-2023-10, F00009/RED2, Pre-Trial Judge, *Lesser Redacted Version of Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders ("Januzi and Bahtijari Arrest Decision")*, 9 September 2023, public, para. 22; *Januzi First Detention Decision*, paras 37, 61; *Thaçi Fifth Detention Decision*, para. 38; *Thaçi Sixth Detention Decision*, para. 37; *Thaçi Seventeenth Detention Decision*, para. 26.

charges, (ii) the severity of the potential sentence he may face, and (iii) his awareness that the evidence adduced against him exceeds what he had previously foreseen after he was arrested.⁷⁶

57. In addition to the above findings of the Single Judge, the Pre-Trial Judge takes into account that, with the forthcoming Confirmed Indictment, Mr Kilaj will become aware of: (i) the gravity of the specific offences with which he is charged, which go beyond what he initially foresaw; (ii) the evidence presented by the SPO in support; and (iii) the fact that the prospect of a potential sentence of a long imprisonment is now concrete.⁷⁷ In the Pre-Trial Judge's view, under said circumstances, irrespective of his compliance with the conditions imposed on him in the *Kilaj* Release Decision,⁷⁸ Mr Kilaj will have concrete incentives to abscond.

58. The Pre-Trial Judge also recalls the previous findings that Mr Kilaj possesses, in principle, the means and opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of the SC, including but not limited to Albania.⁷⁹ [REDACTED].⁸⁰

59. Furthermore, the Pre-Trial Judge recalls that, notwithstanding the considerations favourable to Mr Kilaj concerning his settled family life and ties within the community, and his willingness to cooperate with the SPO on the day of

⁷⁶ See *Kilaj* Release Decision, para. 39. See similarly, *Haradinaj* Detention Appeals Decision, para. 61.

⁷⁷ The Pre-Trial Judge observes that the offence of obstructing official persons performing official duties, in its aggravated form, foresees a sentence of imprisonment up to five (5) years (Article 401(5) of the KCC). In this regard, the Pre-Trial Judge observes that Messrs Gucati and Haradinaj, who were similarly charged in Case 07 with offences against the administration of justice, were finally sentenced to several years of imprisonment, sentences that Mr Kilaj is likely aware of. See similarly, *Januzi* First Detention Decision, para 43.

⁷⁸ See *Kilaj* Release Decision, para. 33. The Pre-Trial Judge notes that there is no information on record demonstrating that Mr Kilaj did not comply with any of the conditions imposed on him.

⁷⁹ *Kilaj* Release Decision, para. 40. See also, *Kilaj* Return Request, para. 42.

⁸⁰ [REDACTED].

his initial arrest,⁸¹ these factors only diminish, but do not eliminate the risk of flight, particularly now that concrete charges have been confirmed against him.

60. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Kilaj presents a risk of flight.⁸²

61. As regards the risks of obstructing the progress of the proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls that it has been previously found that: (i) Mr Kilaj has demonstrated a willingness to violate court orders and to intervene in proceedings to which he is not a Party; and (ii) Mr Kilaj's progressively increased knowledge about the allegations against him, and the evidence in support thereof, elevate the risk that he may obstruct the proceedings, including these in which he is a Party.⁸³ The Pre-Trial Judge further recalls that: (i) Mr Kilaj's awareness of the existence of an indictment against him was already an important factor in assessing the risk of obstruction; and (ii) given the prospect that he may face criminal charges, the risk of collusion for the purpose of obstructing the proceedings remained particularly high.⁸⁴

62. The Pre-Trial Judge is of the view that not only do the above considerations still carry weight today, but the confirmation of the Further Amended Indictment buttresses these findings. In particular, the Pre-Trial Judge considers that, Mr Kilaj has already demonstrated willingness to misuse SC witness-related information, and thus, his wanton disregard for SC confidentiality rules.⁸⁵ As held in the Confirmation Decision, there is a well-grounded suspicion that Mr Kilaj was part of a group, including Mr Kilaj himself, and Mr Thaçi, the leader of the group, aiming to unlawfully influence the testimony of SPO witnesses in the *Thaçi et al.*

⁸¹ *Kilaj* Release Decision, para. 40.

⁸² *Kilaj* Release Decision, para. 41.

⁸³ *Kilaj* Release Decision, para. 44.

⁸⁴ *Kilaj* Release Decision, para. 44.

⁸⁵ *See similarly, Januzi* First Detention Decision, para. 54; *Januzi* Second Detention Decision, para. 26.

trial.⁸⁶ The Pre-Trial Judge also considers that, once he is informed about the Confirmed Indictment, Mr Kilaj will obtain access to highly sensitive information, such as confidential witness-related information and other evidence the SPO may rely on during the trial against him.⁸⁷ The fact that he may have complied with the conditions imposed in the *Kilaj Release Decision* does not equate to risk elimination. In the Pre-Trial Judge's view, there is a risk that Mr Kilaj may obstruct and interfere with the proceedings by, for example, (i) approaching potential witnesses in his case, [REDACTED], who were the subjects of the obstructive plans plotted with Mr Thaçi during his visit in the SC Detention Facilities on 6 October 2023 in relation to the proceedings in Case 06, and/or (ii) tampering with and/or hiding evidence which the SPO may rely on during this trial.

63. The Pre-Trial Judge makes these considerations bearing in mind the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.⁸⁸

64. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that there is a risk that Mr Kilaj may obstruct the progress of criminal proceedings.

65. As regards the risk of committing further crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge is of the view that the relevant factors to be considered are the same as those discussed in paragraph 62 with respect to the risk of obstruction of the proceedings.⁸⁹ The Pre-Trial Judge is mindful that the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, but considers that, seeing the nature of the charges confirmed against Mr Kilaj, the factors underpinning the former are of relevance to the

⁸⁶ Confirmation Decision, paras 156-172, 195, 205-206, 211, 260, 287-288, 299.

⁸⁷ See *similarly*, *Januzi First Detention Decision*, paras 54-55; *Januzi Second Detention Decision*, para. 27.

⁸⁸ See *Kilaj Release Decision*, para. 45; *P. Shala Trial Judgment*, para. 97.

⁸⁹ See *supra*, para. (a)53, with further references.

assessment of the latter.⁹⁰ In particular, the Pre-Trial Judge finds that there exists a risk that the Mr Kilaj will repeat the offences alleged to have been committed by him.

66. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Kilaj may commit further offences.

67. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Kilaj may flee, obstruct the progress of the criminal proceedings, or commit further offences, therefore necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

68. Consequently, the Pre-Trial Judge terminates Mr Kilaj's conditional release in Kosovo, as ordered in the *Kilaj* Release Decision. The Pre-Trial Judge thus orders the Registrar to: (i) implement all necessary practical arrangements as expeditiously as possible to return the financial security paid by Mr Kilaj for his release; (ii) hand over the passport surrendered by Mr Kilaj pursuant to the *Kilaj* Release Decision,⁹¹ to the custody of the SC Detention Facilities; (iii) liaise with the Kosovo authorities in relation to any matter arising from the *Kilaj* Release Decision, as necessary; and (iv) inform the Pre-Trial Judge accordingly once such arrangements have been duly completed.

c. Mr Smakaj

69. As regards the flight risk under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge considers that the gravity of the offences with which Mr Smakaj is charged in the present proceedings, together with the potential sentence that these offences could attract,⁹² are important factors in the assessment of the flight risk, and provide

⁹⁰ *Kilaj* Release Decision, para. 49. See similarly, *Januzi* and *Bahtijari* Arrest Decision, para. 22; *Januzi* First Detention Decision, paras. 37, 61.

⁹¹ *Kilaj* Release Decision, para. 65(b), (d), 70(b), (d).

⁹² The Pre-Trial Judge observes that the offence of obstructing official persons performing official duties, in its aggravated form, foresees a sentence of imprisonment up to five (5) years (Article 401(5))

Mr Smakaj, in principle, with a motive to evade justice.⁹³ Furthermore, seeing the nature of the charges confirmed against him, the Pre-Trial Judge underlines that Mr Smakaj has demonstrated a blatant disregard for the laws and rule of the SC. Having said that, the Pre-Trial Judge is mindful that the risk of flight cannot be gauged solely on the grounds of the severity of the prison sentence faced, but must be assessed with reference to other relevant factors justifying detention.⁹⁴

70. As regards the opportunity to evade justice, the Pre-Trial Judge considers that, in principle, Mr Smakaj would have the opportunity to flee by travelling freely to jurisdictions without extraditions agreement with Kosovo,⁹⁵ and therefore, beyond the reach of the SC.⁹⁶ Furthermore, taking note of the fact that Mr Smakaj possesses an active Albanian passport,⁹⁷ the Pre-Trial Judge recalls that, [REDACTED],⁹⁸ [REDACTED].⁹⁹

71. As regards Mr Smakaj's means to evade justice, the Pre-Trial Judge notes Mr Smakaj's past positions as National Security Adviser to Mr Thaçi, and as a Director of the Kosovo Intelligence Agency, as well as his previous roles within the Kosovo Police.¹⁰⁰ In this regard, the Pre-Trial Judge considers that, in addition to his

of the KCC). In this regard, the Pre-Trial Judge also observes that Messrs Gucati and Haradinaj, who were similarly charged in Case 07 with offences against the administration of justice, were finally sentenced to several years of imprisonment, sentences that Mr Smakaj is likely aware of.

⁹³ See similarly, *Haradinaj* Detention Appeals Decision, para. 61. See similarly, *Januzi* First Detention Decision, para. 43.

⁹⁴ See similarly among many, *Januzi* First Detention Decision, para 43.

⁹⁵ *Smakaj* and *Fazliu* Arrest and Transfer Request, para. 7.

⁹⁶ In this regard, the Pre-Trial Judge takes note of the recent developments regarding the easing of visa restrictions allowing Kosovo passport holders to travel without visa to countries that are members of the European Union, see *Smakaj* and *Fazliu* Arrest and Transfer Request, para. 7 with further references.

⁹⁷ *Smakaj* and *Fazliu* Arrest and Transfer Request, para. 7; First Supplement to Arrest Requests, paras 1, 3.

⁹⁸ [REDACTED].

⁹⁹ [REDACTED].

¹⁰⁰ *Smakaj* and *Fazliu* Arrest and Transfer Request, para. 7; Supplemental Submissions on Messrs Smakaj, Fazliu and Kuçi, para. 13, with further references to Annex 2; Amended Indictment, para. 2.

own financial resources,¹⁰¹ Mr Smakaj not only (i) has links to former KLA commanders, such as Mr Thaçi, and thus to their resources, but also (ii) possesses the capacity and the ability to obtain the support of government officials and other persons with security, police, and intelligence expertise who may assist him to secure him access to significant resources, including funds, information, and documents to flee, including by crossing borders unlawfully.¹⁰²

72. Against this backdrop, the Pre-Trial Judge considers that, the fact that Mr Smakaj seemingly has rooted family ties in Kosovo only mitigates but does not diminish the risk that he may flee.

73. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Smakaj presents a risk of flight.

74. As regards the obstruction of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls, at the outset, her findings in the Confirmation Decision as to the existence of a well-grounded suspicion that Mr Smakaj, was part of a group with other uncharged individuals named in the Further Amended Indictment, under the leadership of Mr Thaçi, aiming to unlawfully influence the testimony of SPO witnesses in the *Thaçi et al.* trial.¹⁰³ In particular, the Pre-Trial Judge recalls that: (i) on 9 September 2023, Mr Smakaj participated in a visit to Mr Thaçi at the SC Detention Facilities in which Mr Thaçi directed the visitors, including Mr Smakaj, to provide instructions to [REDACTED] (“Witness 2”) on how to testify in the upcoming testimony in the proceedings in Case 06 (“9 September 2023 Visit”); (ii) on 7 October 2023, as instructed by Mr Thaçi in the 9 September 2023 Visit, Mr Smakaj participated in another visit to Mr Thaçi at the SC Detention Facilities in which he reported to have contacted Witness 2 and, upon request of the witness, sought for further instructions from Mr Thaçi (“7 October

¹⁰¹ *Smakaj and Fazliu Arrest and Transfer Request*, footnote 6; Supplemental Submissions on Messrs Smakaj, Fazliu and Kuçi, para. 16, with further references to Annex 2.

¹⁰² *Smakaj and Fazliu Arrest and Transfer Request*, para. 7. *See similarly, supra*, para. (a)48.

¹⁰³ Confirmation Decision, paras 145-155, 195, 203-204, 211, 260, 287-288, 299.

2023 Visit”); and (iii) on 30 October 2023, in the course of a search and seizure operation of Mr Smakaj’s vehicle, the SPO recovered a document printed from the SC Detention Facilities containing a narrative consistent with the instructions conveyed to him by Mr Thaçi during the 9 September 2023 Visit and the 7 October 2023 Visit.¹⁰⁴ The Pre-Trial Judge considers that the above-described sequence of events shows Mr Smakaj’s persistence in furthering obstruction efforts in SC proceedings, including by following orders from persons with political influence to whom he is loyal, such as Mr Thaçi. It also shows his ability and intent to obtain and misuse witness-related information to obstruct and interfere with SC proceedings.

75. Furthermore, Mr Smakaj’s awareness of the charges and evidence against him provide him further opportunities and incentives to pursue in obstruction efforts in the present proceedings.¹⁰⁵

76. The Pre-Trial Judge makes these findings bearing in mind the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.¹⁰⁶

77. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Smakaj may obstruct the progress of criminal proceedings.

78. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge is of the view that the relevant factors to be considered are the same as those recited in paragraphs 74-75 above with respect to the obstruction of proceedings. The Pre-Trial Judge is mindful that the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, but considers that, seeing the nature of the charges confirmed against

¹⁰⁴ Confirmation Decision, paras 152-153.

¹⁰⁵ See *similarly, among many, Januzi First Detention Decision*, paras 54-55; *Januzi Second Detention Decision*, para. 27.

¹⁰⁶ See *similarly supra*, para. (a)51 above, with references.

Mr Smakaj, the factors underpinning the former are of relevance to the assessment of the latter.¹⁰⁷ In particular, the Pre-Trial Judge finds that there exists a risk that Mr Smakaj will repeat the offences alleged to have been committed by him.

79. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that the Mr Smakaj may commit further offences.

80. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Smakaj may flee, obstruct the progress of the criminal proceedings, or commit further offences, therefore necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

d. Mr Fazliu

81. As regards the flight risk under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge considers that the gravity of the offences with which Mr Fazliu is charged in the present proceedings, together with the potential sentence that these offences could attract,¹⁰⁸ are important factors in the assessment of the flight risk, and provide Mr Fazliu, in principle, with a motive to evade justice.¹⁰⁹ Furthermore, seeing the nature of the charges confirmed against him, the Pre-Trial Judge underlines that Mr Fazliu has demonstrated a blatant disregard for the laws and rule of the SC. Having said that, the Pre-Trial Judge is mindful that the risk of flight cannot be gauged solely on the grounds of the severity of the prison sentence faced, but must be assessed with reference to other relevant factors justifying detention.¹¹⁰

¹⁰⁷ See *similarly among many*, *Kilaj* Release Decision, para. 49; *Januzi and Bahtijari* Arrest Decision, para. 22; *Januzi* First Detention Decision, paras 37, 61.

¹⁰⁸ The Pre-Trial Judge observes that the offence of obstructing official persons performing official duties, in its aggravated form, foresees a sentence of imprisonment up to five (5) years (Article 401(5) of the KCC). In this regard, the Pre-Trial Judge also observes that Messrs Gucati and Haradinaj, who were similarly charged in Case 07 with offences against the administration of justice, were finally sentenced to several years of imprisonment, sentences that Mr Fazliu is likely aware of.

¹⁰⁹ See *similarly*, *Haradinaj* Detention Appeals Decision, para. 61.. See *similarly*, *Januzi* First Detention Decision, para 43;

¹¹⁰ See *similarly among many*, *Januzi* First Detention Decision, para. 43, with references.

82. As regards the opportunity to evade justice, the Pre-Trial Judge considers that, in principle, Mr Fazliu would have the opportunity to flee by travelling freely to jurisdictions without extradition agreements with Kosovo, and therefore, beyond the reach of the SC.¹¹¹ [REDACTED].¹¹²

83. As regards Mr Fazliu's means to evade justice, the Pre-Trial Judge considers that Mr Fazliu has close ties with former KLA commanders, such as Mr Thaçi, [REDACTED], and Salih Mustafa,¹¹³ who is currently serving a SC prison sentence of fifteen (15) years for the war crimes of arbitrary detention, torture and murder.¹¹⁴ The Pre-Trial Judge also considers Mr Fazliu's long-standing political career, until as recent as 2019. In particular, the Pre-Trial Judge notes Mr Fazliu's political activism as a candidate, together with other known KLA veterans such as [REDACTED],¹¹⁵ as well as his co-Accused in the present case, Mr Kuçi, in a coalition involving Mr Thaçi's historical party, the Democratic Party of Kosovo ("DPK"), [REDACTED].¹¹⁶ The Pre-Trial Judge is therefore persuaded that Mr Fazliu can obtain the support of KLA veterans with rooted political influence, and other government officials and individuals with security, police, and intelligence expertise, who may assist him to secure access to significant resources, including funds, information, and documents to flee, including by crossing borders unlawfully.¹¹⁷

84. Against this backdrop, the Pre-Trial Judge considers that the fact that Mr Fazliu seemingly has rooted family ties in Kosovo only *partially* mitigates and

¹¹¹ See *similarly, supra* para. 70 with references.

¹¹² [REDACTED].

¹¹³ See Supplemental Submissions on Messrs Smakaj, Fazliu and Kuçi, paras 6, 8, with further references to Annex 2.

¹¹⁴ See KSC-CA-2023-02, F00045, Court of Appeals Panel, *Decision on New Determination of Salih Mustafa's Sentence*, 10 September 2024, public.

¹¹⁵ [REDACTED].

¹¹⁶ Supplemental Submissions on Messrs Smakaj, Fazliu and Kuçi, para. 7, with further references to Annex 2.

¹¹⁷ See *Smakaj and Fazliu Arrest and Transfer Request*, para. 7. See *similarly, supra*, paras (a)48, (a)71.

does not diminish the risk that he may flee, particularly seeing the role of his son, Fahri Fazliu (“Fazliu’s Son”), in the facts and the charges alleged against Mr Fazliu.¹¹⁸

85. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Fazliu presents a risk of flight.

86. As regards the obstruction of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls, at the outset, her findings in the Confirmation Decision as to the existence of a well-grounded suspicion that Mr Fazliu was part of a group, including Mr Fazliu himself, and Mr Thaçi, the leader of the group, aiming to unlawfully influence the testimony of SPO witnesses in the *Thaçi et al.* trial.¹¹⁹ In particular, the Pre-Trial Judge recalls that: (i) on 2 July 2023, Mr Fazliu participated in a visit to Mr Thaçi at the SC Detention Facilities in which Mr Thaçi directed Mr Fazliu to provide instructions to Witness 1 on how to testify in the upcoming testimony in the proceedings in Case 06 (“2 July 2023 Visit”) and (ii), in response, Mr Fazliu proposed, and agreed with Mr Thaçi, to send Fazliu’s Son to deliver Mr Thaçi’s instructions to Witness 1. The Pre-Trial Judge also recalls that, as found in the Confirmation Decision, the day after the 2 July 2023 Visit, Fazliu’s Son exchanged messages with Witness 1 to arrange a meeting between Mr Fazliu, Fazliu’s Son and Witness 1 for later that day.¹²⁰ Taking also note that, about a week before the 2 July Visit 2023 Visit, Fazliu’s Son had already exchanged messages on two separate occasions with Witness 1, the Pre-Trial Judge considers that the above-described sequence of events shows: (i) Mr Fazliu’s potential knowledge of the instructions that Mr Thaçi provided in the 2 July 2023 Visit and his intention to pursue them; (ii) his persistence in furthering obstruction efforts in SC proceedings by furthering the interests and the orders of senior KLA leadership; and (iii) his

¹¹⁸ Confirmation Decision, paras 125-127.

¹¹⁹ Confirmation Decision, para. 195.

¹²⁰ Confirmation Decision, paras 125-127.

ability to gain consent from people loyal to him, in pursuing such endeavours, including but not only Fazliu's Son.

87. Furthermore, Mr Fazliu's awareness of the charges and evidence against him provide him further opportunities and incentives to pursue in obstruction efforts in the present proceedings.¹²¹

88. The Pre-Trial Judge makes the considerations bearing in mind the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.¹²²

89. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Fazliu may obstruct the progress of criminal proceedings.

90. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge is of the view that the relevant factors to be considered are the same as those recited in paragraphs 86-87 above with respect to the obstruction of proceedings. The Pre-Trial Judge is mindful that the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, but considers that, seeing the nature of the charges confirmed against Mr Fazliu, the factors underpinning the former are of relevance to the assessment of the latter.¹²³ In particular, the Pre-Trial Judge finds that there exists a risk that the Mr Fazliu will repeat the offences alleged to have been committed by him.

91. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that Mr Fazliu may commit further offences.

92. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Fazliu may flee, obstruct the progress

¹²¹ See, among many, *Januzi* First Detention Decision, paras 54-55; *Januzi* Second Detention Decision, para. 27.

¹²² See similarly, *supra*, para. (a)76 with references.

¹²³ See similarly, *Kilaj* Release Decision, para. 49; *Januzi* and *Bahtijari* Arrest Decision, para. 22; *Januzi* First Detention Decision, paras 37, 61.

of the criminal proceedings, or commit further offences, therefore necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

e. Mr Kuçi

93. As regards the flight risk under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge recalls that the gravity of the offences charged, together with the potential sentence, is an important factor when assessing the flight risk, in particular with respect to the Accused's motive to flee justice.¹²⁴ In this regard, the Pre-Trial Judge takes into consideration that in the Confirmation Decision she declined to confirm the count of obstruction of official person, but has found that there is a well-grounded suspicion that Mr Kuçi is criminally responsible for two counts of contempt of court, punishable by a fine or imprisonment up to six (6) months.¹²⁵ The Pre-Trial Judge considers that, notwithstanding Mr Kuçi's connections to Messrs Thaçi and Veseli, his long-standing political career and the means and ability to travel undetected, including to Albania,¹²⁶ the relative gravity of the offence and related low potential sentence gives Mr Kuçi little motive and/or incentive to flee from such potential punishment.

94. Therefore, the present circumstances, Mr Kuçi does not present a risk of flight.

95. As regards the risk of obstruction of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls, at the outset, her findings in the Confirmation Decision as to the existence of a well-grounded suspicion that Mr Kuçi has engaged in contempt offences in the SC proceedings.¹²⁷ The Pre-Trial Judge considers that Mr Kuçi has demonstrated the ability and the intent to misuse confidential information in violation of court orders, for the purpose of furthering obstructive

¹²⁴ See similarly, *Haradinaj* Detention Appeals Decision, para. 61.

¹²⁵ Confirmation Decision, paras 250, 257, 260, 300-301.

¹²⁶ See *Kuçi* Arrest and Transfer Request, paras 7-10; First Supplement to Arrest Requests, paras 2-4; Supplemental Submissions on Messrs Smakaj, Fazliu and Kuçi, para. 19, with references to Annex 2.

¹²⁷ Confirmation Decision, paras 250, 257, 260, 300-301.

behaviour in the SC proceedings. However, the Pre-Trial Judge is of the view that, once he becomes aware of the more lenient penalty attached to the offences he is charged with, when compared to the more serious penalties faced by his co-Accused, Mr Kuçi will have little incentive to persevere in interferences with the SC proceedings, or obstruct his own proceedings.

96. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that there is no risk that Mr Kuçi may obstruct the progress of criminal proceedings.

97. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge is of the view that the relevant factors to be considered are the same as those recited in paragraph 95 above with respect to the obstruction of proceedings.¹²⁸

98. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that there is no risk that Mr Kuçi may commit further offences.

99. In light of the foregoing, the Pre-Trial Judge finds that there are no articulable grounds to believe that Mr Kuçi may flee, obstruct the progress of the criminal proceedings, or commit further offences, as to warrant his arrest and detention under Article 41(6)(b) of the Law.

100. Consequently, the Pre-Trial Judge finds that a summons to appear on Mr Kuçi, with the below conditions is sufficient to ensure his appearance at trial. Notably Mr Kuçi is ordered to:

- (a) respect the classification of the present decision and annexed summons and shall not release, disclose or otherwise discuss their contents, directly or indirectly, with any person, including his family, with the exception of his Counsel, until the present decision and summons have been made public upon order of the Pre-Trial Judge:

¹²⁸ See *similarly*, *Kilaj* Release Decision, para. 49; *Januzi and Bahtijari* Arrest Decision, para. 22; *Januzi* First Detention Decision, paras 37, 61.

- (b) appear in person before the SC on **Monday, 09 December 2024 at 10:00**, unless otherwise ordered;
- (c) refrain from discussing with any person, with the exception of his Counsel, issues related to the charges which form the basis of the present summons, or the evidence and information presented by the SPO and considered by the SC in the proceedings against him;
- (d) refrain, at this stage and until further order, from any contact or communication, direct or indirect (through any other person), of any kind and through any means, with any (potential) witness or victim in the present case or any other cases before the SC;
- (e) refrain from making, directly or indirectly (for example, through family members), any public statement to the media and/or on social media regarding the present proceedings, the SC, the SPO and/or any other SC proceedings, including any statements involving threats, force, or intimidation of witnesses and obstruction of criminal investigation;
- (f) abide by any restriction to his movements on the territory of the Host State, which may be imposed on him by the Host State, during the period of his stay thereon; and
- (g) comply, in any case, with all the instructions of the Registrar for the purposes of his appearance before the SC.

101. Having been duly summonsed, should Mr Kuçi fail to attend this forthcoming hearing, without authorisation by the SC and showing of good cause, or should he fail to abide by any (other) condition set out in the summons, the Pre-Trial Judge will issue an arrest warrant and order Mr Kuçi's detention, as provided in Rule 68(3) of the Rules.

102. The Pre-Trial Judge reserves her authority to review the above findings either *proprio motu* or at the request of the SPO, particularly if Mr Kuçi fails to

appear on the date specified in the summons or fails to comply with the orders contained therein.

3. Conclusion

103. To conclude, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Thaçi, Kilaj, Smakaj and Fazliu have committed offences under the jurisdiction of the SC, and there are articulable grounds to believe that they may flee, obstruct the progress of criminal proceedings, and commit further offences, warranting their arrest and detention under Article 41(6)(a)-(b) of the Law (“Arrestees”).

104. The Pre-Trial Judge also finds that there is a well-grounded suspicion that Mr Kuçi has committed offences under the jurisdiction of the SC. However, the Pre-Trial Judge finds that there are no articulable grounds to believe that he may flee, obstruct the progress of the criminal proceedings, or commit further offences, warranting Mr Kuçi’s arrest and detention under Article 41(6)(b) of the Law. The Pre-Trial Judge finds that a summons to appear, under the conditions set forth in paragraphs 99-102 of the present decision, is sufficient to ensure his presence before the SC.

E. COMPLIANCE WITH FUNDAMENTAL RIGHTS

105. Insofar as the SPO undertakes to adopt appropriate measures that will protect the fundamental rights of the Accused when executing the arrest warrants, and/or serving the summons to appear, the Pre-Trial Judge finds that they are consistent with the fundamental rights provided for in Chapter II of the Constitution. To this effect, in accordance with Article 41(4) and (5) of the Law, and Rule 55(6) of the Rules, as soon as: (i) Messrs Smakaj, Fazliu, and Kilaj are in custody and fall under the jurisdiction of the SC; (ii) Mr Thaçi is served with the annexed arrest warrant; and (ii) Mr Kuçi is served with the annexed summons to

appear, they shall be informed of their rights under the Law with a view to exercising them before the Pre-Trial Judge as soon as practicable.

F. ORDER FOR TRANSFER TO THE SC DETENTION FACILITIES AND RELATED MATTERS

106. For security reasons, the SPO has invoked a change of venue to the Host State pursuant to Article 3(8)(a) of the Law.¹²⁹ In light of this venue change,¹³⁰ the Pre-Trial Judge considers it necessary that Messrs Smakaj, Fazliu, and Kilaj are transferred to the SC Detention Facilities, managed by the Registrar, in the Host State. Pursuant to Article 41(7) of the Law and Rule 55(4) of the Rules, the Registrar shall execute the order for transfer to the SC Detention Facilities in the Host State, making the necessary arrangements for their prompt transfer (“Transfer Orders”).

107. As regards Mr Thaçi, insofar as he is already detained, the Pre-Trial Judge finds that his transfer to the SC Detention Facilities is moot. Concerning Mr Kuçi, in light of the findings made in 99-102 the Pre-Trial Judge rejects the SPO request for his transfer.

108. [REDACTED].

G. EXECUTION AND SERVICE OF THE ORDERS

109. Pursuant to Article 35(3) of the Law, the police within the SPO has the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law. It may therefore be considered a “competent authority” under Rule 49(1) of the Rules, capable of executing and serving orders and/or summons of the SC, including the annexed arrest warrants and summons¹³¹ for Messrs Smakaj, Fazliu, Kilaj and Kuçi, in Kosovo.

¹²⁹ Submission of Initial Indictment, para. 5. In light of the Decision on Change of Venue, the request is moot.

¹³⁰ Decision on Change of Venue, para. 8.

¹³¹ In notifying the SPO of the present decision, along with the five annexes, through Legal Workflow, the transmission of the relevant documents to the SPO is deemed fulfilled pursuant to Rules 49(1) and 55(1) of the Rules.

110. As regards the arrest warrant for Mr Thaçi, the Registrar shall serve, upon consultation with the SPO, said document on him in the SC Detention Facilities.¹³²

The Registrar shall do so while ensuring that the security and implementation of the arrest operations is not compromised.

111. It is recalled that the Registrar will serve the Confirmed Indictment on the Accused. Together with the Confirmed Indictment, and/or, in any event, as soon as possible after their arrest and prior to their initial appearance, the Registrar shall also serve on the Arrestees the present decision in Albanian.

112. In accordance with Rule 49(1) of the Rules, the Registrar shall transmit the Transfer Orders in cooperation with the SPO. The SPO may, as appropriate and necessary, disclose the arrest warrants and summons for the purposes of their execution and service.

113. If the SPO receives information about the travels of Messrs Smakaj, Fazliu, Kilaj and Kuçi, whether planned or ongoing, or that they are present on the territory of any Third State, the SPO shall promptly provide such information to the Registrar. If the Registrar receives such information from a source other than the SPO, she shall promptly provide any such information to the SPO. The Registrar shall thereafter, having consulted with the SPO, transmit the annexed arrest warrants and/or summons to the competent authorities of any Third State concerned, in conformity with Article 55 of the Law. If this is the case, the Pre-Trial Judge clarifies that the Registrar may, as appropriate and necessary, disclose the annexed arrest warrants and/or summons and the Transfer Orders, as the case may be, for the purposes of their execution and service.

114. Upon arrival of Messrs Smakaj, Fazliu and Kilaj at the SC Detention Facilities, and/or upon serving the annexed arrest warrant and summons to Messrs Thaçi and Kuçi, respectively, or, in any case before the initial appearance of the

¹³² See Articles 34(10), (12) and 41(7) of the Law.

Accused, the Registrar shall submit to the Pre-Trial Judge a report on: (i) the arrest and transfer of Messrs Smakaj, Fazliu and Kilaj; (ii) the service of the arrest warrant to Mr Thaçi; and (iii) the service of the summons to Mr Kuçi, including any relevant details and information provided by the SPO. In case the arrests and transfers of Messrs Smakaj, Fazliu and Kilaj, and/or the service of the summons on Mr Kuçi are effectuated in/from a Third State, the report shall contain any information regarding the basis on which that Third State has agreed or may have assumed an obligation to provide assistance to the SC.

H. INITIAL APPEARANCE

115. Pursuant to Rule 87(6) of the Rules, the initial appearance pursuant to Rule 92 of the Rules shall take place within seven (7) days of the service of the indictment upon the accused or, where the accused has absconded, within three (3) days of his or her arrest, whichever is later. Accordingly, an order scheduling the first appearance of the Arrestees will be issued in due course.

116. In turn, Mr Kuçi is ordered to appear before the SC on **Monday, 09 December 2024 at 10:00**, unless otherwise ordered, as set in paragraph 100(b) and further specified in the annexed summons to appear. The Registrar shall provide Mr Kuçi with all the necessary instructions and shall make all necessary practical arrangements for the purpose of his initial appearance before the SC.

117. Considering that the current proceedings are *ex parte*, the Pre-Trial Judge invites the Parties to make submissions on the issue of detention at the initial appearance, including any conditions for release, if so requested.

I. RECLASSIFICATION OF FILINGS

118. In light of the publicity of the proceedings the Pre-Trial Judge orders the SPO to file, **by no later than Friday, 13 December 2024, at 16:00**, public redacted versions of the following filings, or indicate whether they can be reclassified as public:

- (a) *Smakaj and Fazliu* Arrest Request, KSC-BC-2023-12/F00003;
- (b) Submissions on *Thaçi*, KSC-BC-2023-12/F00009;
- (c) *Kuçi* Arrest and Transfer Request, KSC-BC-2023-12/F00018, including any annex;
- (d) First Supplement to Arrest Requests, KSC-BC-2023-12/F00021; and
- (e) Second Supplement to Arrest Requests, KSC-BC-2023-12/F00023, including any annex.

V. DISPOSITION

119. For the above reasons, the Pre-Trial Judge hereby:

- (a) **GRANTS** the *Smakaj and Fazliu* Arrest and Transfer Request;
- (b) **REJECTS** the *Kilaj* Return Request;
- (c) **REJECTS** the *Kuçi* Arrest and Transfer Request;
- (d) **ISSUES** the annexed arrest warrants, Transfer Orders, and summons to appear for the Accused;
- (e) **TERMINATES** Mr Kilaj's conditional release in Kosovo, and orders the Registrar to: (i) implement all necessary practical arrangements as expeditiously as possible to return the financial security paid by Mr Kilaj for his release; (ii) hand over the passport surrendered by Mr Kilaj pursuant to the *Kilaj* Release Decision, to the custody of the SC Detention Facilities; (iii) liaise with the Kosovo authorities in

relation to any matter arising from the *Kilaj* Release Decision, as necessary; and (iv) inform the Pre-Trial Judge accordingly once such arrangements have been duly completed, as specified in paragraph 68;

- (f) **DIRECTS** the SPO to serve and execute the annexed arrest warrants for Messrs Smakaj, Fazliu, and Kilaj in Kosovo, as specified in paragraph 109;
- (g) **DIRECTS** the Registrar to serve the annexed arrest warrant for Mr Thaçi in the SC Detention Facilities, as specified in paragraph 110;
- (h) **DIRECTS** the SPO to serve the annexed summons to appear for Mr Kuçi in Kosovo, as specified in paragraph 109;
- (i) **DIRECTS** the Registrar to serve the present decision in Albanian on the Arrestees, when serving the Confirmed Indictment, as specified in paragraph 111;
- (j) **DIRECTS** the Registrar, in consultation with the SPO, to transmit the annexed arrest warrant(s) and transfer order(s), as well as the annexed summons to appear, if applicable, to the competent authorities of any Third State, for service and execution, as specified in paragraph 113;
- (k) **DIRECTS** the SPO to consult with the Registrar on the necessary arrangements to be made, including any appropriate and necessary disclosure of the arrest warrants, for their execution and service, as specified in paragraph 109;
- (l) **DIRECTS** the Registrar to execute the transfer of Messrs Smakaj, Fazliu, and Kilaj to the SC Detention Facilities in the Host State, as specified in paragraph 106;

- (m) [REDACTED].
- (n) **DIRECTS** the Registrar, upon arrival of Messrs Smakaj, Fazliu, and Kilaj at the SC Detention Facilities, and/or upon serving the annexed arrest warrant and summons to Messrs Thaçi and Kuçi, respectively, or, in any case before the initial appearance of the Accused, to submit a report on: (i) the arrest and transfer of Messrs Smakaj, Fazliu and Kilaj; (ii) the service of the arrest warrant to Mr Thaçi; and (iii) the service of the summons to Mr Kuçi, as specified in paragraph 114;
- (o) **SETS** the date for the initial appearance of Mr Kuçi on **Monday, 09 December 2024 at 10:00**, unless otherwise ordered, as specified in paragraph 116;
- (p) **INSTRUCTS** the Registrar to provide Mr Kuçi with all the necessary instructions and shall make all necessary practical arrangements for the purpose of his initial appearance before the SC, as specified in paragraph 116; and
- (q) **ORDERS** the SPO to file, **by no later than Friday, 13 December 2024, at 16:00** public redacted versions of the filing listed in paragraph 118 and/or indicate whether they can be reclassified as public.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Friday, 29 November 2024

At The Hague, the Netherlands.