



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

**Date:** 7 February 2025

**Language:** English

**Classification:** Public

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**Decision on Review of Detention of Fadil Fazliu**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 41(6), (10) and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

## I. PROCEDURAL BACKGROUND

1. On 5 December 2024, Fadil Fazliu ("Mr Fazliu" or "Accused") was arrested in Kosovo<sup>2</sup> pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge ("Decision on Arrest"),<sup>3</sup> following a request by the Specialist Prosecutor's Office ("SPO"),<sup>4</sup> and further to the confirmation of an indictment against him, Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj, Isni Kilaj, and Hajredin Kuçi ("Confirmation Decision").<sup>5</sup> On the same day, the Registrar assigned Michiel Pestman as Duty Counsel to the Accused.<sup>6</sup>

2. On 8 December 2024, at the initial appearance of Mr Fazliu,<sup>7</sup> the Pre-Trial Judge ordered Mr Fazliu's continued detention ("First Detention Decision")<sup>8</sup> and set the

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<sup>1</sup> KSC-BC-2023-12, F00015, President, [Decision Assigning a Pre-Trial Judge](#), 6 June 2024, public.

<sup>2</sup> KSC-BC-2023-12, F00045, Registrar, *Notification of Arrest of Fadil Fazliu Pursuant to Rule 55(4)*, 5 December 2024, public.

<sup>3</sup> KSC-BC-2023-12, F00037, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Related Matters*, 29 November 2024, confidential, with Annexes 1-8, confidential. A public redacted version of the main filing was issued on 19 December 2024, [F00037/RED](#).

<sup>4</sup> KSC-BC-2023-12, F00003, Specialist Prosecutor, *Requests for Warrants of Arrest and Related Requests*, 31 January 2024, strictly confidential and *ex parte*. A confidential redacted version was filed on 27 November 2024, F00003/CONF/RED. A public redacted version was filed on 13 December 2024, F00033/RED; F00021, Specialist Prosecutor, *Prosecution Supplemental Submissions Concerning Requests for Arrest Warrants (F00003 & F00018)*, 2 September 2024, public.

<sup>5</sup> KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, confidential.

<sup>6</sup> KSC-BC-2023-12, F00051, Registrar, *Notification of Assignment of Duty Counsel to Fadil Fazliu*, 6 December 2024, public, with Annex 1, confidential.

<sup>7</sup> KSC-BC-2023-12, Transcript of Hearing ("Initial Appearance Transcript"), 8 December 2024, pp. 45-69, public.

<sup>8</sup> See Initial Appearance Transcript, p. 68, lines 8-9.

briefing schedule for the Parties' submissions in relation to the review of Mr Fazliu's detention.<sup>9</sup>

3. On 21 January 2025, in line with the Pre-Trial Judge's order, the SPO made submissions on review of detention ("SPO Submissions").<sup>10</sup>

4. The Defence for Mr Fazliu ("Fazliu Defence") did not file submissions on Mr Fazliu's detention.<sup>11</sup>

## II. SUBMISSIONS

5. The SPO submits that Mr Fazliu's continued detention remains justified and necessary,<sup>12</sup> as there has been no relevant change in circumstances that warrants deviating from the determinations made by the Pre-Trial Judge in the Decision on Arrest and the First Detention Decision.<sup>13</sup> According to the SPO: (i) there is a well-grounded suspicion that Mr Fazliu has committed a crime within the jurisdiction of the Specialist Chambers ("SC");<sup>14</sup> and (ii) the grounds for his detention under Article 41(6)(b) of the Law continue to apply.<sup>15</sup> In particular, the SPO avers that Mr Fazliu's awareness of the charges, and continued disclosure, providing Mr Fazliu with further access to sensitive information and demonstrating the full scope of the charges, reinforces the necessity of his detention.<sup>16</sup> The SPO further submits that: (i) no modalities of conditional release are able to sufficiently mitigate the existing risks;<sup>17</sup> and (ii) given the stage of the proceedings, and the progress

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<sup>9</sup> See Initial Appearance Transcript, p. 68, line 24 to p. 69, line 13.

<sup>10</sup> KSC-BC-2023-12, F00129, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Fadil Fazliu* ("SPO Submissions"), 21 January 2025, public.

<sup>11</sup> The Pre-Trial Judge recalls her considerations in paragraphs 27-31, and 32(b) of decision KSC-BC-2023-12, F00137, Pre-Trial Judge, *Decision on the Registrar's Referral Pursuant to Section 12(5) of the Directive on Counsel*, 27 January 2025, public.

<sup>12</sup> SPO Submissions, paras 11.

<sup>13</sup> SPO Submissions, para. 13.

<sup>14</sup> SPO Submissions, paras 11, 12-13.

<sup>15</sup> SPO Submissions, paras 11, 14-16, 17-19, 20-21.

<sup>16</sup> SPO Submissions, paras 15, 18-19, 21.

<sup>17</sup> SPO Submissions, paras 22-27.

already made, Mr Fazliu's detention remains reasonable and proportional.<sup>18</sup> Based on the above, the SPO submits that Mr Fazliu should remain in detention.<sup>19</sup>

### III. APPLICABLE LAW

6. 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 he or she has committed a crime within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is a risk of flight; (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 the person has threatened to commit.

7. Pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, until a judgment is final or until release, upon expiry of two (2) months from the last ruling on detention on remand, the Panel seized with the case shall examine whether reasons for detention on remand still exist, and render a ruling by which detention on remand is extended or terminated.

8. Pursuant to Article 41(12) of the Law, in addition to detention on remand, the following measures may be ordered by the SC to ensure the presence of the accused, including by video-conference, to prevent reoffending or to ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

9. Pursuant to Rule 56(2) of the Rules, the Pre-Trial Judge shall ensure that a person is not detained for an unreasonable period prior to the opening of the case,

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<sup>18</sup> SPO Submissions, para. 28.

<sup>19</sup> SPO Submissions, para. 29.

and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

#### IV. DISCUSSION

##### A. APPLICABLE STANDARD

10. The Pre-Trial Judge recalls that she has an obligation, under Article 41(10) of the Law, to examine, every two (2) month, whether the reasons for detention on remand continue to exist,<sup>20</sup> including the grounds set out in Article 41(6) of the Law, namely whether: (i) there is a grounded suspicion that the person has committed the crime(s) under Article 41(6)(a) of the Law; and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law are present.<sup>21</sup> The duty to determine whether the circumstances underpinning detention still exist imposes on the Pre-Trial Judge the task to, *proprio motu*, assess whether she is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the person remains warranted.<sup>22</sup> This two (2)-month automatic review is not strictly limited to whether or not a change of circumstances occurred, but such a change can be determinative and shall be taken into consideration if raised by a Party or *proprio motu*.<sup>23</sup> Furthermore, the Pre-Trial Judge may refer to findings in previous decisions if she is satisfied that the

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<sup>20</sup> See, for example, KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, [Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention](#) ("First Haradinaj Detention Appeal Decision"), 9 February 2021, public, para. 55; KSC-BC-2020-06, IA006/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention](#) ("Second Krasniqi Detention Appeal Decision"), 1 October 2021, public, para. 15; KSC-BC-2020-04, F00224/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#) ("Sixth Shala Detention Decision"), 22 June 2022, public, para. 19.

<sup>21</sup> See, for example, [Sixth Shala Detention Decision](#), para. 19; [First Haradinaj Detention Appeal Decision](#), para. 55. See also KSC-BC-2020-04, F00075/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#) ("Second Shala Detention Decision"), 10 September 2021, public, para. 19; KSC-BC-2020-07, F00143, Pre-Trial Judge, [Decision on Review of Detention of Hysni Gucati](#), 24 February 2021, public, para. 17.

<sup>22</sup> [Second Krasniqi Detention Appeal Decision](#), para. 15; [Sixth Shala Detention Decision](#), para. 19.

<sup>23</sup> See [Second Krasniqi Detention Appeal Decision](#), para. 16; [Sixth Shala Detention Decision](#), para. 19.

evidence or information underpinning those decisions still supports the findings made at the time of the review.<sup>24</sup> The Pre-Trial Judge is neither required to make findings on the factors already decided upon in the initial ruling on detention, nor to entertain submissions that merely repeat arguments that have already been addressed in earlier decisions.<sup>25</sup>

11. The Pre-Trial Judge likewise underscores that any analysis of Mr Fazliu's detention must duly consider his presumption of innocence.<sup>26</sup> This means, as a consequence, that his detention cannot be taken lightly and that the SPO bears the burden of establishing that the detention of the person is necessary.<sup>27</sup> This also means that the SPO must provide specific arguments and concrete evidence to establish that continued detention is necessary at the time of the review.<sup>28</sup>

## B. GROUNDED SUSPICION

12. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion<sup>29</sup> that the detained person has committed a crime

<sup>24</sup> KSC-BC-2020-04, IA003/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention](#) ("Second Shala Detention Appeal Decision"), 11 February 2022, public, para. 18. See also [Sixth Shala Detention Decision](#), para. 19.

<sup>25</sup> [First Haradinaj Detention Appeal Decision](#), para. 55; [Second Krasniqi Detention Appeal Decision](#), para. 17; [Second Shala Detention Appeal Decision](#), para. 18; [Sixth Shala Detention Decision](#), para. 19.

<sup>26</sup> See KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release](#) ("First Thaçi Detention Decision"), 22 January 2021, para. 18; KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, [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](#) ("SCCC 26 April 2017 Judgment"), 26 April 2017, public, para. 113. Similarly, ECtHR, [McKay v. the United Kingdom](#), no. 543/03, Judgment, 3 October 2006, para. 43.

<sup>27</sup> See, for example, KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release](#) ("First Shala Detention Decision"), 23 June 2021, public, para. 13; [First Thaçi Detention Decision](#), para. 19, with further references. See also ECtHR, [Merabishvili v. Georgia](#), no. 72508/13, Judgment ("Merabishvili v. Georgia"), 28 November 2017, para. 234.

<sup>28</sup> [Sixth Shala Detention Decision](#), para. 19.

<sup>29</sup> See Article 19(1)(1.9) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ("KCPC"). See similarly, Article 5(1)(c) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in, *inter alia*, ECtHR, [Fox, Campbell and Hartley v. United Kingdom](#), nos 12244/86; 12245/86; 12383/86, Judgment, 30 August 1990, para. 32; [Erdagöz v. Turkey](#), no. 21890/93, Judgment, 22 October 1997, para. 51; [Ilgar Mammadov v. Azerbaijan](#), no. 15172/13, Judgment, 22 May 2014, para. 88; [Selahattin Demirtaş \(No. 2\) v. Turkey](#), no. 14305/17, Judgment, 22 December 2020, para. 314.



within the SC's jurisdiction. This is a condition *sine qua non* for the validity of the detained person's continued detention.<sup>30</sup>

13. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Fazliu is criminally responsible for offences within the jurisdiction of the SC, namely obstructing official persons in performing official duties and contempt of court within the meaning of Articles 401(2) and (5), and 393 of the 2019 Kosovo Criminal Code, Code No. 06/L-074, respectively, in violation of Article 15(2) of the Law.<sup>31</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.<sup>32</sup> The Pre-Trial Judge notes that there have been no developments in the case negating these findings.

14. Therefore, in the absence of any contrary intervening information or developments, the Pre-Trial Judge finds that there continues to exist a grounded suspicion that Mr Fazliu has committed offences within the jurisdiction of the SC for the purposes of Article 41(6)(a) of the Law.<sup>33</sup>

#### C. NECESSITY OF DETENTION

15. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be *articulable* in the sense that they must be specified in detail.<sup>34</sup> In this regard, Article 41(6)(b) of the Law echoes the principle that the continued detention of a person can only be justified if there are

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<sup>30</sup> [First Shala Detention Decision](#), para. 14. See also ECtHR, [Merabishvili v. Georgia](#), para. 222.

<sup>31</sup> Confirmation Decision, para. 313(b).

<sup>32</sup> See Confirmation Decision, paras 42-43; [Decision on Arrest](#), para. 43. See similarly, [Second Shala Detention Decision](#), para. 22; [Sixth Shala Detention Decision](#), para. 24.

<sup>33</sup> See similarly, First Detention Decision in the Initial Appearance Transcript, p. 67, lines 8-10.

<sup>34</sup> See Article 19(1.31) of the KCPC, which defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". See also, for example, [First Shala Detention Decision](#), para. 16; KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, [Decision on Kadri Veseli's Appeal Against Decision on Interim Release](#) ("First Veseli Detention Appeal Decision"), 30 April 2021, public, paras 15, 18.

specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.<sup>35</sup> Therefore, the Panel must rely on case-specific reasoning and concrete grounds in deciding to continue detention.<sup>36</sup>

16. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>37</sup> that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.<sup>38</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>39</sup> The Pre-Trial Judge further observes that these grounds are in the alternative, and that the existence of one ground suffices to determine the necessity of detention.<sup>40</sup>

17. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Pre-Trial Judge recalls that, while the evaluation involves an element of discretion,<sup>41</sup> it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of the detained person.<sup>42</sup> When assessing

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<sup>35</sup> [SCCC 26 April 2017 Judgment](#), para. 113.

<sup>36</sup> See [SCCC 26 April 2017 Judgment](#), para. 115; [First Shala Detention Decision](#), para. 16; 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](#) ("First Thaçi Detention Appeal Decision"), 30 April 2021, public, para. 22. See also ECtHR, [Khudoyorov v. Russia](#), no. 6847/02, Judgment ("Khudoyorov v. Russia"), 8 November 2005, para. 173.

<sup>37</sup> See chapeau of Article 41(6)(b) of the Law.

<sup>38</sup> See similarly, [First Shala Detention Decision](#), para. 16; [Second Shala Detention Decision](#), para. 24; [Sixth Shala Detention Decision](#), para. 26; [First Thaçi Detention Decision](#), para. 20, with further references.

<sup>39</sup> See also, [First Veseli Detention Appeal Decision](#), para. 17; [First Shala Detention Decision](#), para. 16.

<sup>40</sup> See similarly, [First Shala Detention Decision](#), para. 20; [First Thaçi Detention Decision](#), para. 25.; KSC-BC-2023-12, IA001/F00005, Court of Appeals Panel, [Decision on Isni Kilaj's Appeal Against Decision on Continued Detention](#) ("Kilaj Detention Appeal Decision"), 28 January 2025, public, para. 17.

<sup>41</sup> See similarly, [First Thaçi Detention Decision](#), para. 21, with further references; [Kilaj Detention Appeal Decision](#), para. 16.

<sup>42</sup> See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references. See similarly, ECtHR, [Aleksanyan v. Russia](#), no. 46468/06, Judgment, 22 December 2008, para. 179.



the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.<sup>43</sup>

18. Lastly, in relation to the grounds set forth in Article 41(6)(b)(ii)-(iii) of the Law, the Pre-Trial Judge emphasises that the risks may materialise as a result of the detained person's acts or omissions, but they do not require physical execution on his or her part.<sup>44</sup>

## 1. Risk of Flight

19. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge finds that the considerations set out in the Decision on Arrest and First Detention Decision are still relevant, namely Mr Fazliu's: (i) awareness of the gravity of the offences he is charged with, together with the potential sentence that these offences could attract, if Mr Fazliu is convicted;<sup>45</sup> and (ii) demonstrated blatant disregard for the laws and the rules of the SC.<sup>46</sup>

20. The Pre-Trial Judge also recalls that Mr Fazliu has the opportunity to flee, by travelling freely to jurisdictions beyond the reach of the SC.<sup>47</sup> Furthermore, the Pre-Trial Judge recalls Mr Fazliu's means to evade justice.<sup>48</sup> In particular, the Pre-Trial Judge recalls her previous considerations as to the Accused's long-standing political career in Kosovo and close ties with former Kosovo Liberation Army ("KLA") commanders, including KLA veterans with rooted political influence, such as, and not only, Mr Thaçi.<sup>49</sup> Therefore, the Pre-Trial Judge remains persuaded that the Accused can rely on a significant network of influential individuals from whom he

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<sup>43</sup> See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references.

<sup>44</sup> See [First Shala Detention Decision](#), para. 19; [First Thaçi Detention Decision](#), para. 24.

<sup>45</sup> See [Decision on Arrest](#), para. 81, with references; First Detention Decision in the Initial Appearance Transcript, p. 67, lines 16-17.

<sup>46</sup> See [Decision on Arrest](#), para 81.

<sup>47</sup> See [Decision on Arrest](#), para. 82; First Detention Decision in the Initial Appearance Transcript, p. 67, lines 17-21.

<sup>48</sup> See [Decision on Arrest](#), para. 83; First Detention Decision in the Initial Appearance Transcript, p. 67, lines 17-21.

<sup>49</sup> See [Decision on Arrest](#), para. 83.

may seek and secure resources and support for the purpose of fleeing.<sup>50</sup> At this juncture, it is worth recalling that it is the risk, not the inevitability of flight, that must be assessed.<sup>51</sup>

21. In addition to the above, the Pre-Trial Judge attaches weight to the fact that, since his arrest, Mr Fazliu is aware of the indictment-supporting evidence against him, and is being progressively informed through disclosure of the full evidentiary record of his alleged criminal conduct.<sup>52</sup>

22. Lastly, the Pre-Trial Judge maintains her previous findings that: (i) Mr Fazliu's rooted family ties in Kosovo only partially mitigate and do not diminish the risk that he will flee, particularly seeing the potential role of his son, Fahri Fazliu ("Fazliu's Son"), in the charges alleged against Mr Fazliu in the present case; and (ii) his special medical care in Kosovo has no bearing on the flight risk, as, he can also be treated elsewhere.<sup>53</sup>

23. Therefore, in light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that the risk of flight in relation to Mr Fazliu continues to exist.

## **2. Risk of Obstructing the Progress of SC Proceedings**

24. As regards the risk of obstruction of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge finds that the circumstances set out in the Decision on Arrest and First Detention Decision continue to apply,<sup>54</sup> namely: (i) the nature of the charges confirmed against the Accused, who was part of a group, led by Mr Thaçi,

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<sup>50</sup> See [Decision on Arrest](#), para. 83; First Detention Decision in the Initial Appearance Transcript, p. 67, lines 17-21.

<sup>51</sup> See similarly, KSC-BC-2023-10, F00123/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Sabit Januzi's Request for Interim Release](#) ("First Januzi Detention Decision"), 8 December 2023, public, para. 48.

<sup>52</sup> See Disclosure Packages 6 and 8. See also, similarly, [Kilaj Detention Appeal Decision](#), para. 42.

<sup>53</sup> See [Decision on Arrest](#), para. 84; First Detention Decision in the Initial Appearance Transcript, p. 68, lines 1-2.

<sup>54</sup> See [Decision on Arrest](#), para. 86; First Detention Decision in the Initial Appearance Transcript, p. 68, lines 3-7.

aiming at unlawfully influencing witnesses;<sup>55</sup> (ii) Mr Fazliu's demonstrated knowledge of Mr Thaçi's obstructive intentions, and his own intention to pursue them; (iii) his persistence and proneness to obstruct the SC proceedings by furthering the senior KLA leadership's interests and orders,<sup>56</sup> and (iv) his ability to gain consent from people loyal to him, including and not only Fazliu's Son, for the purpose of obstructing SC proceedings.<sup>57</sup>

25. Further to the above, the Pre-Trial Judge considers important the fact that the Accused is gaining increased awareness of the incriminating evidence against him in this case.<sup>58</sup> In this regard, considering Mr Fazliu's past position within the KLA,<sup>59</sup> the Pre-Trial Judge is persuaded that, as a result of the ongoing disclosure, the Accused has further incentive to interfere with the witness. In this respect, the Pre-Trial Judge underscores that the risk of obstruction need not materialise in Mr Fazliu personally approaching Witness 1 and/or other witnesses, but may materialise, for instance, through further coordination with Fazliu's Son, and/or other associates from within his KLA network and/or political circles.<sup>60</sup>

26. In this regard, the Pre-Trial Judge underlines that she assesses the above factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.<sup>61</sup> The Pre-Trial Judge considers

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<sup>55</sup> [Decision on Arrest](#), para. 86, with further explanations; *see similarly*, [Kilaj Detention Appeal Decision](#), para. 43.

<sup>56</sup> *See* [Decision on Arrest](#), para. 86; First Detention Decision in the Initial Appearance Transcript, p. 68, lines 3-7.

<sup>57</sup> *See* [Decision on Arrest](#), para. 86; First Detention Decision in the Initial Appearance Transcript, p. 68, lines 3-7.

<sup>58</sup> *See similarly*, [Kilaj Detention Appeal Decision](#), para. 44.

<sup>59</sup> *See* [Decision on Arrest](#), para. 83.

<sup>60</sup> *See supra*, para. 20. *See similarly*, [First Januzi Detention Decision](#), para. 54.

<sup>61</sup> *See* [Decision on Arrest](#), para. 88, with references; First Detention Decision in the Initial Appearance Transcript, p. 68, lines 3-7.

that, in this context, the risk of Mr Fazliu exerting pressure on witnesses is particularly high,<sup>62</sup> in light of his ties, as referenced above.

27. Therefore, in light of the above, and in the absence of any contrary intervening information, Pre-Trial Judge concludes that the risk that Mr Fazliu will obstruct the progress of SC proceedings continues to exist.

### 3. Risk of Committing Further Crimes

28. As regards the risk of committing further offences under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further offences, the factors underpinning the former are of relevance to the assessment of the latter in the present circumstances.<sup>63</sup> In this regard, the Pre-Trial Judge notes that the relevant factors to be considered are the same as those outlined in paragraphs 24-26 above with respect to the risk of obstruction of proceedings.

29. For these reasons, the Pre-Trial Judge finds that there exists a risk that the Accused will repeat the offences he is alleged to have committed.<sup>64</sup>

30. Therefore, in light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that the risk that Mr Fazliu will commit further crimes continues to exist.

### 4. Conclusion

31. In view of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that Mr Fazliu may flee, obstruct the progress of the SC proceedings, and commit further offences, thus necessitating Mr Fazliu's continued

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<sup>62</sup> See ECtHR, *Štvrtecký v. Slovakia*, no. 55844/12, Judgment, 5 June 2018, para. 61; *Podeschi v. San Marino*, no. 66357/14, Judgment, 13 April 2017, para. 149; *Staykov v. Bulgaria*, no. 16282/20, Judgment, 8 June 2021, para. 83; *Pantano v. Italy*, no. 60851/00, Judgment, 6 November 2003, para. 70.

<sup>63</sup> See *Decision on Arrest*, para. 90; First Detention Decision in the Initial Appearance Transcript, p. 68, lines 3-7. See also *First Shala Detention Decision*, para. 39.

<sup>64</sup> See *Decision on Arrest*, para. 90; First Detention Decision in Initial Appearance Transcript, p. 68, lines 3-7.

detention, in accordance with Article 41(6)(b) of the Law. The Pre-Trial Judge will assess below whether these risks can be adequately mitigated by any conditions for Mr Fazliu's release.

#### D. CONDITIONAL RELEASE

32. The Pre-Trial Judge recalls that, when deciding on whether a person should be released or detained, she must consider all proposed and alternative measures to prevent the risks in Article 41(6)(b) of the Law.<sup>65</sup>

33. The Pre-Trial Judge recalls her previous finding in the First Detention Decision that, while mindful of Mr Fazliu's willingness, at that time, to provide bail in the amount of €2,550 and any other condition deemed appropriate, she remained persuaded that none of the conditions proposed by the Defence could sufficiently mitigate the existing risks.<sup>66</sup>

34. The Pre-Trial Judge remains of the view that no conditions, whether previously proposed by the Defence or imposed *proprio motu* by the Pre-Trial Judge,<sup>67</sup> could diminish, at this stage, the existing risks, in particular the risk that the Accused will obstruct the progress of SC proceedings or commit further offences. Notably, the Pre-Trial Judge is of the view that any possible condition to be imposed: (i) does not address, for example, the possibility of Mr Fazliu employing communication devices belonging to other persons or requesting others to use their devices for these purposes; and (ii) cannot ensure, for example, the effective monitoring of Mr Fazliu's communications. The Pre-Trial Judge is also particularly mindful that,

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<sup>65</sup> As regards the obligation to consider "alternative measures", see [SCCC 26 April 2017 Judgment](#), para. 114. See also ECtHR, [Buzadji v. the Republic of Moldova](#), no. 23755/07, Judgment ("Buzadji v. Moldova"), 5 July 2016, para. 87; [Idalov v. Russia](#), no. 5826/03, Judgment, 22 May 2012, para. 140.

<sup>66</sup> See First Detention Decision in the Initial Appearance Transcript, p. 60, lines 5-19; p. 68, lines 21-23.

<sup>67</sup> See KSC-BC-2020-06, IA017/F00011/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention](#), 5 April 2022, public, para. 51.

despite any conditions, the Accused would have the ability, motive, and opportunity to approach witnesses through his son.<sup>68</sup>

35. In the view of the Pre-Trial Judge, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further offences, as much as possible.<sup>69</sup> In this regard, the Pre-Trial Judge recalls that the Registrar and the Panel, who have unrestricted access to confidential information concerning witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.<sup>70</sup>

36. Therefore, in light of the above, the Pre-Trial Judge concludes that the conditions for the Accused's release previously proposed by the Defence of Mr Fazliu during his initial appearance, and/or any *additional* reasonable conditions imposed by the Pre-Trial Judge, remain insufficient to adequately mitigate the risks under Article 41(6)(b)(i)-(iii) of the Law.

#### E. PROPORTIONALITY OF DETENTION

37. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention, as reflected in Rule 56(2) of the Rules.<sup>71</sup> The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are

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<sup>68</sup> See *supra*, paras 24-26.

<sup>69</sup> Similarly, KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention](#) ("Second Thaçi Detention Appeal Decision"), 27 October 2021, public, para. 68.

<sup>70</sup> KSC-BC-2023-10, F00165, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Haxhi Shala](#), 9 February 2024, public, para. 54.

<sup>71</sup> KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, [Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention](#), 9 December 2020, public, paras 72-73; KSC-BC-2018-01, IA007/F00007, Court of Appeals Panel, *Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention*, 13 May 2024, confidential, para. 18. A public redacted version was issued on 15 May 2024, [IA007/F00007/RED](#).



described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.<sup>72</sup> However, the Pre-Trial Judge notes that the question whether the length of time spent in pre-trial detention is reasonable cannot be assessed in the abstract, and must be assessed based on the facts of each case and according to its specific features.<sup>73</sup> Furthermore, the Pre-Trial Judge recalls that such an assessment can only be based on the circumstances at the time of review, and not on what may or may not occur in the foreseeable future.<sup>74</sup>

38. Considering that Mr Fazliu has been detained since 5 December 2024, the Pre-Trial Judge is of the view that no question of proportionality arises at this early stage of the proceedings. Further, the Pre-Trial Judge takes into consideration that, since the First Detention Decision: (i) a status conference has been held in order to review the status of the case and organise the disclosure of evidence between the Parties;<sup>75</sup> (ii) the Pre-Trial Judge has issued the “Framework Decision on Disclosure of Evidence and Related Matters”, setting the timelines for the disclosure of evidence between the Parties with a view to ensuring the efficiency of the process;<sup>76</sup> and (iii) the SPO has completed disclosure of all Rule 102(1)(a) material.<sup>77</sup> Thus, in the view of the Pre-Trial Judge, the proceedings are moving forward expeditiously.

39. Moreover, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Fazliu’s detention will be regularly reviewed upon the expiry of two (2) months from the last ruling on detention or at any time upon request, or *proprio motu*, where a change in circumstances since the last review has occurred.

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<sup>72</sup> [Second Thaçi Detention Appeal Decision](#), para. 49, with further references.

<sup>73</sup> ECtHR, [Buzadji v. Moldova](#), para. 90.

<sup>74</sup> KSC-BC-2023-10, F00325, Pre-Trial Judge, [Third Decision on Review of Detention of Haxhi Shala](#), 5 June 2024, public, para. 47.

<sup>75</sup> KSC-BC-2023-12, Transcript of Hearing, 17 December 2024, public, pp. 126-198.

<sup>76</sup> KSC-BC-2023-12, F00100, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#), 20 December 2024, public.

<sup>77</sup> See Disclosure Packages Nos 6, 8.

40. In view of the foregoing, the Pre-Trial Judge finds that the time Mr Fazliu has spent in pre-trial detention is not unreasonable within the meaning of Rule 56(2) of the Rules.

## V. DISPOSITION

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

- (a) **ORDERS** Mr Fazliu's continued detention;
- (b) **ORDERS** Mr Fazliu, if he so wishes, to file submissions on the next review of detention by **Monday, 10 March 2025**, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- (c) **ORDERS** the SPO, should Mr Fazliu decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Fazliu's detention by **Friday, 14 March 2025**, and Mr Fazliu, if he so wishes, to file his response by **Friday, 21 March 2025**.



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**Judge Marjorie Masselot**  
**Pre-Trial Judge**

Dated this Friday, 7 February 2025

At The Hague, the Netherlands.