



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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Decision on Review of Detention of Hashim Thaçi

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THE PRE-TRIAL JUDGE,¹ 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"), the Pre-Trial Judge hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 29 November 2024, the Pre-Trial Judge confirmed, in part, an indictment against Hashim Thaçi ("Mr Thaçi" or "Accused"), Bashkim Smakaj ("Mr Smakaj"), Isni Kilaj ("Mr Kilaj"), Fadil Fazliu ("Mr Fazliu") and Hajredin Kuçi ("Mr Kuçi") ("Confirmation Decision").² On the same day, the Pre-Trial Judge issued *proprio motu* an arrest warrant for Mr Thaçi.³
2. On 5 December 2024, the Registrar served Mr Thaçi, already detained in the context of the proceedings of *The Specialist Prosecutor v. Hashim Thaçi, et al* ("Case 06"), at the Detention Facilities of the Specialist Chambers ("SC") with (i) the "Decision on Arrest Warrants and Related Matters" ("Decision on Arrest") and arrest warrant for Mr Thaçi; and (ii) the Confirmed Indictment.⁴
3. On 8 December 2024, at Mr Thaçi's initial appearance,⁵ the Pre-Trial Judge ordered his continued detention ("First Detention Decision")⁶ and set the briefing

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

² KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, confidential.

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

⁴ KSC-BS-2023-12, F00064, Registrar, *Public Redacted Version of Report on the Service of the Arrest Warrant on Hashim Thaçi*, 7 December 2024, confidential and *ex parte*, with Annexes 1-3, confidential and *ex parte*. A public redacted version of the report was submitted on 11 January 2025, F00064/RED.

⁵ KSC-BC-2023-12, Transcript of Hearing, 8 December 2024 ("Initial Appearance Transcript"), pp. 1-20, public.

⁶ See Initial Appearance Transcript, p. 18, lines 16-20.

schedule for the Parties' submissions in relation to the review of Mr Thaçi's detention.⁷

4. On 21 January 2025, in line with the Pre-Trial Judge's order, the SPO made submissions on the review of Mr Thaçi's detention ("SPO Submissions").⁸

5. On 28 January 2025, the Defence for Mr Thaçi ("Thaçi Defence") responded to the SPO Submissions.⁹

II. SUBMISSIONS

6. The SPO submits that Mr Thaçi's continued detention remains necessary,¹⁰ as there has been no relevant change in circumstances that would require the Pre-Trial Judge to depart from her findings in the Confirmation Decision and the Decision on Arrest.¹¹ The SPO avers that (i) there is a well-grounded suspicion that Mr Thaçi has committed a crime within the jurisdiction of the Specialist Chambers;¹² and (ii) all Article 41(6)(b) of the Law criteria are met.¹³ In particular, the SPO avers that Mr Thaçi's awareness of the charges and evidence against him,¹⁴ his prolific role in the commission of the alleged offences,¹⁵ and continued disclosure, providing Mr Thaçi with further access to additional evidence,¹⁶ reinforces the necessity of his detention. The SPO further submits that: (i) no modalities of conditional release are able to sufficiently mitigate the risks;¹⁷ and (ii) Thaçi's detention is both reasonable

⁷ See Initial Appearance Transcript, p. 18, line 21 to p. 19, line 10.

⁸ KSC-BC-2023-12, F00124, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Hashim Thaçi*, 21 January 2025, public.

⁹ KSC-BC-2023-12, F00142, Thaçi Defence, *Thaçi Response to Prosecution Submissions on Review of Detention of Hashim Thaçi* ("Response"), 28 January 2025, public.

¹⁰ SPO Submissions, paras 11, 28.

¹¹ SPO Submissions, paras 12-13.

¹² SPO Submissions, paras 11, 12-13.

¹³ SPO Submissions, paras 14-16, 17-19, 20-21.

¹⁴ SPO Submissions, para. 17.

¹⁵ SPO Submissions, paras 17, 19.

¹⁶ SPO Submissions, para 21.

¹⁷ SPO Submissions, paras 22-27.

and proportional.¹⁸ Based on the above, the SPO submits that Mr Thaçi should remain in detention.¹⁹

7. The Thaçi Defence argues that Mr Thaçi's risk of flight is not a sufficiently real possibility²⁰ and requests the Pre-Trial Judge to find that Mr Thaçi's continued detention is not justified at this time based on the risk of flight pursuant to Article 41(6)(b)(i) of the Law.²¹ The Defence expresses concerns about the fragmentation of the trial record and inconsistent judicial decisions being made in Case 06 and the present proceedings ("Case 12") on what they claim to be the same facts in relation to Mr Thaçi's risk of flight.²² In relation to said risk, the Defence challenges the arguments that: (i) the gravity of the offences in the present case and their potential sentence provide a motive for Mr Thaçi to escape, as it was rejected by Trial Panel II;²³ (ii) Mr Thaçi has demonstrated *mala fide* intentions towards the laws and rules of the SC, as it is contrary to Mr Thaçi's presumption of innocence;²⁴ (iii) Mr Thaçi has the means and opportunity to flee, as he is detained in the context of Case 06;²⁵ (iv) Mr Thaçi's previous roles in the Kosovo Liberation Army ("KLA") be discussed in the context of this case, as they are central matters in issue in Case 06;²⁶ and (v) an accused's increased knowledge of the case and evidence against him does not elevate the risk of flight.²⁷

¹⁸ SPO Submissions, para. 28.

¹⁹ SPO Submissions, para. 29.

²⁰ Response, para. 23.

²¹ Response, para. 24.

²² Response, para. 13.

²³ Response, paras 15-16.

²⁴ Response, para. 17.

²⁵ Response, paras 18-19.

²⁶ Response, para. 20.

²⁷ Response, para. 21.

III. APPLICABLE LAW

8. 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 at 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.

9. 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.

10. 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-teleconference, 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.

11. 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, 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

12. The Pre-Trial Judge recalls that she has an obligation, under Article 41(10) of the Law, to examine every two (2) months whether the reasons for detention on remand continue to exist,²⁸ 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.²⁹ The duty to determine whether the circumstances underpinning detention still exist imposes on the Pre-Trial Judge the task to assess, *proprio motu*, 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.³⁰ 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*.³¹ Furthermore, the Pre-Trial Judge may refer to findings in previous decisions if she is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.³² The Pre-Trial Judge is neither required to make

²⁸ 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.

²⁹ 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.

³⁰ See [Second Krasniqi Detention Appeal Decision](#), para. 15; [Sixth Shala Detention Decision](#), para. 19.

³¹ See [Second Krasniqi Detention Appeal Decision](#), para. 16; [Sixth Shala Detention Decision](#), para. 19.

³² 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.

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.³³

13. The Pre-Trial Judge likewise underscores that any analysis of Mr Thaçi's detention must duly consider his presumption of innocence.³⁴ This means, as a consequence, that pre-trial detention cannot be taken lightly and that the SPO bears the burden of establishing that Mr Thaçi's detention is necessary.³⁵ 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.³⁶

B. GROUNDED SUSPICION

14. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion³⁷ that the detained person has committed a crime within the SC's jurisdiction. This is a condition *sine qua non* for the validity of the detained person's continued detention.³⁸

³³ [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.

³⁴ 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.

³⁵ 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.

³⁶ [Sixth Shala Detention Decision](#), para. 19.

³⁷ 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.

³⁸ [First Shala Detention Decision](#), para. 14. See also ECtHR, [Merabishvili v. Georgia](#), para. 222.

15. 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 Thaçi is criminally responsible for offences within the jurisdiction of the SC, namely violating the secrecy of proceedings, contempt of court and obstructing official persons in performing official duties within the meaning of Articles 392, 393, and 401 of the 2019 Kosovo Criminal Code, Code No. 06/L-074, in violation of Article 15(2) of the Law.³⁹ 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.⁴⁰ The Pre-Trial Judge notes that there have been no developments in the case negating these findings.

16. 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 Thaçi has committed offences within the jurisdiction of the SC for the purposes of Article 41(6)(a) of the Law.⁴¹

C. NECESSITY OF DETENTION

17. 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.⁴² 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 specific indications of a genuine requirement of public interest, which outweigh the

³⁹ Confirmation Decision, para. 313(a).

⁴⁰ 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.

⁴¹ See similarly, First Detention Decision in Initial Appearance Transcript, p. 15, lines 1-7.

⁴² 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.

person's right to liberty.⁴³ Therefore, the Panel must rely on case-specific reasoning and concrete grounds in deciding to continue detention.⁴⁴

18. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"⁴⁵ 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.⁴⁶ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴⁷ 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.⁴⁸

19. 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,⁴⁹ 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.⁵⁰ When assessing

⁴³ [SCCC 26 April 2017 Judgment](#), para. 113.

⁴⁴ [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.

⁴⁵ See chapeau of Article 41(6)(b) of the Law.

⁴⁶ 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.

⁴⁷ See similarly, [First Veseli Detention Appeal Decision](#), para. 17; [First Shala Detention Decision](#), para. 16.

⁴⁸ 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.

⁴⁹ See also, [Kilaj Detention Appeal Decision](#), para. 16. See similarly, [First Thaçi Detention Decision](#), para. 21, with further references.

⁵⁰ 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.⁵¹

20. 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.⁵²

1. Risk of Flight

21. As regards the Thaçi Defence argument of inconsistent judicial decisions being made in Case 06 and Case 12 on the same facts,⁵³ the Pre-Trial Judge recalls, at the outset, the previous finding that her assessment of the risks under Article 41(6)(b) of the Law is independent from the assessment undertaken by the competent Panel in Case 06.⁵⁴ This means that Mr Thaçi's flight risk (and other risks) are assessed in the specific circumstances of the present proceedings and in light of the charges brought in this case, not Case 06. It is worth recalling that the facts are not the same as Mr Thaçi, who is an accused in both cases, is charged with war crimes and crimes against humanity in Case 06, while he is charged with offences against the administration of justice in Case 12. The proceedings are independent of each other and findings of Trial Panel II made in the context of Case 06 are not binding on or determinative for the Pre-Trial Judge.⁵⁵ That being said, the Pre-Trial Judge clarifies that Mr Thaçi's current detention in Case 06, as part of his personal circumstances, can have a bearing on the assessment of the risks under Article 41(6)(b) of the Law, including the flight risk.⁵⁶

⁵¹ See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references.

⁵² [First Shala Detention Decision](#), para. 19; [First Thaçi Detention Decision](#), para. 24.

⁵³ Response, para. 13.

⁵⁴ [Decision on Arrest](#), para. 45.

⁵⁵ *Contrary*, Response, paras 13, 15-16, 19, 21.

⁵⁶ [Decision on Arrest](#), para. 45.

22. Turning to the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge recalls the relevant considerations, as set out in the Decision on Arrest and First Detention Decision namely: (i) the gravity of the offences with which Mr Thaçi is charged in the present proceedings; (ii) the potential sentence in the event of conviction; (iii) Mr Thaçi's *mala fide* intentions towards the laws and rules of the SC; and (iv) his means and opportunity to flee, despite his ongoing detention in the Case 06 proceedings.⁵⁷

23. As regards the Thaçi Defence argument that the Pre-Trial Judge dismiss the consideration of the gravity of the offences and potential sentence in the present case because Trial Panel II held differently,⁵⁸ the Pre-Trial Judge considers that none of the arguments of the Thaçi Defence upsets her determination that these two factors are important in the assessment of the flight risk and provide Mr Thaçi with the motive to evade justice.⁵⁹ In fact the Pre-Trial Judge considers that the nature and gravity of the charges in the present proceedings may have an impact on Case 06, and increase Mr Thaçi's incentive to flee. The argument that Mr Thaçi may, in the event of a conviction, receive a greater sentence in Case 06 than in the present proceedings, rests on speculation and has no impact on the Pre-Trial Judge's assessment of the gravity of the offences and possible ensuing sentence in Case 12. Thus, the Thaçi Defence argument is without merit.

24. As regards the Thaçi Defence argument that the Pre-Trial Judge dismiss the consideration of Mr Thaçi's *mala fide* intentions towards the laws and rules of the SC in order to preserve his presumption of innocence,⁶⁰ the Pre-Trial Judge recalls that her analysis of Mr Thaçi's detention takes his presumption of innocence as its starting point.⁶¹ The fact that Mr Thaçi pleaded not guilty in the present case does

⁵⁷ See [Decision on Arrest](#), paras 46-48, First Detention Decision in the Initial Appearance Transcript, p. 15, lines 1-8.

⁵⁸ Response, paras 15-16.

⁵⁹ [Decision on Arrest](#), para. 46.

⁶⁰ Response, para. 17.

⁶¹ See *supra*, para. 13.

not disturb the Pre-Trial Judge's findings on Mr Thaçi's *mala fide* intentions underpinning the charges. These findings, while made in the context of confirming the indictment, are equally relevant for the Pre-Trial Judge's assessment of the flight risk: Mr Thaçi's recent behaviour at issue supports the belief that there is a sufficiently real possibility that Mr Thaçi may disregard the laws and rules of the SC in the future and evade justice. Whether or not Mr Thaçi indeed demonstrated *mala fide* intentions will be established at trial. Mr Thaçi's right to be presumed innocent remains applicable throughout the proceedings while he is prosecuted for the Case 12 offences. Nevertheless, these offences are serious and grave and may provide Mr Thaçi, with an incentive to flee. Thus, the Thaçi Defence argument is without merit.

25. As regards the Thaçi Defence argument that the Pre-Trial Judge reject the flight risk as Mr Thaçi is already detained in the context of Case 06, the Pre-Trial Judge reaffirms that Mr Thaçi's current detention constitutes one of the factors that have a bearing on her assessment of the flight risk.⁶² However, as the Thaçi Defence acknowledges, its argument rests on the assumption that Mr Thaçi continues to be in detention in Case 06, and ignores the fact that the Pre-Trial Judge undertakes the assessment independent from the developments in Case 06. Thus, the Thaçi Defence argument is without merit.

26. As regards the Thaçi Defence argument that the Pre-Trial Judge disregard Mr Thaçi's previous political positions in Kosovo as well as his previous roles within the KLA as they are central matters discussed in Case 06, the Pre-Trial Judge clarifies that these factors are considered for the purposes of reviewing Mr Thaçi's flight risk in Case 12 and not for the purposes of establishing central matters in the Case 06 proceedings. Thus, the Thaçi Defence argument is without merit.

⁶² [Decision on Arrest](#), paras 45, 47.

27. As regards the Thaçi Defence argument that the Pre-Trial Judge dismiss as a factor Mr Thaçi's increased knowledge of the evidence, as it was allegedly dismissed by Trial Panel II in Case 06, the Pre-Trial Judge clarifies that this factor was not part of her considerations in establishing the flight risk. Be that as it may, the Pre-Trial Judge reiterates that findings rendered in the context of Case 06 are not binding on her. The Thaçi Defence has not advanced an argument capable of disturbing the Pre-Trial Judge's findings on this factor in the context of Article 46(1)(b)(ii) and (iii) of the Law.⁶³ Thus, the Thaçi Defence argument is without merit.

28. 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 Thaçi continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

29. As regards the risk of obstruction of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls her findings in the Decision on Arrest and First Detention Decision, namely that: (i) Mr Thaçi coordinated with three distinct groups, of which he was the leader, to interfere with the testimony of SPO witnesses in the ongoing Case 06 trial, including by deliberately revealing and providing confidential information related to witnesses, and instructing others *to*, and *how to*, unlawfully influence the witnesses' testimonies; (ii) Mr Thaçi's actions and conduct are part of a broader pattern of efforts to interfere with the testimony of SPO witnesses in Case 06; (iii) Mr Thaçi's actions show persistence in furthering obstruction efforts in SC proceedings from within the SC Detention Facilities, including by leveraging his influence over former KLA affiliates loyal to him, and persons from his political circles, such as his co-Accused in the present proceedings; (iv) previous findings suggest that in the past Mr Thaçi attempted to undermine the

⁶³ [Decision on Arrest](#), paras 50, 53.

SC, and, through his circles, offered benefits to persons who were summoned by the SPO to provide information to the SPO/SC; and (v) Mr Thaçi is aware of the charges and evidence against him.⁶⁴

30. Further to the above, the Pre-Trial Judge considers important the fact that Mr Thaçi is further gaining increased awareness of the incriminating evidence against him in this case.⁶⁵ In this regard, considering Mr Thaçi's leading role in the three separate groups, which he set up with Messrs Smakaj, Fazliu, and Kilaj, as well as his former position within the KLA and public stature in Kosovo,⁶⁶ the Pre-Trial Judge is persuaded that, as a result of the ongoing disclosure, the Accused has further incentive to interfere with witnesses or obstruct the progress of the present proceedings.

31. Lastly, the Pre-Trial Judge assesses the above factors bearing in mind the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC.⁶⁷

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

3. Risk of Committing Further Crimes

33. 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.⁶⁸ In this regard, the Pre-Trial Judge notes

⁶⁴ [Decision on Arrest](#), para. 50. See Initial Appearance Transcript, p. 12, line 15.

⁶⁵ [Decision on Arrest](#), para. 50. See similarly, [Kilaj Detention Appeal Decision](#), para. 44.

⁶⁶ See Confirmation Decision, para. 208; [Decision on Arrest](#), para. 50.

⁶⁷ [Decision on Arrest](#), para. 51; First Detention Decision in the Initial Appearance Transcript, p. 18, lines 16-20.

⁶⁸ See [Decision on Arrest](#), para. 53; Initial Appearance Transcript, p. 15, lines 3-7.

that the relevant factors to be considered are the same as those outlined in paragraphs 29-30 above with respect to obstruction of proceedings.

34. For these reasons, the Pre-Trial Judge finds that there exists a risk that Mr Thaçi will repeat the offences he is alleged to have committed.⁶⁹

35. 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 Thaçi will commit further crimes continues to exist.

4. Conclusion

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

D. CONDITIONAL RELEASE

37. 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.⁷⁰

38. The Pre-Trial Judge remains of the view that no conditions, had the Thaçi Defence proposed any, or imposed *proprio motu* by the Pre-Trial Judge,⁷¹ 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

⁶⁹ See [Decision on Arrest](#), para. 54; Initial Appearance Transcript, p. 18, lines 16-20.

⁷⁰ 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.

⁷¹ 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.

address, for example, the possibility of Mr Thaçi using others or employing communication devices belonging to other persons or requesting others to use their devices for the purpose of unlawfully interfering with witnesses; and (ii) cannot ensure the effective monitoring of Mr Thaçi's communications. The Pre-Trial Judge is also particularly mindful that, despite any conditions (if released), the Accused would have the ability, motive and opportunity to persist in furthering the obstruction of SC proceedings.⁷²

39. 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 crimes, as much as possible.⁷³ 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.⁷⁴

40. Therefore, in light of the above, the Pre-Trial Judge concludes that any 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

41. 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

⁷² See *supra*, paras 28, 38.

⁷³ 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.

⁷⁴ 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.

reflected in Rule 56(2) of the Rules.⁷⁵ 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 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.⁷⁶ However, the Pre-Trial Judge notes that the question whether a 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.⁷⁷ 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.⁷⁸

42. Considering that Mr Thaçi has been detained since 5 December 2024 for the purposes of these proceedings, 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;⁷⁹ (ii) the Pre-Trial Judge has issued the “Framework Decision on Disclosure of Evidence and Related Matters”,⁸⁰ setting the timelines for disclosure of evidence between the Parties with a view to ensuring the efficiency of the process; and (iii) the SPO has completed disclosure of all

⁷⁵ 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](#).

⁷⁶ [Second Thaçi Detention Appeal Decision](#), para. 49, with further references.

⁷⁷ ECtHR, [Buzadji v. Moldova](#), para. 90.

⁷⁸ KSC-BC-2023-10, F00325, Pre-Trial Judge, [Third Decision on Review of Detention of Haxhi Shala](#), 5 June 2024, public, para. 47.

⁷⁹ KSC-BC-2023-12, Transcript of Hearing, 17 December 2024, public, pp. 126-198.

⁸⁰ KSC-BC-2023-12, F00100, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#), 20 December 2024, public.

Rule 102(1)(a) material.⁸¹ Thus, in view of the Pre-Trial Judge, the proceedings are moving forward expeditiously.

43. Moreover, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Thaçi'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 *propriu motu*, where a change in circumstance since the last review has occurred.

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

⁸¹ See Disclosure Packages Nos 6, 8.

V. DISPOSITION

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

- (a) **ORDERS** Mr Thaçi's continued detention;
- (b) **ORDERS** Mr Thaçi, 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 Thaçi decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Thaçi's detention by **Friday, 14 March 2025**, and Mr Thaçi, if he so wishes, to file his response by **Friday, 21 March 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Friday, 7 February 2025

At The Hague, the Netherlands.