



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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Second Decision on Review of Detention of Bashkim Smakaj

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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"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 5 December 2024, Bashkim Smakaj ("Mr Smakaj" or "Accused") was arrested in Kosovo,² pursuant to a decision and arrest warrant issued by the Pre-Trial Judge ("Decision on Arrest"),³ and further to the confirmation of an indictment against him, Hashim Thaçi ("Mr Thaçi"), Fadil Fazliu, Isni Kilaj and Hajredin Kuçi ("Mr Kuçi" and "Confirmation Decision").⁴
2. On 8 December 2024, at the initial appearance of Mr Smakaj, the Pre-Trial Judge ordered his continued detention ("Decision on Detention").⁵
3. On 7 February 2025, the Pre-Trial Judge ordered Mr Smakaj's continued detention ("First Review Decision").⁶
4. On 14 March 2025, the Specialist Prosecutor's Office ("SPO") made submissions on the periodic review of Mr Smakaj's detention ("SPO Submissions").⁷

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

² KSC-BC-2023-12, F00042, Registrar, *Notification of Arrest of Bashkim Smakaj Pursuant to Rule 55(4)*, 5 December 2024, public.

³ 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, strictly confidential and *ex parte*. A public redacted version of the main filing was issued on 19 December 2024, [F00037/RED](#).

⁴ KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, confidential. A public redacted version was issued on 12 February 2025, [F00036/RED](#).

⁵ KSC-BC-2023-12, Transcript of Hearing, *Initial Appearance of Bashkim Smakaj* ("Initial Appearance Transcript"), 8 December 2024, public, p. 40, line 23, to p. 43, line 25.

⁶ KSC-BC-2023-12, F00164, Pre-Trial Judge, [Decision on Review of Detention of Bashkim Smakaj](#), 7 February 2025, public.

⁷ KSC-BC-2023-12, F00218, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Bashkim Smakaj*, 14 March 2025, public.

5. On 21 March 2025, the Defence for Mr Smakaj ("Smakaj Defence") responded to the SPO Submissions ("Defence Response").⁸

6. On 27 March 2025, the SPO replied to the Defence Response ("SPO Reply").⁹

II. SUBMISSIONS

A. SPO SUBMISSIONS

7. The SPO submits that the Pre-Trial Judge should order Mr Smakaj's continued detention,¹⁰ since: (i) the findings in the First Review Decision remain applicable in all aspects; and (ii) no contrary information or developments have intervened since then to justify changing such findings.¹¹

8. In particular, the SPO avers that the Accused's detention is necessary, as the risks under Article 41(6)(b) of the Law continue to be present, and have increased with the advancement of the pre-trial stage, as Mr Smakaj has gained insight into the case against him through the recent disclosure of incriminating evidence the SPO will lead at trial.¹² According to the SPO, (i) no condition can sufficiently mitigate such risks, which can only be effectively managed in the Specialist Chambers' ("SC") Detention Facilities;¹³ and (ii) any assurances that Mr Smakaj may give would be insufficient to guarantee compliance with any conditions or overcome the concrete risks of release.¹⁴

9. Lastly, the SPO submits that Mr Smakaj's continued detention is proportional, considering that he faces a potentially lengthy sentence and that the proceedings

⁸ KSC-BC-2023-12, F00238, Smakaj Defence, *Smakaj Response to Prosecution Submissions on Review of Detention*, 21 March 2025, confidential.

⁹ KSC-BC-2023-12, F00243, Specialist Prosecutor, *Prosecution Reply to "Smakaj Response to Prosecution Submissions on Review of Detention"*, 27 March 2025, confidential.

¹⁰ SPO Submissions, para. 8.

¹¹ SPO Submissions, paras 1-4.

¹² SPO Submissions, paras 1, 4.

¹³ SPO Submissions, paras 1, 4-6.

¹⁴ SPO Submissions, para. 6.

continue to move forward expeditiously.¹⁵ Concretely, the SPO avers that, since the First Review Decision, it has, *inter alia*: (i) disclosed material under Rule 102(1)(b) of the Rules; (ii) filed its first notice under Rule 102(3) of the Rules; and (iii) disclosed items requested by the Defence under Rule 102(3) of the Rules.¹⁶

B. DEFENCE RESPONSE

10. The Smakaj Defence responds that, at the time of the Decision on Arrest and of the Decision on Detention, the SPO had withheld from the Pre-Trial Judge an interview given by Witness 2 to the SPO on 6 December 2023 (“6 December 2023 Interview”), which directly contradicts the finding of a well-grounded suspicion that Mr Smakaj contacted Witness 2 and conveyed to him Mr Thaçi’s instructions on how he ought to testify before the SC.¹⁷ According to the Smakaj Defence, the 6 December 2023 Interview was only revealed to the Pre-Trial Judge and the Parties on 18 December 2024, as exculpatory material pursuant to Rule 103 of the Rules.¹⁸ In addition, the Smakaj Defence submits that: (i) in their prior submissions on detention, neither duty counsel for Mr Smakaj nor the SPO referred to the 6 December 2023 Interview;¹⁹ and, as such, (ii) the findings of the First Review Decision rely on the misleading assertion of the SPO that there was an “absence of any contrary intervening information” since the Decision on Detention.²⁰ The Smakaj Defence thus avers that the Pre-Trial Judge never addressed the 6 December 2023 Interview in her findings of grounded suspicion against the Accused, neither

¹⁵ SPO Submissions, paras 1, 7.

¹⁶ SPO Submissions, para. 7.

¹⁷ Defence Response, paras 3, 6-7, 12-13, 22.

¹⁸ Defence Response, paras 14, 31(a), *referring to* Disclosure Package No. 7.

¹⁹ Defence Response, paras 15-17, *referring to* KSC-BC-2023-12, F00117, Smakaj Defence, *Submissions on Detention on Remand*, 15 January 2025, public, with Annex 1, confidential and *ex parte*; F00138, Specialist Prosecutor, *Prosecution Response to ‘Submission on Detention on Remand’ (F00117)*, 27 January 2025, public.

²⁰ Defence Response, paras 18-21.

in the Confirmation Decision, the Decision on Arrest, the Decision on Detention or the First Review Decision.²¹

11. The Smakaj Defence further submits that, if the finding of a well-grounded suspicion against Mr Smakaj is set aside, his situation is no different than that of Mr Kuçi.²² In particular, the Smakaj Defence states that, despite the well-grounded suspicion that Mr Kuçi committed offences against the administration of justice and that he had the connections, resources, means and ability to travel undetected and to obstruct criminal proceedings,²³ the Pre-Trial Judge found that: (i) Mr Kuçi presented no risks under Article 41(6) of the Law;²⁴ and (ii) a summons with conditions was sufficient to ensure Mr Kuçi's appearance at trial.²⁵ The Smakaj Defence also states that, if convicted, Mr Smakaj would not necessarily receive a longer sentence than Mr Kuçi.²⁶ The Smakaj Defence thus considers that the SPO's lack of candour and abuse of process lead to an unfair disparity in the treatment of Mr Smakaj and Mr Kuçi.²⁷

12. In this regard, the Smakaj Defence submits that: (i) for the same reasons found in relation to Mr Kuçi, there is no risk that Mr Smakaj will flee, obstruct the progress of criminal proceedings, or commit further offences; and (ii) such risks have not been reinforced through the recent disclosure of the 6 December 2023 Interview as exculpatory evidence.²⁸ Accordingly, the Smakaj Defence avers that the Pre-Trial Judge should grant the immediate release of Mr Smakaj on the same terms as Mr Kuçi, or with such other conditions as deemed appropriate.²⁹

²¹ Defence Response, para. 19.

²² Defence Response, paras 23-29, 31(b).

²³ Defence Response, paras 8-9.

²⁴ Defence Response, paras 9-10.

²⁵ Defence Response, para. 11.

²⁶ Defence Response, para. 30.

²⁷ Defence Response, paras 20-21, 31-32.

²⁸ Defence Response, paras 34-35.

²⁹ Defence Response, paras 2, 33, 36.

C. SPO REPLY

13. The SPO replies, or in the alternative seeks leave to reply, alleging that the Smakaj Defence inappropriately re-litigates the unfounded abuse of process claim regarding the SPO's withholding the 6 December 2023 Interview from the Pre-Trial Judge.³⁰ It avers that said evidence does not impact the Pre-Trial Judge's findings on the existence of a well-grounded suspicion against Mr Smakaj,³¹ and was disclosed in full compliance with the SPO's disclosure obligations.³² Lastly, the SPO highlights that the circumstances involving Mr Kuçi are entirely different.³³ As a result, the SPO requests the Pre-Trial Judge to reject the Defence Response and to order Mr Smakaj's continued detention.³⁴

III. APPLICABLE LAW

14. 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 which he or she has threatened to commit.

15. 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 the two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case

³⁰ SPO Reply, para. 1.

³¹ SPO Reply, paras 2-4, 6.

³² SPO Reply, para. 5.

³³ SPO Reply, para. 7.

³⁴ SPO Reply, paras 1, 9.

shall examine whether reasons for detention on remand still exist, and render a ruling by which detention on remand is extended or terminated.

16. 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. Pursuant to Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

17. 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.

18. Pursuant to Rule 76 of the Rules, unless otherwise provided in the Rules, any reply to a response shall be filed within five (5) days of the response. The Panel shall only consider a reply, or parts thereof, addressing new issues arising from the response.

IV. DISCUSSION

A. PRELIMINARY MATTER

19. The Pre-Trial Judge notes that the SPO seeks leave to reply, while at the same time replying in full to the arguments of the Defence Response. The Pre-Trial Judge reminds the SPO that, according to the briefing schedule in the First Review Decision, the SPO is not foreseen to reply.³⁵ The briefing schedule for submissions

³⁵ [First Review Decision](#), para. 50(c)-(d), which mentions Rule 76 of the Rules *only* if the Smakaj Defence decides to make submissions first. Should the Smakaj Defence decide not to make

in the context of review of detention decisions is designed to allow the Defence, in principle, to have the last word. Nevertheless, considering: (i) the SPO's formal request for leave to reply; (ii) the novelty of the arguments raised in the Defence Response, namely with respect to the consideration of the 6 December 2023 Interview in the finding of grounded suspicion; and (iii) the fairness vis-à-vis the SPO to present its arguments in this litigation,³⁶ Pre-Trial Judge grants the SPO's request for leave to reply and, accordingly, takes into account for the present decision the arguments raised in the SPO Reply.

B. APPLICABLE STANDARD

20. 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,³⁷ 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.³⁸ The

submissions, the Pre-Trial Judge has set specific deadlines, in derogation from the Rule 76 deadlines, for the Parties' submissions. *See similarly, amongst many*, KSC-BC-2020-04, F00282/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#), 21 September 2022 (the public redacted version was issued on the same day), public, para. 42(b)-(c); KSC-BC-2020-06, F00371/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Jakup Krasniqi](#), 25 June 2021 (date of the public redacted version 30 June 2021), public, para. 61(b) and (c). *Contrary*, KSC-BC-2020-04, F00838/RED, Trial Panel I, [Public redacted version of Decision on the Seventeenth Review of Detention of Pjetër Shala](#), 17 May 2024 (the public redacted version was issued on the same day), public, para. 40(b)-(d); KSC-BC-2020-06, F03008, Trial Panel II, [Decision on Periodic Review of Detention of Rexhep Selimi](#), 13 May 2025, public, para. 34(b).

³⁶ *See* 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. 43.

³⁷ *See, for example* [First Haradinaj Detention Appeal Decision](#), 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.

³⁸ [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](#)

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.³⁹ 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*.⁴⁰ 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.⁴¹ 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.⁴²

21. The Pre-Trial Judge likewise underscores that any analysis of Mr Smakaj's detention must duly consider his presumption of innocence.⁴³ This means, as a consequence, that pre-trial detention cannot be maintained lightly and that the SPO

[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.

³⁹ [Second Krasniqi Detention Appeal Decision](#), para. 15; [Sixth Shala Detention Decision](#), para. 19.

⁴⁰ See [Second Krasniqi Detention Appeal Decision](#), para. 16; [Sixth Shala Detention Decision](#), para. 19.

⁴¹ 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.

⁴² [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.

⁴³ 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.

bears the burden of establishing that Mr Smakaj's detention is necessary.⁴⁴ 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.⁴⁵

C. GROUNDED SUSPICION

22. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion⁴⁶ that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.⁴⁷

23. 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 Smakaj is criminally responsible for offences within the jurisdiction of the SC, namely attempting to obstruct 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.⁴⁸ These findings were made on the basis of a "well-grounded" suspicion, a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.⁴⁹

⁴⁴ 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.

⁴⁵ [Sixth Shala Detention Decision](#), para. 19.

⁴⁶ 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.

⁴⁷ [First Shala Detention Decision](#), para. 14. See also ECtHR, [Merabishvili v. Georgia](#), para. 222.

⁴⁸ [Confirmation Decision](#), para. 313(c).

⁴⁹ 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.

24. As regards the argument of Mr Smakaj that the 6 December 2023 Interview directly contradicts the finding of grounded suspicion, the Pre-Trial Judge recalls that this argument has been put forward and addressed in the context of the decision rejecting Mr Smakaj's request to stay the proceedings.⁵⁰ While in said decision, the Pre-Trial Judge assessed whether not including this evidentiary item in the indictment-supporting material amounts to a violation meriting the stay of the proceedings, the question here is whether the 6 December 2023 Interview undermines the Pre-Trial Judge's finding of grounded suspicion. However, as was explained before: (i) the Pre-Trial Judge's findings on Mr Smakaj's criminal responsibility in the Confirmation Decision rest on several factors and elements;⁵¹ (ii) the Smakaj Defence manifestly overstates the importance of Mr Smakaj's contact with Witness 2, as allegedly evidenced in the 6 December 2023 Interview, and, thereby misrepresents the Confirmation Decision; and (iii) the Smakaj Defence singles out the 6 December 2023 Interview for the purpose of reaching a particular conclusion, and disregards the entirety of the evidence at hand.⁵² The 6 December 2023 Interview is a matter to be aired and discussed at trial, in light of the Parties arguments and evidence as a whole. Hence, the Smakaj Defence argument is without merit. As a consequence, Mr Smakaj's comparison of his situation with that of Mr Kuçi⁵³ equally fails.

25. In light of the above, and in the absence of any other intervening information or developments, the Pre-Trial Judge finds that there continues to exist a grounded

⁵⁰ KSC-BC-2023-12, F00247, Pre-Trial Judge, *Decision on Bashkim Smakaj's Application for Stay of Proceedings* ("Decision on Stay of Proceedings"), 7 April 2025, confidential.

⁵¹ See the comprehensive analysis in the [Confirmation Decision](#), paras 145-155, 203, 282-283, 285-286, 292, with references and supporting material cited therein.

⁵² Decision on Stay of Proceedings, para. 30.

⁵³ See *supra* para. 11.

suspicion that Mr Smakaj has committed offences under the jurisdiction of the SC, within the meaning of Article 41(6)(a) of the Law.⁵⁴

D. NECESSITY OF DETENTION

26. 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.⁵⁵ 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 person's right to liberty.⁵⁶ Therefore, the Pre-Trial Judge must rely on case-specific reasoning and concrete grounds in deciding whether to order continued detention.⁵⁷

27. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"⁵⁸ 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.⁵⁹ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁶⁰ The Pre-Trial Judge further observes that these

⁵⁴ See similarly, [Decision on Arrest](#), para. 43; Initial Appearance Transcript, p. 42, lines 20-24; [First Review Decision](#), para. 23.

⁵⁵ 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.

⁵⁶ [SCCC 26 April 2017 Judgment](#), para. 113.

⁵⁷ [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](#), 30 April 2021, public, para. 22. See also ECtHR, [Khudoyorov v. Russia](#), no. 6847/02, Judgment, 8 November 2005, para. 173.

⁵⁸ See chapeau of Article 41(6)(b) of the Law.

⁵⁹ See [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.

⁶⁰ See [First Veseli Detention Appeal Decision](#), para. 17; [First Shala Detention Decision](#), para. 16.

grounds are in the alternative, and that the existence of one ground suffices to determine the necessity of detention.⁶¹

28. 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,⁶² 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.⁶³ When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁶⁴

29. Lastly, in relation to the grounds set forth in Article 41(6)(b)(ii)-(iii) of the Law, the Pre-Trial Judge emphasises that it suffices 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.⁶⁵

1. Risk of Flight

30. 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 previous decisions on review of detention are still relevant, namely: (i) Mr Smakaj's awareness of the gravity of the offences he is charged with, together with the potential sentence that these offences could attract if he is convicted, which provide him with a motive to evade justice;⁶⁶ (ii) his demonstrated blatant disregard for the laws and the rules of the SC;⁶⁷ (iii) the fact that he possesses an active Albanian

⁶¹ See [First Shala Detention Decision](#), para. 20; [First Thaçi Detention Decision](#), para. 25.

⁶² See [First Thaçi Detention Decision](#), para. 21, with further references.

⁶³ 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.

⁶⁴ See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references.

⁶⁵ [First Shala Detention Decision](#), para. 19; [First Thaçi Detention Decision](#), para. 24.

⁶⁶ See [Decision on Arrest](#), para. 69, with references; Initial Appearance Transcript, p. 42, lines 3-7; [First Review Decision](#), para. 28.

⁶⁷ See [Decision on Arrest](#), para. 69; [First Review Decision](#), para. 28.

passport and would have the opportunity to flee, by travelling freely to jurisdictions beyond the reach of the SC;⁶⁸ and (iv) the fact that he has the means to evade justice, considering in particular his past (high-level) positions in Kosovo's institutions and his links to former Kosovo Liberation Army ("KLA") commanders.⁶⁹ Therefore, the Pre-Trial Judge remains persuaded that: (i) the Accused can rely on a significant network of influential individuals from whom he may seek and secure resources and support for the purpose of fleeing;⁷⁰ and (ii) Mr Smakaj's rooted family ties in Kosovo only mitigate and do not eliminate the risk that he will flee.⁷¹

31. In addition to the above, the Pre-Trial Judge attaches weight to the fact that, since the First Review Decision, Mr Smakaj has gained increased insight into the evidence underpinning the charges through the ongoing disclosure process.⁷²

32. 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 Smakaj continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

33. 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 continue to apply, namely: (i) the nature of the charges confirmed against the Accused, who was part of a group, led by Mr Thaçi, aiming at unlawfully influencing witnesses;⁷³ and (ii) Mr Smakaj's persistence in furthering obstruction

⁶⁸ See [Decision on Arrest](#), para. 70; [First Review Decision](#), para. 28.

⁶⁹ See [Decision on Arrest](#), para. 71; [First Review Decision](#), para. 28.

⁷⁰ See [Decision on Arrest](#), para. 71; [First Review Decision](#), para. 28.

⁷¹ See [Decision on Arrest](#), para. 72; Initial Appearance Transcript, p. 42, lines 7-9; [First Review Decision](#), para. 30.

⁷² The Pre-Trial Judge notes that, since the First Review Decision, the SPO has made an additional four (4) disclosures pursuant to Rule 102(1)(b) of the Rules. See Disclosure Packages Nos 11, 17, 19, 21.

⁷³ [Decision on Arrest](#), para. 74, with further explanations. See similarly, 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. 43.

efforts in SC proceedings, including by following orders from persons with political influence to whom he is loyal, such as Mr Thaçi.⁷⁴

34. Further to the above, the Pre-Trial Judge considers important the fact that the Accused is gaining increased insight into the incriminating evidence against him in this case, as a result of the ongoing disclosure,⁷⁵ and has, as such, further incentive to interfere with witnesses.⁷⁶ In this respect, the Pre-Trial Judge underscores that the risk of obstruction need not materialise by Mr Smakaj personally approaching any witnesses, but may materialise, for instance, through further coordination with people loyal to KLA commanders, such as Mr Thaçi, and/or people from his political circles.⁷⁷

35. Lastly, 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.⁷⁸ The Pre-Trial Judge considers that, in this context, the risk of Mr Smakaj exerting pressure on witnesses is particularly high,⁷⁹ in light of his ties, as referenced above.⁸⁰

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

⁷⁴ See [Decision on Arrest](#), para. 74. See similarly, [First Review Decision](#), para. 32.

⁷⁵ See *supra* footnote 72.

⁷⁶ See [Decision on Arrest](#), para. 75; [First Review Decision](#), para. 33. See similarly, [Kilaj Detention Appeal Decision](#), para. 44.

⁷⁷ See similarly, KSC-BC-2023-10, F00123/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Sabit Januzi's Request for Interim Release](#), 8 December 2023, public, para. 54.

⁷⁸ See [Decision on Arrest](#), para. 76, with references.

⁷⁹ See ECtHR, [Štortecký 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.

⁸⁰ See similarly, [First Review Decision](#), para. 34.

3. Risk of Committing Further Crimes

37. 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.⁸¹ In this regard, the Pre-Trial Judge notes that the relevant factors to be considered are the same as those outlined in paragraphs 33-35 above with respect to the risk of obstruction of proceedings. In particular, the Pre-Trial Judge underlines that, insofar as the Accused has (allegedly) attempted to obstruct proceedings for the benefit of Mr Thaçi, the possibility that he may repeat these actions for his own benefit cannot be ruled out, especially in the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.⁸² For these reasons, the Pre-Trial Judge considers that there still exists a risk that the Accused will repeat the offences he is alleged to have committed.

38. In light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that the risk that Mr Smakaj will commit further offences continues to exist.

4. Conclusion

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

⁸¹ See [Decision on Arrest](#), para. 78.

⁸² See *supra* para. 35; see similarly, [First Review Decision](#), para. 37.

E. CONDITIONAL RELEASE

40. 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.⁸³ In this context, it is worth recalling that the assessment is case-specific, paying heed to the individual circumstances of each accused. Considering the above findings on grounded suspicion against Mr Smakaj,⁸⁴ placing him and Mr Kuçi on equal footing, as suggested by the Smakaj Defence,⁸⁵ is improper. What matters is that the Smakaj Defence explains how the proposed conditions would mitigate the risks.

41. The Pre-Trial Judge recalls her previous finding that none of the conditions then proposed by the Smakaj Defence, nor any other conditions imposed *proprio motu*,⁸⁶ could sufficiently mitigate the existing risks, particularly the risks of obstruction of SC proceedings and commission of further offences, in particular in light of the significant network of influential individuals within the Accused's KLA network and/or political circles.⁸⁷ Having received no relevant contrary intervening information, the Pre-Trial Judge remains persuaded that such conditions: (i) do not address the possibility of Mr Smakaj employing communication devices belonging to other persons or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of Mr Smakaj's communications.⁸⁸ The Pre-Trial Judge further maintains that: (i) the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits

⁸³ 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.

⁸⁴ See *supra* para. 24.

⁸⁵ See Defence Response, paras 33, 36.

⁸⁶ 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.

⁸⁷ See Initial Appearance Transcript, p. 37, line 24, to p. 38, line 6; p. 43, lines 3-5; [First Review Decision](#), paras 43-45.

⁸⁸ [First Review Decision](#), para. 43.

and communications, minimising, as much as possible, the risks of obstruction and commission of further offences;⁸⁹ and (ii) 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.⁹⁰

42. In light of the above, the Pre-Trial Judge concludes that the conditions for Mr Smakaj's release proposed by the Smakaj Defence, 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.

F. PROPORTIONALITY OF DETENTION

43. 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.⁹¹ 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.⁹² However, the Pre-Trial Judge notes that the question of 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.⁹³ Furthermore, the Pre-Trial Judge recalls

⁸⁹ [First Review Decision](#), para. 44, with further references.

⁹⁰ [First Review Decision](#), para. 44, with further references.

⁹¹ 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.

⁹² 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](#), 27 October 2021, public, para. 49, with further references.

⁹³ ECtHR, [Buzadji v. Moldova](#), para. 90. In this context, whether a charged offence is alleged to have been committed as part of a group is a relevant circumstance in evaluating the reasonableness of continued detention. *See, for example*, ECtHR, [Bak v. Poland](#), no. 7870/04, 16 January 2007, paras 56, 62-63; [Tomecki v. Poland](#), no. 47944/06, Judgment, 20 May 2008, para. 33.

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.⁹⁴

44. The Pre-Trial Judge recalls that: (i) Mr Smakaj has been detained since his arrest on 5 December 2024;⁹⁵ (ii) he is charged with one count of attempting to obstruct official persons in performing official duties and one count of contempt of court, which carry possible sentences of up to five (5) years and six (6) months, respectively;⁹⁶ and (iii) the risks under Article 41(6)(b) of the Law (in particular, the risks of obstruction and commission of further offences) cannot be mitigated by any proposed or additional conditions for release.⁹⁷

45. The Pre-Trial Judge also takes into consideration that, since the First Review Decision: (i) the SPO has (largely) completed the disclosure of evidence in its possession pursuant to Rule 102(1)(b) of the Rules⁹⁸ and made further disclosures pursuant to Rule 103 of the Rules;⁹⁹ (ii) the SPO has filed its first notice pursuant to Rule 102(3) of the Rules¹⁰⁰ and disclosed a number of items, as requested by the Defence;¹⁰¹ (iii) remaining investigative steps are progressing steadily;¹⁰² (iv) the Pre-Trial Judge has issued the “Decision on Framework for the Handling of Confidential Information and Witness Contacts”, adopting certain measures and

⁹⁴ KSC-BC-2023-10, F00325, Pre-Trial Judge, [Third Decision on Review of Detention of Haxhi Shala](#), 5 June 2024, public, para. 47.

⁹⁵ See *supra* para. 1.

⁹⁶ See KSC-BC-2023-12, F00040, Specialist Prosecutor, *Submission of Confirmed Indictment*, 2 December 2024, strictly confidential, para. 46, with Annex 1, strictly confidential. Public redacted versions of the main filing and the annex were issued on 6 December 2024, F00055 and F00055/A01, respectively.

⁹⁷ See *supra* paras 41-42.

⁹⁸ See Disclosure Package Nos 11, 17, 19, 21; See also KSC-BC-2023-12, F00100, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#), 20 December 2024, public, paras 45, 104(c), (e) (setting the deadline for the disclosure of such material to 17 March 2025); F00226, Specialist Prosecutor, *Prosecution Submissions Pursuant to F00100* (“SPO Update on Investigation”), 17 March 2025, confidential, para. 16 (seeking leave to disclose two (2) outstanding items under Rule 102(1)(b) of the Rules).

⁹⁹ See Disclosure Packages Nos 10, 18, 23.

¹⁰⁰ KSC-BC-2023-12, F00185, Specialist Prosecutor, [Prosecution Rule 102\(3\) Notice](#), 17 February 2025, public, with Annex 1, confidential.

¹⁰¹ See Disclosure Packages Nos 13-16, 20, 22.

¹⁰² SPO Update on Investigation, paras 2-15.

prohibitions related to the handling of confidential information and contact with any witnesses or victims in the present case or any other cases;¹⁰³ and (v) the Court of Appeals decision on the SPO appeal against the Confirmation Decision was rendered.¹⁰⁴ Thus, in the view of the Pre-Trial Judge, the proceedings are moving forward expeditiously.

46. Moreover, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Smakaj'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.

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

V. RECLASSIFICATION

48. The Pre-Trial Judge orders the Smakaj Defence and the SPO to file public redacted versions of the Defence Response and SPO Reply, respectively, or request their reclassification as public. In so doing, the Pre-Trial Judge reminds the Parties to abide by the relevant requirements of the Practice Direction on Files and Filings, and, in this regard, to follow the practice of submitting redacted filings in a clean word format without any prior stamps of the Court Management Unit and with the words "Public Redacted Version of" included in the title.¹⁰⁵

¹⁰³ KSC-BC-2023-12, F00173, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information and Witness Contacts*, 11 February 2025, confidential. A public redacted version was issued on 11 March 2025, [F00173/RED](#). See also F00207, [Decision on Thaçi Defence Request for Certification to Appeal the "Decision on Framework for the Handling of Confidential Information"](#), 10 March 2025, public.

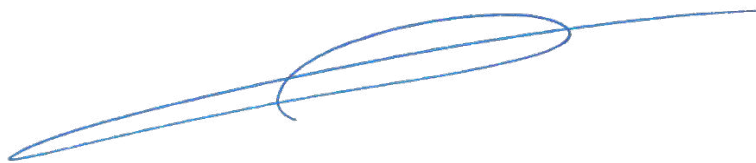
¹⁰⁴ KSC-BC-2023-12, IA002/F00012, Court of Appeals Panel, *Decision on the Specialist Prosecutor's Office's Appeal Against the Decision on the Confirmation of the Indictment*, 3 April 2025, confidential. A public redacted version was filed the same day, [IA002/F00012/RED](#).

¹⁰⁵ See, in particular, Articles 15(3), 29(2)(h) and 37-38 of KSC-BD-15, Registrar, *Registry Practice Direction – Files and Filings before the Kosovo Specialist Chambers*, 17 May 2019, public.

VI. DISPOSITION

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

- a) **GRANTS** leave to the SPO to reply;
- b) **ORDERS** Mr Smakaj's continued detention;
- c) **ORDERS** the Smakaj Defence and the SPO to file public redacted versions of the Defence Response and SPO Reply, respectively, or request their reclassification as public, by **Thursday, 10 April 2025**, pursuant to paragraph 48 of the present decision;
- d) **ORDERS** Mr Smakaj, if he so wishes, to file submissions on the next review of detention by **Monday, 5 May 2025**, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- e) **ORDERS** the SPO, should Mr Smakaj decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Smakaj's detention by **Wednesday, 14 May 2025**, and Mr Smakaj, if he so wishes, to file his response by **Wednesday, 21 May 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Monday, 7 April 2025

At The Hague, the Netherlands.