



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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 April 2025

**Language:** English

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**Public Redacted Version of**  
**Second 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 9(5), 56(2), 57(2) and 76 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,<sup>3</sup> further to the confirmation of an indictment against him, Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj, Isni Kilaj, and Hajredin Kuçi ("Confirmation Decision").<sup>4</sup>
2. On 8 December 2024, at the initial appearance of Mr Fazliu, the Pre-Trial Judge ordered his continued detention ("Decision on Detention").<sup>5</sup>
3. On 7 February 2025, the Pre-Trial Judge ordered Mr Fazliu's continued detention ("First Review Decision").<sup>6</sup>

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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* ("Decision on Arrest"), 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, 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](#).

<sup>5</sup> KSC-BC-2023-12, Transcript of Hearing ("Initial Appearance Transcript"), 8 December 2024, public, p. 65, line 24 to p. 69, line 18; *see, in particular*, p. 68, lines 8-9.

<sup>6</sup> KSC-BC-2023-12, F00163, Pre-Trial Judge, [Decision on Review of Detention of Fadil Fazliu](#), 7 February 2025, public.

4. On 14 March 2025, the Specialist Prosecutor's Office ("SPO") filed its submissions on the periodic review of Mr Fazliu's detention ("SPO Submissions").<sup>7</sup>

5. On 2 April 2025, the Defence for Mr Fazliu ("Fazliu Defence") filed a response comprising a request for an extension of time ("Response") and an annex.<sup>8</sup>

## II. SUBMISSIONS

6. The SPO submits that Mr Fazliu's continued detention remains necessary and proportionate,<sup>9</sup> as there has been no contrary intervening information or developments since the First Review Decision impacting the Pre-Trial Judge's previous findings.<sup>10</sup> According to the SPO: (i) there continues to be a grounded suspicion that Mr Fazliu has committed multiple crimes within the jurisdiction of the Specialist Chambers ("SC"), as required under Article 41(6)(a) of the Law;<sup>11</sup> and (ii) all three risks under Article 41(6)(b) of the Law continue to be present.<sup>12</sup> The SPO avers that the risks under Article 41(6)(b) have only increased with the advancement of the pre-trial stage of the proceedings, throughout which Mr Fazliu has gained insight into the case against him

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<sup>7</sup> KSC-BC-2023-12, F00217, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Fadil Fazliu*, 14 March 2025, public.

<sup>8</sup> KSC-BC-2023-12, F00245, Fazliu Defence, *Fazliu Defence Submissions on Detention Review*, 2 April 2025, confidential, with Annex 1, confidential and *ex parte*. A public redacted version was filed on 4 April 2025, F00245/RED. On 27 March 2025, the Fazliu Defence sought directions from the Pre-Trial Judge, *via* email, on whether it could request an extension of time for its response within the Response itself. The Pre-Trial Judge indicated that if the Fazliu Defence wished to make such a request, it should indeed include it in its Response. See CRSPD62, 20250327 *Emails bt (sic) Fazliu Defence Team Pre-Trial Judge (sic) re Response to the Prosecution Submissions on Review of Detention of Fadil Fazliu*, 27 March 2025, confidential.

<sup>9</sup> SPO Submissions, paras 1, 7-8.

<sup>10</sup> SPO Submissions, paras 1, 4.

<sup>11</sup> SPO Submissions, paras 1, 3.

<sup>12</sup> SPO Submissions, paras 1, 4.

through the recent disclosure of incriminating evidence that the SPO will lead at trial.<sup>13</sup> The SPO further submits that: (i) no conditions of release are able to sufficiently mitigate the existing risks;<sup>14</sup> and (ii) given the stage of the proceedings, which continue to move forward expeditiously, Mr Fazliu's detention remains proportionate.<sup>15</sup>

7. The Fazliu Defence submits that circumstances have changed since the First Review Decision, Mr Fazliu's detention is unnecessary and disproportionate, and he should be granted conditional release in Kosovo.<sup>16</sup>

8. More specifically, the Fazliu Defence argues that Mr Fazliu is not a flight risk as: (i) the charges against him are among the least serious before the SC; (ii) the maximum possible sentences are modest; (iii) he has lived in his family home for some 47 years, and his wife and children also live there presently; and (iv) he has an excellent reputation and is respected in his community, and so is his family.<sup>17</sup>

9. The Fazliu Defence further submits that the risk of obstructing the proceedings is negligible, if not entirely absent since: (i) the proceedings in Case 06 are well advanced and coming to a close; and (ii) the repercussions of Mr Fazliu's alleged acts on said proceedings appear to be limited.<sup>18</sup>

10. Regarding the risk of committing further offences, the Fazliu Defence adds that: (i) Mr Fazliu enjoys the presumption of innocence; (ii) he is 64 years old; (iii) he is of good character and has never been convicted of a criminal offence; (iv) over the past four months, he would have reflected on the gravity of the proceedings and the need to ensure that his conduct is exemplary; and (v) he

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<sup>13</sup> SPO Submissions, paras 1, 4.

<sup>14</sup> SPO Submissions, paras 1, 4-6.

<sup>15</sup> SPO Submissions, paras 1, 7.

<sup>16</sup> Response, paras 1, 17, 23.

<sup>17</sup> Response, paras 1, 6-10.

<sup>18</sup> Response, paras 11-12, 18.

has more to lose by committing further offences, as his continued detention may worsen his health.<sup>19</sup>

11. For these reasons, the Fazliu Defence submits that Mr Fazliu should be granted conditional release in Kosovo and proposes a series of conditions including bail of at least [REDACTED], frequent reporting to the police, surrender of his passport and further travel restrictions.<sup>20</sup> At this juncture, the Fazliu Defence highlights that Mr Fazliu suffers from a [REDACTED] heart condition, as evidenced by a cardiologist's report annexed to the Response.<sup>21</sup> The Fazliu Defence argues that Mr Fazliu's medical condition militates in favour of his conditional release, as this would significantly reduce the risk of [REDACTED], which cannot be overcome by the medical practitioners Mr Fazliu has access to from the SC Detention Centre.<sup>22</sup>

12. Lastly, the Fazliu Defence requests the Pre-Trial Judge to extend the deadline for its Response and consider it for the review of Mr. Fazliu's detention. In this regard, the Fazliu Defence submits that: (i) the cardiologist's report presented in support of its submissions regarding Mr Fazliu's health was produced only on 19 March 2025; and (ii) Mr Fazliu's Defence team is still new to the proceedings.<sup>23</sup>

### III. APPLICABLE LAW

13. 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,

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<sup>19</sup> Response, paras 1, 13-14.

<sup>20</sup> Response, para. 20; *see also* para. 10.

<sup>21</sup> *See* Annex 1 to the Response.

<sup>22</sup> Response, paras 1, 21-22.

<sup>23</sup> Response, para. 19.

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.

14. 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.

15. 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.

16. 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.

17. Pursuant to Rule 9(5) of the Rules, the Pre-Trial Judge may, *proprio motu* or upon showing of good cause: (a) extend or reduce any time limit prescribed by the Rules or set by her; or (b) recognise as valid any act carried out after the expiration of the time limit.

18. Pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.

#### IV. DISCUSSION

##### A. PRELIMINARY MATTER

19. Before all else, the Pre-Trial Judge will address the Fazliu Defence's request for an extension of the time limit to file its Response.<sup>24</sup> The Pre-Trial Judge recalls that the time limit for the Fazliu Defence to file a response to the SPO Submissions was 21 March 2025.<sup>25</sup>

20. The Pre-Trial Judge notes first that the Fazliu Defence filed its Response containing the request for an extension of time on 2 April 2025, twelve (12) days past the time limit, that is to say manifestly not "sufficiently in advance", as required by Rule 76 of the Rules, to enable the Pre-Trial Judge to rule on said request before the expiry of the time limit.

21. Second, the Pre-Trial Judge considers that the Fazliu Defence fails to demonstrate good cause, as required under Rule 9(5) of the Rules. The Fazliu Defence refers to the date of issuance of the medical report attached to the Response, as well as to the fact that "the defence personnel [...] are still relatively new to these proceedings" to justify the late filing of the Response.<sup>26</sup> The Pre-Trial Judge finds neither of these arguments persuasive, given that: (i) the medical report is based on examinations of Mr Fazliu conducted already in early 2024 and could thus have been prepared earlier; (ii) the medical report (based on two examinations of Mr Fazliu that were conducted more than a year ago)<sup>27</sup> is dated 19 March 2025, meaning that it was produced prior to the expiration of the time limit for the Fazliu Defence's Response; (iii) the Fazliu Defence could and should have made a request for extension of time in advance

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<sup>24</sup> Response, para. 19.

<sup>25</sup> [First Review Decision](#), para. 41(c).

<sup>26</sup> Response, para. 19.

<sup>27</sup> Indeed, Mr Fazliu previously raised the matter of his medical condition, as early as 8 December 2024, during his initial appearance, and this was duly considered by the Pre-Trial Judge at the time; *see* Initial Appearance Transcript, p. 58, lines 3-6; p. 68, lines 1-2.



of the expiry of the time limit, as prescribed by Rule 76 of the Rules;<sup>28</sup> and (iv) lead Counsel for Mr Fazliu has been assigned since 19 February 2025<sup>29</sup> and he is certainly not new to the proceedings before the SC.<sup>30</sup>

22. Third, the Pre-Trial Judge reminds the Fazliu Defence that the rationale behind setting briefing schedules for submissions in the context of review of detention decisions is to provide Parties with an opportunity to make relevant submissions and/or respond to each other's arguments, allowing the Pre-Trial Judge, in turn, to rule on the matter before the expiry of the two-month time limit.<sup>31</sup> Furthermore, the SC procedural framework also foresees the possibility for the Fazliu Defence to file a request before the PTJ for Mr Fazliu's release at *any time*, in particular when a change of circumstances since the last review has occurred, as provided for in Article 41(10) of the Law and Rule 57(2) of the Rules.<sup>32</sup>

23. Having said that, considering that these are the first submissions from the Fazliu Defence on Mr Fazliu's detention since his initial appearance on 8 December 2024,<sup>33</sup> the Pre-Trial Judge will exceptionally consider the Response.

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<sup>28</sup> Only on 27 March 2025, *via* e-mail, the Fazliu Defence informed the Pre-Trial Judge that it intended to file a response the very next day, that is six (6) days past the deadline and eight (8) days after the "medical report" was produced, and took another six (6) days to file its Response; *see supra* fn. 8.

<sup>29</sup> KSC-BC-2023-12, F00189, Registrar, *Notification of Conditional Assignment of Specialist Counsel and Termination of Services of Duty Counsel for Fadil Fazliu*, 19 February 2025, public, with Annexes 1-2, confidential.

<sup>30</sup> KSC-BC-2020-06, F00075, Registrar, [Notification of the Appointment of Counsel to Rexhep Selimi](#), 12 November 2020, public with Annex 1, confidential. More recently, *see* F02875, Trial Panel II, [Decision on Registrar Referral Pursuant to Section 12\(5\) of the Directive on Counsel](#), 30 January 2025, public and 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>31</sup> The Pre-Trial Judge recalls that in the last round of review of detention, the Fazliu Defence filed neither submissions, nor a response to the SPO submissions (*see*, [First Review Decision](#), para. 4).

<sup>32</sup> *See* KSC-BC-2023-12, Transcript of Hearing ("Initial Appearance Transcript"), 8 December 2024, public, p. 68, line 24 – p. 69, line 2.

<sup>33</sup> Response, para. 5, referring to [First Review Decision](#), para. 4.



## B. APPLICABLE STANDARD

24. 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,<sup>34</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>35</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>36</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>37</sup> 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

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<sup>34</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>35</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>36</sup> [Second Krasniqi Detention Appeal Decision](#), para. 15; [Sixth Shala Detention Decision](#), para. 19.

<sup>37</sup> See [Second Krasniqi Detention Appeal Decision](#), para. 16; [Sixth Shala Detention Decision](#), para. 19.

findings made at the time of the review.<sup>38</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>39</sup>

25. The Pre-Trial Judge likewise underscores that any analysis of Mr Fazliu's detention must duly consider his presumption of innocence.<sup>40</sup> This means, as a consequence, that pre-trial detention cannot be taken lightly and that the SPO bears the burden of establishing that Mr Fazliu's detention is necessary.<sup>41</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>42</sup>

### C. GROUNDED SUSPICION

26. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion<sup>43</sup> that the detained person has committed a

<sup>38</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>39</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>40</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>41</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>42</sup> [Sixth Shala Detention Decision](#), para. 19.

<sup>43</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.

crime within the SC's jurisdiction. This is a condition *sine qua non* for the validity of the detained person's continued detention.<sup>44</sup>

27. 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 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.<sup>45</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>46</sup> The Pre-Trial Judge notes that there have been no developments in the case negating these findings.

28. 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, as set forth under Article 41(6)(a) of the Law.<sup>47</sup>

#### D. NECESSITY OF DETENTION

29. 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>48</sup> In this regard, Article 41(6)(b) of the Law

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<sup>44</sup> [First Shala Detention Decision](#), para. 14. See also ECtHR, [Merabishvili v. Georgia](#), para. 222.

<sup>45</sup> [Confirmation Decision](#), para. 313(b).

<sup>46</sup> [First Review Decision](#), para. 13; [Decision on Arrest](#), para. 43; [Confirmation Decision](#), paras 42-43. See similarly, [Second Shala Detention Decision](#), para. 22; [Sixth Shala Detention Decision](#), para. 24.

<sup>47</sup> See similarly, [First Review Decision](#), para. 14; Decision on Detention in the Initial Appearance Transcript, p. 67, lines 8-10.

<sup>48</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

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.<sup>49</sup> Therefore, the Pre-Trial Judge must rely on case-specific reasoning and concrete grounds in deciding to continue detention.<sup>50</sup>

30. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>51</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>52</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>53</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>54</sup>

31. 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>55</sup> it must be based on the facts of the case and must be undertaken on

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Panel, [Decision on Kadri Veseli's Appeal Against Decision on Interim Release](#) ("First Veseli Detention Appeal Decision"), 30 April 2021, public, paras 15, 18.

<sup>49</sup> [SCCC 26 April 2017 Judgment](#), para. 113.

<sup>50</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>51</sup> See chapeau of Article 41(6)(b) of the Law.

<sup>52</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>53</sup> See also, [First Veseli Detention Appeal Decision](#), para. 17; [First Shala Detention Decision](#), para. 16.

<sup>54</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>55</sup> See similarly, [First Thaçi Detention Decision](#), para. 21, with further references; [Kilaj Detention Appeal Decision](#), para. 16.

an individual basis in light of the personal circumstances of the detained person.<sup>56</sup> When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.<sup>57</sup>

32. 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>58</sup>

### 1. Risk of Flight

33. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge first finds that the considerations set out in the First Review Decision are still relevant, namely: (i) Mr Fazliu's awareness of the gravity of the offences he is charged with, together with the potential sentence that these offences could attract, if convicted;<sup>59</sup> (ii) his demonstrated blatant disregard for the laws and the rules of the SC;<sup>60</sup> (iii) the fact that he has the opportunity to flee, by travelling freely to jurisdictions beyond the reach of the SC;<sup>61</sup> (iv) that he also has the means to evade justice, given his long-standing political career in Kosovo and close ties with former Kosovo Liberation Army ("KLA") commanders, including KLA veterans with rooted political influence – among them Mr Thaçi – from whom he may seek and secure resources and support for the purpose of fleeing;<sup>62</sup> and (v) the fact that, since his arrest, Mr Fazliu is aware of the

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<sup>56</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.

<sup>57</sup> See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references.

<sup>58</sup> See [First Shala Detention Decision](#), para. 19; [First Thaçi Detention Decision](#), para. 24.

<sup>59</sup> See [First Review Decision](#), para. 19.

<sup>60</sup> See [First Review Decision](#), para. 19.

<sup>61</sup> See [First Review Decision](#), para. 20.

<sup>62</sup> See [First Review Decision](#), para. 20.

indictment-supporting evidence against him, and is being progressively informed through disclosure of the full evidentiary record of his alleged criminal conduct.<sup>63</sup> The Pre-Trial Judge remains attentive to the fact that Mr Fazliu continues to gain increased insight into the evidence underpinning the charges against him, through the ongoing disclosure process.<sup>64</sup> At this juncture, the Pre-Trial Judge finds that: (i) the Fazliu Defence's submission that the offences with which Mr Fazliu is charged are not the gravest and they attract a minimal sentence, understates the gravity of said offences;<sup>65</sup> and (ii) the Fazliu Defence's statement that Mr Fazliu's custody in detention risks him serving a significant part of any sentence imposed, is speculative in nature.<sup>66</sup>

34. As regards Mr Fazliu's rooted family ties in Kosovo, the Pre-Trial Judge continues to be persuaded that these only partially mitigate and do not eliminate the risk that he will flee, particularly in light of the potential role of his son, Fahri Fazliu ("Fazliu's Son"), in the charges alleged against Mr Fazliu in the present case. The Fazliu Defence's submissions regarding his family and community ties in fact only reinforce the Pre-Trial Judge's determination that Mr Fazliu benefits from an extensive support network in Kosovo which he may, in turn, mobilize for the purposes of fleeing.<sup>67</sup>

35. As to the Fazliu Defence's argument regarding Mr Fazliu's need for specialized medical care while in detention, the Pre-Trial Judge recalls that Mr Fazliu's medical condition has no bearing on the flight risk, as he can also be treated elsewhere.<sup>68</sup> The Fazliu Defence fails to articulate what, if anything,

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<sup>63</sup> See [First Review Decision](#), para. 21.

<sup>64</sup> The Pre-Trial Judge notes that, since the First Review Decision, the SPO has made four (4) additional disclosures pursuant to Rule 102(1)(b) of the Rules. See Disclosure Package Nos 11, 17, 19 and 21.

<sup>65</sup> See [Decision on Arrest](#), para. 81; [First Review Decision](#), para. 19.

<sup>66</sup> Response, para. 6.

<sup>67</sup> See Response, paras 7-9 and *supra* para. 33.

<sup>68</sup> See [First Review Decision](#), para. 22.



has changed since the last detention review in this regard. The Pre-Trial Judge notes, in particular, that the cardiologist's report attached to the Response refers to a heart condition which predates Mr Fazliu's detention and for which he can receive care while in detention.<sup>69</sup>

36. Lastly, the Pre-Trial Judge recalls that it is the risk, and not the inevitability of flight, that must be assessed.<sup>70</sup>

37. 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**

38. 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 First Review Decision 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;<sup>71</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>72</sup> (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>73</sup> and (v) his increased awareness of the incriminating evidence against him.<sup>74</sup>

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<sup>69</sup> See Response, para. 22; see also KSC-BD-08-Rev1, Registrar, [Rules on Detention](#), 23 September 2020, public, Rule 30.

<sup>70</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>71</sup> See [First Review Decision](#), para. 24. See similarly, [Kilaj Detention Appeal Decision](#), para. 43.

<sup>72</sup> See [First Review Decision](#), para. 24.

<sup>73</sup> See [First Review Decision](#), para. 24.

<sup>74</sup> See [First Review Decision](#), para. 25.



39. The Pre-Trial Judge remains attentive to the fact that Mr Fazliu continues to gain increased insight into the evidence underpinning the charges through the ongoing disclosure process.<sup>75</sup> Considering Mr Fazliu's past position within the KLA,<sup>76</sup> the Pre-Trial Judge remains persuaded that, as a result of the ongoing disclosure, he has further incentive to interfere with the witness.<sup>77</sup> 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 Mr Fazliu's Son, and/or other associates from within his KLA network and/or political circles.<sup>78</sup>

40. The Pre-Trial Judge assesses the above factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC.<sup>79</sup> In this context, the Pre-Trial Judge considers that the risk of Mr Fazliu exerting pressure on witnesses remains particularly high,<sup>80</sup> in light of his ties, as referenced above.

41. The Pre-Trial Judge is not persuaded by the Fazliu Defence's submissions that the risk of obstruction is negligible or even absent.<sup>81</sup> The Fazliu Defence simply ignores the fact that: (i) the proceedings in Case 06 remain ongoing and that a Trial Panel can hear evidence up until the closing of a case under Rule 136 of the Rules and, in exceptional circumstances, even afterwards;<sup>82</sup> and (ii) the

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<sup>75</sup> See *supra* para. 33.

<sup>76</sup> See [Decision on Arrest](#), para. 83.

<sup>77</sup> See [First Review Decision](#), para. 25.

<sup>78</sup> See *supra* para. 33; [First Review Decision](#), para. 25. See similarly, [First Januzi Detention Decision](#), para. 54.

<sup>79</sup> See [First Review Decision](#), para. 26.

<sup>80</sup> 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.

<sup>81</sup> See Response, paras 11-12, 18.

<sup>82</sup> See similarly KSC-BC-2020-04, F00812/RED, Trial Panel I, [Public Redacted Version of Decision on the Sixteenth Review of Detention of Pjetër Shala](#), 18 March 2024, public, para. 26.

Pre-Trial Judge assesses the risk of obstruction not only in relation to Case 06 proceedings, but also – importantly – in relation to the present proceedings.<sup>83</sup>

42. 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**

43. 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>84</sup> In this regard, the Pre-Trial Judge notes that the relevant factors to be considered are the same as those outlined in paragraphs 38-41 above with respect to the risk of obstruction of proceedings. For these reasons, the Pre-Trial Judge finds that there still exists a risk that the Accused will repeat the offences he is alleged to have committed.

44. The Pre-Trial Judge has considered the arguments raised by the Fazliu Defence in this regard and finds that none of them put into question the findings made above. Mr Fazliu's age, the fact that he has never been convicted of a criminal offence, as submitted,<sup>85</sup> and his health bear little weight when considering the allegations in the present case, Mr Fazliu's persistence and proneness to obstruct the SC proceedings, and his willingness to involve other persons, including his son, for the purpose of obstructing said proceedings.<sup>86</sup>

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<sup>83</sup> See [Decision on Arrest](#), paras 86-89, *in particular*, para. 87.

<sup>84</sup> See [First Review Decision](#), para. 28. See also [First Shala Detention Decision](#), para. 39.

<sup>85</sup> Response, para. 13.

<sup>86</sup> See *supra* para. 38.

45. 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

46. 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 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.

#### E. CONDITIONAL RELEASE

47. 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>87</sup>

48. The Pre-Trial Judge recalls her previous finding that, while mindful of Mr Fazliu's willingness, at that time, to provide bail and any other condition deemed appropriate, she remained persuaded that none of the conditions proposed by the Fazliu Defence could sufficiently mitigate the existing risks.<sup>88</sup>

49. The Pre-Trial Judge remains of the view that, despite the newly proposed and significantly higher bail in the amount of [REDACTED], no conditions - whether proposed by the Fazliu Defence or imposed *proprio motu* by the Pre-Trial Judge<sup>89</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

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<sup>87</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>88</sup> See [First Review Decision](#), para. 33.

<sup>89</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.

further offences. Notably, the Pre-Trial Judge considers that such conditions: (i) do 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.<sup>90</sup> The Pre-Trial Judge is also particularly mindful that, despite any conditions, the Accused would have the ability, motive, and opportunity to approach witnesses through his son.<sup>91</sup>

50. 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>92</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>93</sup>

51. As to the argument that Mr Fazliu's heart condition militates in favour of his conditional release, the Pre-Trial Judge recalls that whilst in detention, Mr Fazliu is entitled to receiving at least the same standards of health care as are available in the Host State, and that therefore his condition cannot in itself amount to a circumstance justifying Mr Fazliu's conditional release.<sup>94</sup>

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<sup>90</sup> See [First Review Decision](#), para. 34.

<sup>91</sup> See *supra* paras 38-39.

<sup>92</sup> [First Review Decision](#), para. 35. 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>93</sup> [First Review Decision](#), para. 35. Similarly, 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>94</sup> See *supra* fn. 69.

52. Therefore, in light of the above, the Pre-Trial Judge concludes that the conditions for the Mr Fazliu's release proposed by the Fazliu Defence 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.

#### F. PROPORTIONALITY OF DETENTION

53. 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>95</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 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>96</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>97</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>98</sup>

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<sup>95</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](#).

<sup>96</sup> [Second Thaçi Detention Appeal Decision](#), para. 49, with further references.

<sup>97</sup> 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.

<sup>98</sup> KSC-BC-2023-10, F00325, Pre-Trial Judge, [Third Decision on Review of Detention of Haxhi Shala](#), 5 June 2024, public, para. 47.

54. The Pre-Trial Judge recalls that: (i) Mr Fazliu has been detained since his arrest on 5 December 2024; (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 a possible sentence of up to five (5) years and six (6) months, respectively; and (iii) the risks under Article 41(6)(b) of the Law (in particular, the risk of obstruction and commission of further offences) cannot be mitigated by any proposed or additional conditions for release.<sup>99</sup>

55. 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 Rules,<sup>100</sup> and made further disclosures pursuant to Rule 103 of the Rules;<sup>101</sup> (ii) the Pre-Trial Judge has issued the “Decision on Framework for the Handling of Confidential Information and Witness Contacts”, adopting certain measures and prohibitions related to the handling of confidential information and contact with any witnesses or victims in the present case or any other cases;<sup>102</sup> (iii) the SPO has filed its first notice pursuant to Rule 102(3) of the Rules<sup>103</sup> and disclosed a number of items, as requested by the Defence;<sup>104</sup> (iv) remaining investigative steps are progressing steadily;<sup>105</sup> and (v) the Court of Appeals has rendered its

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<sup>99</sup> See *supra* para. 52.

<sup>100</sup> See Disclosure Package Nos 11, 17, 19 and 21; SPO Submissions, para. 7. 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).

<sup>101</sup> See Disclosure Package Nos 10, 18 and 23.

<sup>102</sup> 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](#).

<sup>103</sup> See KSC-BC-2023-12, F00185, Specialist Prosecutor, [Prosecution Rule 102\(3\) Notice](#), 17 February 2025, public, with Annex 1, confidential.

<sup>104</sup> See Disclosure Packages 13, 14, 15, 16, 20 and 22; SPO Submissions, para. 7.

<sup>105</sup> SPO Update on Investigation, paras 2-15.

decision on the SPO appeal against the Confirmation Decision.<sup>106</sup> Thus, the proceedings continue to move forward expeditiously.

56. 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.

57. 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

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

- a) **GRANTS** the Fazliu Defence request for an extension of the deadline for its Response;
- b) **ORDERS** Mr Fazliu's continued detention;
- c) **ORDERS** Mr Fazliu, if he so wishes, to file submissions on the next review of detention by **Monday, 5 May 2025**, with the response and reply following the timeline set out in Rule 76 of the Rules; and

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<sup>106</sup> 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.



d) **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 **Wednesday, 14 May 2025**, and Mr Fazliu, if he so wishes, to file his response by **Wednesday, 21 May 2025**.



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

Dated this Monday, 7 April 2025

At The Hague, the Netherlands.