

In: KSC-BC-2023-12
Specialist Prosecutor v. Hashim Thaci, Bashkim Smakaj, Isni
Kilaj, Fadil Fazliu and Hajredin Kuci

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Fadil Fazliu

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**Public Redacted Version of Fazliu Defence Submissions on the Third Review of
Detention**

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I. INTRODUCTION

1. The Defence for Mr Fadil Fazliu ("Fazliu Defence"), pursuant to Pre-Trial Judge's order in the latest decision on detention review¹, files the following submissions.
2. Given the change of circumstances and the recent developments in *Thaci et al*, ("Case 06"), the Defence contends that Mr Fazliu's continued Detention is no longer necessary and proportionate.

II. PROCEDURAL BACKGROUND

3. On 5 December 2024, Mr Fadil Fazliu was arrested in Kosovo pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge², further to the confirmation of an indictment against him, Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, and Hajredin Kuçi ("Confirmation Decision").³
4. On 8 December 2024, at the initial appearance of Mr Fazliu, the Pre-Trial Judge ordered his continued detention.⁴

¹ KSC-BC-2023-12, F00251, Pre-Trial Judge, Second Decision on Review of Detention of Fadil Fazliu, 7 April 2025, public.

² KSC-BC-2023-12, F00045, Notification of Arrest Warrant of Fadil Fazliu, Pursuant to Rule 55(4), 4 December 2024, public.

³ KSC-BC-2023-12, F00036, Pre-Trial Judge, Decision on the Confirmation of Indictment, 29 November 2024, confidential. Public redacted version dated 12 February 2025.

⁴ KSC-BC-2023-12, Transcript of Hearing, 8 December 2024, public, pp. 65-69, in particular p.68, lns 8-9.

5. On 7 February 2025, the Pre-Trial Judge ordered Mr Fazliu's continued detention.⁵
6. On 14 March 2025, the Specialist Prosecutor's Office ("SPO") filed its submissions on the periodic review of Mr Fazliu's detention.⁶
7. On 2 April 2025, the Defence for Mr Fazliu filed a response comprising a request for an extension of time and an annex.⁷
8. On 7 April 2025, the Pre-Trial Judge issues the Second Decision on Review of Detention of Fadil Fazliu and ordered his continued detention. The Pre-Trial Judge ordered Mr. Fazliu, if so wishes, to file submissions on detention review no later than 5 May 2025.⁸

III. APPLICABLE LAW

9. The Pre-Trial Judge is authorized to conduct a detention review under the Rules of Procedure and Evidence of the Kosovo Specialist Chambers ("Rules"). Rule 57(2) states: *"the Panel seized with a case shall review a decision on detention on remand upon the expiry of two months from the last ruling on detention, in accordance with Article*

⁵ KSC-BC-2023-12, F00163, Pre-Trial Judge, Decision on Review of Detention of Fadil Fazliu, 7 February 2025, public.

⁶ KSC-BC-2023-12, F00217, Specialist Prosecutor, Prosecution Submissions on Review of Detention of Fadil Fazliu, 14 March 2025, public,

⁷ KSC-BC-2023-12, F00245, Fazliu Defence, Fazliu Defence Submissions on Detention Review, 2 April 2025, confidential, with Annex 1, confidential *ex parte*, Public redacted version dated 4 April 2025.

⁸ KSC-BC-2023-12, F00251, Second Decision on Detention Review of Fadil Fazliu, 7 April 2025, confidential, Public Redacted version dated 7 April 2025.

41(6), (10), (11), and (12) of the Law or at any time upon request by the Accused or the Specialist Prosecutor, or proprio motu, where a change in circumstances since the last review has occurred.”

10. Article 41(10) of the Law on Specialist Chambers and Specialist Prosecutor’s Office mandates that: *“Upon expiry of two months from the last ruling on detention on remand, the Pre-Trial Judge [...] shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.”*

IV. SUBMISSION

11. The Defence submits that continued detention is no longer necessary, justified, or proportionate. The conclusion of the evidentiary phase of *Case 06* amounts to a significant change of circumstances which compel Mr. Fazliu’s immediate conditional release.

12. The Defence demands that the fundamental right to liberty, enshrined in both domestics and international human rights law, be respected. Mr. Fazliu must not be subjected to indefinite pre-trial detention absent concrete, current and individualized justification, in compliance with Article 5 of the European Convention on Human Rights and relevant KSC and ECtHR jurisprudence.⁹

⁹ KSC-BC-2020-07, IA-001/ F00005, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, 9 December 2020, para. 72 and fns. 127-130.

13. It is settled that the presumption is in favour of release pending trial. The burden lies squarely with the Prosecution to prove, with specific, concrete evidence, that the continued detention remains necessary.¹⁰

14. Detention must not be sustained based on abstract, general or historical concerns.¹¹ The competent panel has the duty to examine the reasons or circumstances underpinning detention and to determine whether they “still exist” and thoroughly assess any new submissions and pertinent evidence.¹²

15. The Defence acknowledge that the ‘grounded suspicion’ standard under Article 41(6)(a) of the Law remains met at this stage. Nevertheless, the Defence submits that suspicion alone is insufficient to justify ongoing detention absent demonstrable and present risks.

(i) Necessity of Detention

a) No risk of flight

16. The Prosecution’s theory that Mr. Fazliu poses a flight risk is speculative and unsupported by evidence. Mr Fazliu has demonstrated unwavering ties to

¹⁰ KSC-BC-2020-04, IA001/F00005/RED, Public Redacted Version of Decision on Pjeter Shala’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 19 July 2022, para 18. See also ECtHR, *Buzadji v. Moldova*, [GC], no. 23755/07, para. 84

¹¹ *Merabishvili v. Georgia*, no. 72508/13, paras 222-225

¹² KSC-BC-2020-04, IA001/F00005/RED, Public Redacted Version of Decision on Pjeter Shala’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 19 July 2022, paras 20-21.

Kosovo; a lifelong resident of over 47 years, a devoted husband and father, with a strong reputation within his community.

17. The alleged offences are among the least serious before the Kosovo Specialist Chambers. Any risk of flight is mitigated by Mr. Fazliu's health issues – including a pre-existing heart condition that requires regular monitoring – making international travel a serious physical burden.

18. As the ECtHR has affirmed, the mere seriousness of charges or potential sentences cannot, without more, justify prolonged detention.¹³ Speculative concerns must not suffice where an individual's liberty is at stake. It is submitted that the risk of flight has been significantly undermined by the change in circumstances of he submitted removal of any risk of obstruction.

b) No risk of obstruction: Conclusion of SPO case

19. The Pre-Trial Judge previously considered that Mr. Fazliu might obstruct the course of *Case 06* proceedings. That premise is now wholly extinguished: The SPO has completed the presentation of evidence in *Case 06* on 15 April 2025.

20. There are “no more witnesses to be called or other evidentiary material to be presented”.¹⁴ Therefore there are (i): no longer any witnesses to be influenced; (ii) there is no ongoing trial process that Mr. Fazliu could obstruct; and (iii) there is no pending evidence that Mr. Fazliu could interfere with.

¹³ *Letellier v. France*, no. 12369/86, para. 43

¹⁴ KSC-BC-2020-06, F03121, Prosecution notice pursuant to Rule 129, 15 April 2025, para 1.

21. Any continuing reliance on risks tied to *Case 06* is both factually obsolete and legally impermissible. Continued detention based on risk arising from a concluded trial would amount to punitive pre-trial detention, which the ECtHR has repeatedly condemned.¹⁵

22. The Defence emphasized that no new allegations have been raised concerning interference in the current proceedings. Generalized fears and outdated findings must not be substituted for real, present threats.¹⁶ Any ongoing detention must be justified solely based on the need of this case. The absence of a live risk demands Mr. Fazliu's immediate release.

c) Risk of further offences: no concrete basis

23. Assertions that Mr. Fazliu might commit further offences are entirely speculative. Mr. Fazliu, aged 64, suffers from a [REDACTED] cardiac condition, as evidenced in the previously served Cardiologist Report, and has never been convicted of a criminal offence.

24. The Pre-Trial Judge must, according to the jurisprudence, consider individual characteristics – including age, health, criminal history, and personal circumstances – in assessing risk.¹⁷ Detaining an elderly man of good character based on theoretical risks cannot meet the stringent threshold under Article 41(6)(b). It is submitted that the risk of further offences has been significantly undermined by the submitted removal of the risk of obstruction.

¹⁵ *Idalov v. Russia*, no. 5826/03, para. 140

¹⁶ *Buzadji v. Moldova*, no. 23755/07 para. 91

¹⁷ *Khudoyorov v. Russia*, no. 6847/02, para. 186

(ii) Conditional Release is Sufficient

25. The Defence submits that, even if risks were found to exist, strict conditions can adequately mitigate them. The Defence propose numerous measures that the Pre-Trial Judge might consider as necessary to mitigate the risk. Amongst those measures are:

1) Residence at the property:

[REDACTED], Kosovo

2) Reporting at a frequency, to be decided by the Pre-Trial Judge, to the nearest police station to this address, which is understood to be the 'Central Police Station', located at [REDACTED] in Pristina.

3) A curfew condition ensuring that the Accused be present at the above address by 2000 hours every evening until 0800 hours every morning, or such other hours as appear necessary, save where the Accused has to attend medical or hospital appointments, by prior arrangement, where advance notice is given to the local police station.

4) Supervision of the Accused's presence at the above address, by local police, as deemed reasonable.

5) A restriction preventing Mr. Fazliu from travelling beyond a three-kilometer radius from the above residence in Pristina.

6) In any event a prohibition on his leaving Kosovo, unless authorized to do so by the Court.

7) The surrender of his passport to the Kosovo authorities or police.

8) A surety in the sum of at least [REDACTED].

9) Any other conditions which the Pre-Trial Judge deems reasonable.

26. The Defence emphasizes that stringent conditions may be sufficient to mitigate the potential risks. Conditional release must always be seriously considered where alternatives to detention exist.¹⁸

V. CONCLUSION

27. Mr Fazliu has been detained for five months on charges carrying a maximum sentence of 5 years and 6 months. The proportionality principle under Rule 56(2) of the Rules and ECtHR case law¹⁹, requires that pre-trial detention must not become a form of punishment.

28. In the context of the completion of *Case 06*, the contended progress of pre-trial activities in the present case, and the absence of any fresh allegations, detention has lost any reasonable justification. For the ongoing reasons, the Defence respectfully requests that the Pre-Trial Judge:

¹⁸ *Sulaoja v. Estonia* no. 55939/00, para. 64

¹⁹ *Buzadji v. Moldova*, no.23755/07, para. 104

- a) order the immediate conditional release of Mr. Fadil Fazliu pending trial, subject to appropriate conditions; or, in the alternative,
- b) order house arrest under strict monitoring conditions in Kosovo.

29. The Defence reiterates that liberty is the rule, and detention the exception, and that Mr. Fazliu's continued is now a violation of his fundamental rights under the Law and the European Convention on Human Rights.

VI. CLASSIFICATION

30. Pursuant to Rule 82(1)(b), the Defence files these submissions confidentially as it contains sensitive and private information pertaining to Mr Fazliu. A public redacted version will be filed in the due course.

Word count: 1920 words

Respectfully submitted,



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4 May 2025

The Hague, Netherlands