



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 14 May 2025

Language: English

Classification: Public

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

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I. INTRODUCTION

1. Pursuant to Rule 76 of the Rules,¹ the Specialist Prosecutor's Office ('SPO') hereby responds to the FAZLIU Submissions.² FAZLIU's claim that his detention is no longer necessary, justified or proportionate³ is incorrect. Further, submissions concerning FAZLIU's purported absence of an incentive to further obstruct or interfere with proceedings⁴ are misplaced. The issues raised do not constitute a meaningful change in circumstances nor do they impact upon the Pre-Trial Judge's individualised findings, such that FAZLIU's continued detention remains necessary and proportionate.

II. SUBMISSIONS

2. The Pre-Trial Judge has consistently found: (i) a grounded suspicion that FAZLIU committed crimes within the jurisdiction of the Kosovo Specialist Chambers ('KSC');⁵ (ii) the existence of a risk of flight;⁶ (iii) articulable grounds to believe that

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('KSC'), KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

² Public Redacted Version of Fazliu Defence Submissions on the Third Review of Detention, KSC-BC-2023-12/F00278/RED, 4 May 2025 ('FAZLIU Submissions').

³ FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, para.11.

⁴ FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, paras 19-20.

⁵ Public Redacted Version of Second Decision on Review of Detention of Fadil Fazliu, KSC-BC-2023-12/F00251/RED, 7 April 2025 ('Decision F00251'), paras 26-28. FAZLIU acknowledges that a grounded suspicion is established in this case (*see* FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, para. 15). *See also* Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036/RED, 29 November 2024, paras 211, 287-288, 313(b); Public Redacted Version of Decision on Request for Arrest Warrants and Related Matters, KSC-BC-2023-12/F00037/RED, 29 November 2024, ('Decision on Arrest and Transfer'), para.43; Transcript (Initial Appearance), 8 December 2024, pp. 65-69; Decision on Review of Detention of Fadil Fazliu, KSC-BC-2023-12/F00163, 7 February 2025 ('Decision F00163'), paras 12-14.

⁶ Decision F00251, KSC-BC-2023-12/F00251/RED, paras 33-37, 46. *See also* Decision on Arrest and Transfer, KSC-BC-2023-12/F00037/RED, paras 81-85; Transcript (Initial Appearance), 8 December 2024, pp. 65-69; Decision F00163, KSC-BC-2023-12/F00163, paras 19-23, 31.

FAZLIU will obstruct the progress of KSC proceedings⁷ and commit further crimes;⁸ (iv) that no release conditions can mitigate the Article 41(6)(b) of the Law⁹ risks;¹⁰ and (v) that FAZLIU's continued detention is proportional.¹¹

3. Following these sustained findings, no contrary information or meaningful development has intervened. All articulable risks under Article 41(6)(b) remain clear and present as the pre-trial stage of the proceedings continues to advance. Accordingly, and as a review of detention under Rule 57(2) of the Rules concerns what has changed, if anything, since the prior ruling on detention,¹² the FAZLIU request for release must be denied. Importantly, the Pre-Trial Judge is not required to make findings on the factors already decided upon in an earlier ruling,¹³ and need not 'entertain submissions that merely repeat arguments that have already been addressed in previous decisions.'¹⁴ This is particularly relevant as to FAZLIU's repeated submissions that his unwavering ties to Kosovo and his health undermine the fact that he is a flight risk.¹⁵

4. FAZLIU contends that the conclusion of Prosecution evidence in *Thaçi et al.* (KSC-BC-2020-06, 'Case 6') is a change in circumstances which means that no further

⁷ Decision F00251, KSC-BC-2023-12/F00251/RED, paras 38-42, 46. *See also* Decision on Arrest and Transfer, KSC-BC-2023-12/F00037/RED, paras 86-89; Transcript (Initial Appearance), 8 December 2024, pp. 65-69; Decision F00163, KSC-BC-2023-12/F00163, paras 24-27, 31.

⁸ Decision F00251, KSC-BC-2023-12/F00251/RED, paras 43-46. *See also* Decision on Arrest and Transfer, KSC-BC-2023-12/F00037/RED, paras 90-91; Transcript (Initial Appearance), 8 December 2024, pp. 65-69; Decision F00163, KSC-BC-2023-12/F00163, paras 28-31.

⁹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

¹⁰ Decision F00251, KSC-BC-2023-12/F00251/RED, paras 47-52. *See also* Transcript (Initial Appearance), 8 December 2024, pp. 65-69; Decision F00163, KSC-BC-2023-12/F00163, paras 32-36.

¹¹ Decision F00251, KSC-BC-2023-12/F00251/RED, paras 53-57. *See also* Transcript (Initial Appearance), 8 December 2024, pp. 65-69; Decision F00163, KSC-BC-2023-12/F00163, paras 37-40.

¹² *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021 ('*Haradinaj Appeal*'), para.55.

¹³ *Haradinaj Appeal*, KSC-BC-2020-07/IA002/F00005, para.55.

¹⁴ *Specialist Prosecutor v. Pjetër Shala*, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, KSC-BC-2020-04, IA003/F00005/RED, 11 February 2022, para. 18.

¹⁵ *Contra* FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, paras 16-17.

obstruction or interference is possible, and that immediate conditional release is therefore appropriate.¹⁶ However, this argument ignores the multitude of factors assessed by the Pre-Trial Judge with respect to FAZLIU's risk of obstruction, all of which remain relevant today, in particular that: (i) the proceedings in Case 6 remain ongoing up until a closing under Rule 136 of the Rules; and (ii) the risk of obstruction is assessed not only in relation to Case 6, but also in relation to this case.¹⁷ Relevantly, there are many examples in international criminal law of accused, convicted persons, and third parties attempting to undermine the judicial process, even after the closure of a prosecution phase of evidence.¹⁸ Further, and as the factors underpinning an assessment as to obstruction are inherently relevant with respect to considering the risk of committing further crimes, the FAZLIU Submissions have no impact with respect to previous findings under Article 41(6)(b)(iii).

5. Separately, FAZLIU suggests that his continued detention does not result from concrete, specific and individualised justifications, but rather from abstraction, generalisation and speculation.¹⁹ This argument fails to acknowledge the extensive deliberation and personalised conclusions of Decision F00251 and previous detention decisions. While FAZLIU asserts that his 'alleged offences are among the least serious' before the KSC,²⁰ such an argument trivializes the gravity of the confirmed charges in this case.

¹⁶ FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, paras 19-21.

¹⁷ Decision F00251, KSC-BC-2023-12/F00251/RED, paras 38-41

¹⁸ See for example Special Court for Sierra Leone ('SCSL'), *Independent Counsel v. Eric Koi Senessie*, SCSL-2011-01-T, Judgment in Contempt Proceedings, 16 August 2012; International Residual Mechanism for Criminal Tribunals ('IRMCT'), *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Judgment, 25 June 2021; SCSL, *Independent Counsel v. Bangura et al.*, SCSL-2011-02-T, Judgment in Contempt Proceedings, 25 September 2012; IRMCT, *Prosecutor v. Gérard Ntakirutimana*, MICT-12-17-R, Review Judgment, 22 November 2024, paras 57, 62. See also Confidential Redacted Version of 'Prosecution submissions concerning the completion of its case', KSC-BC-2020-06/F02400/CONF/RED, 21 June 2024, para.14; Public Redacted Version of 'Prosecution submission pertaining to periodic detention review of Hashim Thaçi', KSC-BC-2020-06/F01813/RED, para.12.

¹⁹ FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, paras 12-14, 16, 23.

²⁰ FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, para. 17.

6. Ultimately, and while only one of the articulable risk factors in Article 41(6)(b) needs to be met for purposes of FAZLIU's continued detention,²¹ all continue to be clear and present at this time. Further, these risks can only be effectively managed in the KSC Detention Centre, which is the most effective means to limit FAZLIU's ability to flee, otherwise thwart the KSC proceedings, and/or commit further crimes. Additionally, the assurances offered in the FAZLIU Submissions²² are insufficient to overcome the concrete risks of release, as previously found by the Pre-Trial Judge.²³ When the Article 41(6)(b) conditions are met and no lesser measures than detention are available, the person shall continue to be detained.²⁴

7. FAZLIU is charged with two counts of Article 15(2) offences and, if convicted, faces a potentially lengthy sentence. Moreover, as noted by the Pre-Trial Judge in Decision F00251, the proceedings in this case continue to move forward expeditiously.²⁵ Indeed, and since Decision F00251: (i) the SPO filed its second Rule 102(3) Notice, and has continued to disclose material; (ii) remaining investigative steps are progressing efficiently; and (iii) preliminary motions have been filed by Specialist Counsel. Finally, and by way of the ongoing disclosure process, FAZLIU continues to gain increased insight into the evidence against him.²⁶

8. Against this backdrop, FAZLIU's continued detention remains reasonable and proportionate.

²¹ See for example Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, KSC-BC-2023-12/IA001/F00005, 28 January 2025, para.17 ('[i]f one of those conditions is fulfilled, the other conditions do not have to be addresses in order for detention to be maintained').

²² FAZLIU Submissions, KSC-BC-2023-12/F00278/RED, paras 25-26.

²³ Decision F00251, KSC-BC-2023-12/F00251/RED, paras 47-52.

²⁴ *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, para.51.

²⁵ Decision F00251, KSC-BC-2023-12/F00251/RED, para.55.

²⁶ See Decision F00251, KSC-BC-2023-12/F00251/RED, paras 33, 39.

III. RELIEF REQUESTED

9. For the foregoing reasons, the Pre-Trial Judge should order FAZLIU's continued detention.

Word count: 1,354



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Wednesday, 14 May 2025

At The Hague, the Netherlands