



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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Third 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 2025⁶ and 7 April 2025,⁷ the Pre-Trial Judge ordered Mr Smakaj's continued detention ("First Review Decision" and "Second Review Decision", respectively).

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](#). See also KSC-BC-2023-12, F00260, Pre-Trial Judge, [Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions](#) ("Decision on Amendments"), 14 April 2025, public.

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, F00249, Pre-Trial Judge, [Second Decision on Review of Detention of Bashkim Smakaj](#), 7 April 2025, public.

4. On 5 May 2025, the Defence for Mr Smakaj ("Smakaj Defence") made submissions on the periodic review of his detention ("Defence Submissions").⁸

5. On 14 May 2025, the Specialist Prosecutor's Office ("SPO") responded to the Defence Submissions ("SPO Response").⁹ The Smakaj Defence did not reply.

II. SUBMISSIONS

A. DEFENCE SUBMISSIONS

6. The Smakaj Defence submits that the Pre-Trial Judge should order the immediate interim release of Mr Smakaj, subject to conditions.¹⁰ According to the Smakaj Defence, such response would: (i) be proportionate to the risks found in relation to the Accused under Article 41(6)(b) of the Law;¹¹ and (ii) demonstrate due regard to both the presumption of innocence and the Accused's good character.¹²

7. The Smakaj Defence claims that the Accused: (i) is a 49-year-old academic, with no previous convictions and a positive character; (ii) has previously served his country with distinction as the head of intelligence; (iii) holds a doctorate in science and is a professor at the University of Business and Technology in Pristina; (iv) has deep family and community ties to Pristina;

⁸ KSC-BC-2023-12, F00281, Smakaj Defence, *Smakaj Submissions on Third Review of Detention with Annex 1*, 5 May 2025, confidential, with Annex 1, confidential. The Pre-Trial Judge noted that Annex 1 contained documents in Albanian and in English. In line with her decision (see KSC-BC-2023-12, F00076, Pre-Trial Judge, [Decision on Working Language](#), 11 December 2024, public, paras 12-14), the Smakaj Defence was ordered to submit a translation of pages 3-4 of Annex 1 by 13 May 2025 (see CRSPD71, 8 May 2025, confidential). On 12 May 2025, the Smakaj Defence submitted a corrected Annex 1 with the relevant translated pages (see KSC-BC-2023-12, F00292, Smakaj Defence, *Smakaj Submission of Corrected Annex 1 to the Submissions on the Third Review of Detention*, 12 May 2025, confidential, with Annex 1 ("Corrected Annex 1 to Defence Submissions"), confidential).

⁹ KSC-BC-2023-12, F00301, Specialist Prosecutor, *Prosecution Response to 'Smakaj Submissions on Third Review of Detention with Annex 1'*, 14 May 2025, confidential.

¹⁰ Defence Submissions, paras 2, 28.

¹¹ Defence Submissions, para. 15.

¹² Defence Submissions, paras 24, 27.

and (v) is married, with a permanent address and two young children, with whom he struggles to maintain contact.¹³

8. The Smakaj Defence further avers that: (i) having close connections with Mr Thaçi and Kadri Veseli, a long-standing political career, and the means and ability to travel undetected, including to Albania, are not incompatible with interim release;¹⁴ and (ii) an individual with alleged close ties to Mr Smakaj's family¹⁵ stands ready to post bail on his behalf in the amount of €30,000, a sum which is presently available in the bank account of said individual.¹⁶

9. In relation to the risk of flight, the Smakaj Defence submits that any residual risk is properly addressed by the following conditions: (i) house detention in his home address or order not to leave his place of current residence; (ii) daily reporting to the EULEX compound in Pristina; (iii) payment of a surety of €30,000, to be forfeited if Mr Smakaj fails to attend court as required; (iv) restriction of movement on the territory of the Host State during the period of his stay thereon; and (v) compliance with all instructions of the Registrar for the purposes of the Accused's appearance before the Specialist Chambers ("SC").¹⁷

10. In relation to the risks of committing further offences and obstructing the progress of SC proceedings, the Smakaj Defence submits that: (i) the SPO has no further witnesses to call in the case of *The Specialist Prosecutor v. Hashim Thaçi et al.* ("Thaçi et al. trial" or "Case 06"); (ii) there are no other outstanding trials before the SC save for the present case; and (iii) Witness 2 has confirmed that he has not been the recipient of any attempt to interfere with his testimony.¹⁸ According to the Smakaj Defence, any theoretical risk towards "possible

¹³ Defence Submissions, paras 16-18.

¹⁴ Defence Submissions, para. 19.

¹⁵ Defence Submissions, paras 20, 22.

¹⁶ Defence Submissions, paras 20-21; Corrected Annex 1 to Defence Submissions, pp. 3-7.

¹⁷ Defence Submissions, paras 23-24.

¹⁸ Defence Submissions, para. 25.

unknown” witnesses in possible future trials can be proportionally addressed by imposing conditions inhibiting the Accused from: (i) discussing with any person, except his Counsel, issues related to the proceedings against him; (ii) contacting or communicating, directly or indirectly, with any (potential) witness or victim in any case before the SC; and (iii) making, directly or indirectly (for example, through family members), any public statement regarding the present and/or any other SC proceedings, the SC or the SPO.¹⁹

B. SPO RESPONSE

11. The SPO responds that Mr Smakaj’s continued detention remains necessary and proportionate, and that his request for release must be denied.²⁰ In this respect, the SPO submits that no contrary information or meaningful development impacting the Pre-Trial Judge’s previous findings has intervened since the last ruling on detention.²¹

12. Concerning the Smakaj Defence’s argument that the closure of the SPO’s case in the *Thaçi et al.* trial must be considered in the present decision, the SPO submits that: (i) such assertion ignores the multitude of factors assessed by the Pre-Trial Judge when determining the existence of the risk of obstructing the progress of SC proceedings; (ii) the proceedings in Case 06 remain ongoing until a closing under Rule 136 of the Rules and, thus, susceptible to interference, as demonstrated in previous international criminal law cases; (iii) the risk of obstruction is assessed, not only in relation to Case 06, but also in relation to the present case; and (iv) the Defence Submissions have no impact with respect to previous findings on the risk of committing further crimes.²²

¹⁹ Defence Submissions, para. 26.

²⁰ SPO Response, paras 1, 3, 8, 10.

²¹ SPO Response, paras 1-3.

²² SPO Response, para. 4.

13. Concerning the Smakaj Defence argument that the alleged late disclosure of the interview of Witness 2 and the purportedly comparable circumstances of Mr Smakaj and Mr Kuçi serve as grounds supporting his requested release, the SPO responds that such arguments have already been rejected in previous rulings and that, as such, the Pre-Trial Judge is not required to make findings thereon.²³

14. In addition, the SPO avers that: (i) the risks under Article 41(6)(b) of the Law remain clear and present as the pre-trial stage continues to advance;²⁴ (ii) such risks can only be effectively managed in the SC Detention Facilities, which is the most effective means to limit Mr Smakaj's ability to flee, otherwise thwart the SC proceedings, and/or commit further crimes;²⁵ and (iii) the assurances offered in the Defence Submissions are insufficient to overcome the concrete risks of release.²⁶

15. Lastly, the SPO submits that: (i) if convicted, the Accused faces a potentially lengthy sentence; (ii) proceedings continue to move forward expeditiously, as demonstrated by the SPO's filing of its second Rule 102(3) Notice, its continued disclosure process, the efficient progress of the remaining investigative steps, and the filing of preliminary motions; and (iii) Mr Smakaj continues to gain increased insight into the evidence against him, by way of the ongoing disclosure process.²⁷

III. APPLICABLE LAW

16. 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

²³ SPO Response, paras 3, 5.

²⁴ SPO Response, paras 1, 3, 6.

²⁵ SPO Response, para. 6.

²⁶ SPO Response, para. 6.

²⁷ SPO Response, para. 7.

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.

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

18. 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. 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.

19. Pursuant to Rule 56(2) of the Rules, the Pre-Trial Judge shall ensure that a person is not detained for an unreasonable period prior to the opening of the case, and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

IV. DISCUSSION

A. APPLICABLE STANDARD

20. The standard governing the review of detention on remand has been laid out extensively in earlier decisions and is hereby incorporated by reference.²⁸ Accordingly, the Pre-Trial Judge will apply this standard to the present decision.

B. GROUNDED SUSPICION

21. 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.²⁹ 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.³⁰

22. In light of the above, and in the absence of any contrary intervening information or developments, the Pre-Trial Judge finds that there continues to

²⁸ See [Second Review Decision](#), paras 20-21 (general requirements), 22 (grounded suspicion), 26-29 (necessity of detention), 40 (conditional release) and 43 (proportionality), and references cited therein; and [First Review Decision](#), paras 18-19 (general requirements), 20 (grounded suspicion), 24-27 (necessity of detention), 41 (conditional release) and 46 (proportionality), and references cited therein.

²⁹ [Confirmation Decision](#), para. 313(c).

³⁰ See [Confirmation Decision](#), paras 42-43; and also [Decision on Arrest](#), para. 43. See similarly, KSC-BC-2020-04, F00075/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#), 10 September 2021, public, para. 22; and F00224/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#), 22 June 2022, public, para. 24.

exist a grounded suspicion that Mr Smakaj has committed offences under the jurisdiction of the SC, within the meaning of Article 41(6)(a) of the Law.³¹

C. NECESSITY OF DETENTION

1. Risk of Flight

23. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge takes note of the considerations favourable to the Accused, as pleaded by the Smakaj Defence, namely his positive character and reputation, as well as his rooted family, community, and professional ties in Kosovo.³²

24. However, the Pre-Trial Judge finds that all considerations set out in the Second Review 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;³³ (ii) his demonstrated blatant disregard for the laws and the rules of the SC;³⁴ (iii) the fact that he possesses an active Albanian passport and would have the opportunity to flee, by travelling freely to jurisdictions beyond the reach of the SC;³⁵ 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.³⁶ The Pre-Trial Judge also remains persuaded that the Accused can rely on a significant network of influential individuals from whom he may

³¹ See similarly, [Second Review Decision](#), para. 25; [First Review Decision](#), para. 23; Initial Appearance Transcript, p. 42, lines 20-24; [Decision on Arrest](#), para. 43.

³² See *supra* paras 6-7.

³³ See [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; Initial Appearance Transcript, p. 42, lines 3-7; [Decision on Arrest](#), para. 69, and references cited therein.

³⁴ See [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 69.

³⁵ See [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 70.

³⁶ See [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 71.

seek and secure resources and support for the purpose of fleeing.³⁷ The Pre-Trial Judge is further attentive to the fact that, since the Second Review Decision, Mr Smakaj has gained increased insight into the evidence underpinning the charges through the ongoing disclosure process.³⁸

25. Having weighed all of the above considerations as a whole, the Pre-Trial Judge remains of the view that the factors favourable to Mr Smakaj insufficiently mitigate the risk that he will flee.³⁹

26. 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

27. As regards the risk of obstructing the progress of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge finds that all considerations set out in the Second Review Decision continue to apply, namely: (i) the nature of the charges confirmed against Mr Smakaj who was part of a group, led by Mr Thaçi, aiming at unlawfully influencing witnesses;⁴⁰ (ii) Mr Smakaj's persistence in furthering obstruction efforts in SC proceedings, including by following orders from persons with political influence to whom he is loyal, such as Mr Thaçi;⁴¹ and (iii) Mr Smakaj's increased awareness of the incriminating

³⁷ See [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 71. In this regard, the Pre-Trial Judge recalls her findings in relation to Mr Smakaj's means to flee, irrespective of his personal financial means (See [First Review Decision](#), para. 28), and notes that Mr Smakaj now specifically proposes a third-party to pay a surety in the amount of €30,000 on his behalf. See *supra* para. 8.

³⁸ The Pre-Trial Judge notes that, since the Second Review Decision, the SPO has made additional disclosures pursuant to Rule 102(1)(b) of the Rules. See Disclosure Packages Nos 24, 27-28, 30, 34, 37-38 and 43.

³⁹ See [Second Review Decision](#), para. 30; [First Review Decision](#), para. 30; Initial Appearance Transcript, p. 42, lines 7-9; [Decision on Arrest](#), para. 72.

⁴⁰ See [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74, with further explanations.

⁴¹ [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74.

evidence against him, as a result of the ongoing disclosure, which creates further incentives to interfere with witnesses.⁴²

28. The Pre-Trial Judge further finds without merit the Smakaj Defence's assertion that only a theoretical risk of obstruction remains, since (i) there are no further witnesses to interfere with, considering that the SPO has closed its case in chief in the *Thaçi et al.* trial, and (ii) there are no outstanding trials before the SC, save for the present case.⁴³ The Pre-Trial Judge considers that the risk of obstruction in Case 06 does not cease to exist with the closing of the SPO's case in chief,⁴⁴ as: (i) proceedings in Case 06 remain ongoing and the Trial Panel may hear further evidence from the participating victims and rebuttal witnesses, including by witnesses who may have already testified;⁴⁵ and (ii) a Trial Panel may, under exceptional circumstances, hear additional evidence subsequently to the closing of the case under Rule 136 of the Rules.⁴⁶ Moreover, the risk of obstruction is assessed not only in relation to proceedings in Case 06, but also to the present case. In this respect, the Pre-Trial Judge observes that, while some evidence has been seized and is in the possession of the SPO, contrary to the Smakaj Defence's submission,⁴⁷ the Accused has sufficient knowledge of the

⁴² [Second Review Decision](#), para. 34; [First Review Decision](#), para. 33; [Decision on Arrest](#), para. 75.

⁴³ See *supra* para. 10.

⁴⁴ See KSC-BC-2020-06, F03121, Specialist Prosecutor, [Prosecution Notice Pursuant to Rule 129](#), 15 April 2025, public.

⁴⁵ See similarly KSC-BC-2020-04, F00663/RED, Trial Panel I, [Public Redacted Version of Decision on the Thirteenth Review of Detention of Pjetër Shala](#), 20 September 2023, public, para. 18; and KSC-BC-2020-05, F00355/RED, Trial Panel I, [Public Redacted Version of Ninth Decision on Review of Detention](#), 21 March 2022, public, para. 19.

⁴⁶ See, for example, 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, public, para. 24; 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. See similarly, ICC, *The Prosecutor v. Bemba et al.*, ICC-01/05-01/13-612, Pre-Trial Chamber II, [Decision on the First Review of Jean-Jacques Mangenda Kabongo's Detention Pursuant to Article 60\(3\) of the Statute](#), 5 August 2014, public, paras 17-18; *The Prosecutor v. Bemba et al.*, ICC-01/05-01/13-538, Pre-Trial Chamber II, [Decision on the First Review of Fidèle Babala Wandu's Detention Pursuant to Article 60\(3\) of the Statute](#), 4 July 2014, public, paras 12-13.

⁴⁷ See *supra* para. 10.

identity of potential witnesses, as discussed in the Confirmation Decision. The Pre-Trial Judge also recalls that the assessment of the risks involves acceptance of the possibility, not the inevitability of a future occurrence.⁴⁸ Lastly, the Pre-Trial Judge underlines that the risk of interference is not limited to witnesses who are yet to testify, but also concerns witnesses who have already testified and may be retaliated against or incentivised to recant, thereby threatening the integrity of the ongoing trial in Case 06 and future trial proceedings in the present case.

29. With respect to the Smakaj Defence's argument that Witness 2 confirmed that he was not subject to an attempt to interfere with his testimony,⁴⁹ the Pre-Trial Judge notes that this issue has already been considered on two occasions, namely in the context of the decision rejecting Mr Smakaj's request to stay the proceedings⁵⁰ and the Second Review Decision.⁵¹ Suffice to recall that such matter is to be aired and discussed at trial, in light of the Parties' arguments and the evidence as a whole,⁵² and to underline that, even if taken at face value, it has no bearing on the current assessment of the risk of obstruction. The Pre-Trial Judge further underscores that the risk of obstruction need not materialise by Mr Smakaj personally approaching Witness 2 or any other witness, 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.⁵³

30. Lastly, the Pre-Trial Judge underlines that she still assesses the above considerations and factors against the backdrop of the pervasive climate of fear

⁴⁸ See [Second Review Decision](#), para. 27.

⁴⁹ See *supra* para. 10.

⁵⁰ KSC-BC-2023-12, F00247, Pre-Trial Judge, *Decision on Bashkim Smakaj's Application for Stay of Proceedings*, 7 April 2025, confidential. A public redacted version was issued on the same date, [F00247/RED](#).

⁵¹ [Second Review Decision](#), para. 24.

⁵² [Second Review Decision](#), para. 24.

⁵³ See [Second Review Decision](#), para. 34, and references cited therein.

and intimidation in Kosovo against witnesses or potential witnesses of the SC.⁵⁴ In this context, the risk of Mr Smakaj exerting pressure on witnesses remains particularly high, in light of his ties,⁵⁵ as referenced above.⁵⁶

31. 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 obstruct the progress of SC proceedings continues to exist.

3. Risk of Committing Further Offences

32. 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.⁵⁷ In this regard, the Pre-Trial Judge notes that the relevant factors to be considered are the same as those outlined in paragraphs 27-30 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.⁵⁸ 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, including in relation to witnesses who have provided or may provide evidence in Case 06 and/or the present case.⁵⁹

⁵⁴ [Second Review Decision](#), para. 35; [First Review Decision](#), para. 34; [Decision on Arrest](#), para. 76, and references cited therein.

⁵⁵ [Second Review Decision](#), para. 35, and references cited therein.

⁵⁶ See *supra* paras 24, 27, 29.

⁵⁷ See [Decision on Arrest](#), para. 78.

⁵⁸ See *supra* para. 30; see similarly, [Second Review Decision](#), para. 37; [First Review Decision](#), para. 37.

⁵⁹ See *supra* para. 28, and references cited therein.

33. 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

34. 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.

D. CONDITIONAL RELEASE

35. 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*,⁶⁰ could sufficiently mitigate the existing risks, particularly the risks of obstruction of the progress 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.⁶¹

36. The Pre-Trial Judge further takes note of the Smakaj Defence's argument that the risks under Article 41(6)(b) of the Law can be adequately mitigated by the imposition of conditions upon release, including frequent reporting to the EULEX compound, a surety in the amount of €30,000, to be entirely paid by a third-party with alleged close ties to Mr Smakaj's family, and restrictions on

⁶⁰ See similarly 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.

⁶¹ See [Second Review Decision](#), paras 41-42; [First Review Decision](#), paras 43-45; Initial Appearance Transcript, p. 37, line 24, to p. 38, line 6; p. 43, lines 3-5.

communications and movement.⁶² Nevertheless, 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.⁶³ The Pre-Trial Judge further maintains that: (i) 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, minimising, as much as possible, the risks of obstruction and commission of further offences;⁶⁴ 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.⁶⁵

37. 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.

E. PROPORTIONALITY OF DETENTION

38. The Pre-Trial Judge recalls that: (i) Mr Smakaj has been detained since his arrest on 5 December 2024;⁶⁶ (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)

⁶² See *supra* paras 9-10. The Pre-Trial Judge further notes that, when determining the appropriate amount to be set as bail, due consideration must be given to Mr Smakaj's financial situation.

⁶³ [Second Review Decision](#), para. 41; [First Review Decision](#), para. 43.

⁶⁴ [Second Review Decision](#), para. 41; [First Review Decision](#), para. 44, and references cited therein.

⁶⁵ [Second Review Decision](#), para. 41; [First Review Decision](#), para. 44, and references cited therein.

⁶⁶ See *supra* para. 1.

months, respectively;⁶⁷ 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.⁶⁸

39. The Pre-Trial Judge also takes into consideration that, since the Second Review Decision: (i) the SPO has (largely) completed the disclosure of evidence in its possession pursuant to Rule 102(1)(b) of the Rules⁶⁹ and made further disclosures pursuant to Rule 103 of the Rules;⁷⁰ (ii) the SPO has filed its second notice pursuant to Rule 102(3) of the Rules⁷¹ and disclosed a number of items, as requested by the Defence;⁷² (iii) remaining investigative steps are progressing steadily;⁷³ (iv) the SPO has submitted the Confirmed Amended Indictment,⁷⁴ following confirmation of the amended charges against Mr Thaçi;⁷⁵ and (v) the Defence Counsel have filed preliminary motions.⁷⁶ Thus, in the view of the Pre-

⁶⁷ See KSC-BC-2023-12, F00264/A02, Specialist Prosecutor, [Public Redacted Amended Confirmed Indictment](#) ("Confirmed Amended Indictment"), 16 April 2025, public, para. 46.

⁶⁸ See *supra* paras 35-37.

⁶⁹ See Disclosure Packages Nos 24, 27-28, 30, 34, 37-38 and 43; 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); F00256, Pre-Trial Judge, [Decision Authorizing Additional Disclosure under Rule 102\(1\)\(b\) of the Rules](#), 11 April 2025, public.

⁷⁰ See Disclosure Packages Nos 26, 29, 33, 41 and 45.

⁷¹ KSC-BC-2023-12, F00265, Specialist Prosecutor, *Prosecution's Second Rule 102(3) Notice*, 17 April 2025, public, with Annex 1, confidential.

⁷² See Disclosure Packages Nos 25, 31-32, 35-36, 39-40 and 44.

⁷³ See KSC-BC-2023-12, F00254, Pre-Trial Judge, *Decision on Prosecution Request for Production of Material*, 10 April 2025, confidential; F00266, Pre-Trial Judge, *Decision on Prosecution Request for Production and Related Request*, 22 April 2025, confidential, with Annex 1, strictly confidential and *ex parte*; F00284, Pre-Trial Judge, *Decision Appointing Independent Counsel*, 7 May 2025, confidential; F00291, Registrar, *Fifth Registry Submissions Related to the Execution of Request for Assistance F00039*, 8 May 2025, confidential; F00296, Registrar, *Sixth Registry Submissions Related to the Execution of Request for Assistance F00039*, confidential, with Annex 1, confidential; F00299, Registrar, *Notification of Assignment of Independent Counsel*, 13 May 2025, confidential, with Annex 1, confidential; F00304, Registrar, *Registry Notification of Start of Stage 1 Execution Pursuant to Order F00221*, 14 May 2025, confidential.

⁷⁴ See [Confirmed Amended Indictment](#).

⁷⁵ See [Decision on Amendments](#).

⁷⁶ KSC-BC-2023-12, F00285, Defence for Mr Thaçi ("Thaçi Defence"), *Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings Concerning Mr Thaçi*, 7 May 2025, public, with Annex 1, public; F00286, Smakaj Defence, Defence for Isni Kilaj, Defence for Fadil Fazliu

Trial Judge, the proceedings continue to move forward expeditiously, bringing the case one step closer to its transmission to a Trial Panel.

40. The Pre-Trial Judge has duly considered the additional time Mr Smakaj has spent in detention since the Second Review Decision, but finds that – when weighed against the remaining factors set out in paragraphs 38 and 39 above – his detention remains proportionate.

41. 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.

42. 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.

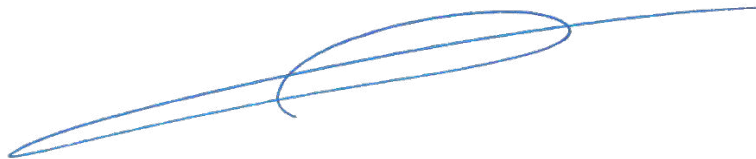
V. DISPOSITION

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

- a) **ORDERS** Mr Smakaj's continued detention;
- b) **ORDERS** Mr Smakaj, if he so wishes, to file submissions on the next review of detention by **Friday, 27 June 2025**, with responses and replies following the timeline set out in Rule 76 of the Rules;

("Fazliu Defence") and Defence for Mr Kuçi, *Joint Defence Preliminary Motion Pursuant to Rule 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers*, 7 May 2025, public; F00288, Taçi Defence, *Taçi Defence Motion on Defects in the Indictment*, 8 May 2025, public; F00289, Fazliu Defence, *Fazliu Defence Challenge to the Form of the Indictment*, 8 May 2025, public; F00290, Taçi Defence, *Taçi Defence Preliminary Motion on Jurisdiction*, 8 May 2025, confidential and *ex parte*, with Annex 1, confidential and *ex parte* (public redacted versions of the main filing and the annex were filed on 12 May 2025, F00290/RED and F00290/RED/A01/RED, respectively). See also KSC-BC-2023-12, F00306, Pre-Trial Judge, [*Decision on "Prosecution Request for Extension of Time on Preliminary Motions Responses"*](#), 15 May 2025, public.

- c) **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 **Monday, 7 July 2025**, and Mr Smakaj, if he so wishes, to file his response by **Monday, 14 July 2025**;
- d) **ORDERS** the Smakaj Defence to file a public redacted version of the Defence Submissions, or request its reclassification as public, by **Tuesday, 10 June 2025**; and
- e) **INSTRUCTS** the Registrar to reclassify F00301 (SPO Response) as public, by **Tuesday, 10 June 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Thursday, 5 June 2025

At The Hague, the Netherlands.