



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: 7 July 2025

Language: English

Classification: Public

Public redacted version of 'Prosecution submissions on review of detention of
Bashkim Smakaj'

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I. INTRODUCTION

1. Pursuant to Decision F00326,¹ the Specialist Prosecutor's Office ('SPO') files its submissions on the next review of Bashkim SMAKAJ's detention.
2. In numerous decisions, the Pre-Trial Judge has properly and consistently found:
(i) a grounded suspicion that SMAKAJ committed crimes within the jurisdiction of the Kosovo Specialist Chambers ('KSC');² (ii) the existence of a risk of flight;³ (iii) articulable grounds to believe that SMAKAJ will obstruct the progress of KSC proceedings⁴ and will commit further offences;⁵ (iv) that no release conditions can mitigate the Article 41(6)(b) of the Law⁶ risks;⁷ and (v) that SMAKAJ's continued detention is proportional.⁸

¹ Third Decision on Review of Detention of Bashkim Smakaj, KSC-BC-2023-12/F00326, 5 June 2025 ('Decision F00326'), para.43(c).

² See 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(c); Public Redacted Version of Decision on Request for Arrest Warrants and Related Matters, KSC-BC-2023-12/F00037/RED, 29 November 2024, Confidential ('Decision on Arrest and Transfer'), para.43; Transcript (Initial Appearance), 8 December 2024, pp. 40-43; Decision on Review of Detention of Bashkim Smakaj, KSC-BC-2023-12/F00164, 7 February 2025, Confidential ('Decision F00164'), paras 20-23; Second Decision on Review of Detention of Bashkim Smakaj, KSC-BC-2023-12/F00249, 7 April 2025 ('Decision F00249'), paras 22-25; Decision F00326, KSC-BC-2023-12/F00326, paras 21-22.

³ See Decision on Arrest and Transfer, KSC-BC-2023-12/F00037/RED, paras 69-73, 80; Transcript (Initial Appearance), 8 December 2024, pp. 40-43; Decision F00164, KSC-BC-2023-12/F00164, paras 28-31, 40; Decision F00249, KSC-BC-2023-12/F00249, paras 30-32, 39; Decision F00326, KSC-BC-2023-12/F00326, paras 23-26, 34.

⁴ See Decision on Arrest and Transfer, KSC-BC-2023-12/F00037/RED, paras 74-77, 80; Transcript (Initial Appearance), 8 December 2024, pp. 40-43; Decision F00164, KSC-BC-2023-12/F00164, paras 32-36, 40; Decision F00249, KSC-BC-2023-12/F00249, paras 33-36, 39; Decision F00326, KSC-BC-2023-12/F00326, paras 27-31, 34.

⁵ See Decision on Arrest and Transfer, KSC-BC-2023-12/F00037/RED, paras 78-80; Transcript (Initial Appearance), 8 December 2024, pp. 40-43; Decision F00164, KSC-BC-2023-12/F00164, paras 37-40; Decision F00249, KSC-BC-2023-12/F00249, paras 37-39; Decision F00326, KSC-BC-2023-12/F00326, paras 32-34.

⁶ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article(s)' refer to articles of the Law, unless otherwise specified.

⁷ See Transcript (Initial Appearance), 8 December 2024, pp. 40-43; Decision F00164, KSC-BC-2023-12/F00164, paras 41-45; Decision F00249, KSC-BC-2023-12/F00249, paras 40-42; Decision F00326, KSC-BC-2023-12/F00326, paras 35-37.

⁸ See Transcript (Initial Appearance), 8 December 2024, pp. 40-43; Decision F00164, KSC-BC-2023-12/F00164, paras 46-49; Decision F00249, KSC-BC-2023-12/F00249, paras 43-47; Decision F00326, KSC-BC-2023-12/F00326, paras 38-42.

3. No information or developments to the contrary have subsequently intervened, and these findings remain unaltered and appropriate at this time. SMAKAJ's continued detention therefore remains necessary and proportionate.

II. SUBMISSIONS

4. Following the well-grounded and sustained findings outlined above, there have been no consequential changes which undercut Decision F00326. Accordingly, and as a review of detention under Rule 57(2) of the Rules⁹ considers what has changed, *if anything*, since the prior ruling on detention,¹⁰ the continued detention of SMAKAJ remains necessary and proportionate. Importantly, the Pre-Trial Judge is not required to make findings on the factors already decided upon in an earlier ruling, but rather need only satisfy herself that they continue to apply.¹¹

5. Although the presence of just one risk under Article 41(6)(b) is sufficient to require continued detention on remand,¹² all three risks remain evident at this time. Further, no condition of release can appropriately mitigate them. Indeed, the risks enumerated in Decision F00326 and earlier decisions – that is, the articulable grounds to believe that SMAKAJ may flee, obstruct the process of KSC proceedings, and commit further offences – can only be effectively managed in the KSC Detention Centre, whether considered in isolation or comprehensively. This is affirmed by the Pre-Trial Judge's most recent determination, that any assurance(s) provided by SMAKAJ cannot adequately mitigate the risks under Articles 41(6)(b).¹³ Ultimately,

⁹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

¹⁰ *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.

¹¹ *Haradinaj Appeal*, KSC-BC-2020-07/IA002/F00005, para.55; *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.16.

¹² *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').

¹³ Decision F00326, KSC-BC-2023-12/F00326, paras 35-37.

when these risks are clear and present and no lesser measures than detention are available, the accused shall continue to be detained.¹⁴ The repeated findings as to the articulable risks attributable to SMAKAJ, pursuant to Article 41 of the Law, have been made on the basis of numerous individualised and well-grounded factors,¹⁵ reflecting an appropriate holistic approach.

6. Nor has the limited further passage of time altered the assessment. SMAKAJ is charged with 2 counts of Article 15(2) offences and faces a potentially lengthy sentence if convicted. Separately, and as repeatedly noted by the Pre-Trial Judge, these proceedings continue to move forward expeditiously.¹⁶ Significant recent benchmarks of the progress since Decision F00326 was issued include: (i) that all preliminary motions have been decided by the Pre-Trial Judge,¹⁷ and are pending any associated appeals; (ii) an important investigative effort, [REDACTED], has been completed, reflecting a major milestone, [REDACTED];¹⁸ (iii) that search results from seized phones have been and continue to be provided to the Accused on a rolling basis; (iv) the SPO's filing of its' Third Rule 102(3) Notice¹⁹ and the disclosure of the requested material to the defence teams of all Accused; and (v) the continued disclosure of other material required by the Rules. Finally, SMAKAJ continues to gain increased insight

¹⁴ *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.

¹⁵ See Decision on Arrest and Transfer, KSC-BC-2023-12/F00037/RED, paras 69-80; Transcript (Initial Appearance), 8 December 2024, pp. 40-43; Decision F00164, KSC-BC-2023-12/F00164, paras 28-40; Decision F00249, KSC-BC-2023-12/F00249, paras 30-39; Decision F00326, KSC-BC-2023-12/F00326, paras 23-34.

¹⁶ Decision F00326, KSC-BC-2023-12/F00326, para.39.

¹⁷ Decision on the Thaçi Defence Preliminary Motion on Jurisdiction, KSC-BC-2023-12/F00343, 19 June 2025; Decision on Preliminary Motions Alleging Defects in the Indictment, KSC-BC-2023-12/F00347, 24 June 2025; Public Redacted Version of Decision on Preliminary Motions for Adjournment and Severance of the Proceedings, KSC-BC-2023-12/F00354/RED, 30 June 2025.

¹⁸ See generally [REDACTED].

¹⁹ Prosecution's third Rule 102(3) notice, KSC-BC-2023-12/F00341, 17 June 2025 ('Third Rule 102(3) Notice').

into the evidence underpinning the charges against him through the ongoing disclosure process.²⁰

7. This relevant backdrop – which has not changed since Decision F00326 – informs the current review as to detention on remand, and SMAKAJ's continued detention remains necessary and proportionate.

III. CLASSIFICATION

8. This filing is classified as confidential pursuant to Rule 82(3), because it refers to confidential information. A public redacted version will be filed.

IV. RELIEF REQUESTED

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

Word count: 1,218



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Monday, 7 July 2025

At The Hague, the Netherlands

²⁰ See Decision F00326, KSC-BC-2023-12/F00326, para.24.