



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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Fourth 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,³ and further to the confirmation of an indictment against him, Hashim Thaçi ("Mr Thaçi"), Fadil Fazliu, Isni Kilaj and Hajredin Kuçi ("Confirmation Decision").⁴
2. On 8 December 2024, at the initial appearance of Mr Smakaj, the Pre-Trial Judge ordered his continued detention.⁵
3. On 7 February 2025,⁶ 7 April 2025,⁷ and 5 June 2025 ("Third Review Decision"),⁸ the Pre-Trial Judge ordered Mr Smakaj's continued detention.

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* ("Decision on Arrest"), 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](#), 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](#) ("First Review Decision"), 7 February 2025, public.

⁷ KSC-BC-2023-12, F00249, Pre-Trial Judge, [Second Decision on Review of Detention of Bashkim Smakaj](#) ("Second Review Decision"), 7 April 2025, public.

⁸ KSC-BC-2023-12, F00326, Pre-Trial Judge, [Third Decision on Review of Detention of Bashkim Smakaj](#), 5 June 2025, public.

4. On 7 July 2025, the Specialist Prosecutor's Office ("SPO") made submissions on the periodic review of Mr Smakaj's detention ("SPO Submissions").⁹

5. On 10 July 2025, the Defence for Mr Smakaj ("Smakaj Defence") responded to the SPO Submissions ("Smakaj Response").¹⁰

6. On 16 July 2024, the SPO filed a request seeking leave to reply to the Smakaj Response ("Leave to Reply"), with submissions in reply to said Response ("SPO Reply").¹¹

7. On 22 July 2025, pursuant to an order by the Pre-Trial Judge,¹² the Smakaj Defence responded to the Leave to Reply ("Response to Leave to Reply").¹³

II. SUBMISSIONS

A. SPO SUBMISSIONS

8. The SPO submits that Mr Smakaj should remain in detention,¹⁴ as: (i) no contrary information or developments have arisen that would warrant a departure from the findings of the Pre-Trial Judge set out in previous decisions

⁹ KSC-BC-2023-12, F00364, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Bashkim Smakaj*, 7 July 2005, confidential. A public redacted version was filed on 10 July 2025, F00364/RED.

¹⁰ KSC-BC-2023-12, F00369, Smakaj Defence, *Smakaj Response to Prosecution Submissions on Fourth Review of Detention*, 10 July 2025, confidential.

¹¹ KSC-BC-2023-12, F00373, Specialist Prosecutor, *Prosecution Reply to 'Smakaj Response to Prosecution Submissions on Fourth Review of Detention'*, 15 July 2025, confidential. A corrected version and a public redacted version thereof were filed on 16 July 2025 and 18 July 2025, F00373/COR and F00373/COR/RED, respectively.

¹² KSC-BC-2023-12, CRSPD95, *Email from Pre-Trial Judge to Smakaj Defence re Order Shortening Time Limits*, 18 July 2025, confidential.

¹³ KSC-BC-2023-12, F00389, Smakaj Defence, *Smakaj Response to Prosecution Reply to 'Smakaj Response to Prosecution Submissions on Fourth Review of Detention'*, 22 July 2025, confidential.

¹⁴ SPO Submissions, para. 9.

on the review of his detention and (ii) such findings continue to apply.¹⁵ Therefore, according to the SPO, Mr Smakaj's continued detention remains necessary and proportionate.¹⁶

9. In particular, the SPO avers that Mr Smakaj's continued detention remains necessary as all articulable risks under Article 41(6)(b) of the Law repeatedly found by the Pre-Trial Judge with respect to Mr Smakaj remain present and evident at this time.¹⁷ Moreover, according to the SPO, no condition for release, including any assurances that Mr Smakaj may provide, is sufficient to appropriately mitigate such risks, which can only be effectively managed in the Specialist Chambers' ("SC") Detention Facilities.¹⁸

10. Lastly, the SPO submits that Mr Smakaj's continued detention remains proportionate considering that: (i) he is charged with two counts of offences pursuant to Article 15(2) and faces a potentially lengthy sentence, if convicted; (ii) he continues to gain increased insight into the evidence against him through the ongoing disclosure process; and (iii) the proceedings continue to advance expeditiously.¹⁹ The SPO identifies the following benchmarks as indicators of the expeditious progress of the proceedings since the Third Review Decision: (i) all preliminary motions have been decided by the Pre-Trial Judge, and are pending any associated appeals; (ii) the remaining investigative steps are progressing efficiently, reflecting significant advancement; (iii) search results from seized phones have been and continue to be provided to the Accused on a rolling basis; (iv) the SPO filed its third notice pursuant to Rule 102(3) of the

¹⁵ SPO Submissions, paras 2-4, 7.

¹⁶ SPO Submissions, paras 3-4, 7.

¹⁷ SPO Submissions, para. 5.

¹⁸ SPO Submissions, para. 5.

¹⁹ SPO Submissions, para. 6.

Rules and disclosed the requested material to all Accused; and (v) the SPO continues the disclosure of other material required by the Rules.²⁰

B. SMAKAJ RESPONSE

11. The Smakaj Defence responds that Mr Smakaj should be released immediately, since the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law is not satisfied.²¹

12. More specifically, the Smakaj Defence avers that none of the fifty-three (53) disclosure packages released by the SPO pursuant to Rules 102 and 103 of the Rules contain any evidence establishing the attribution of voices as set out in the transcripts of audio-recordings made within the SC Detention Facilities on 9 September and 7 October 2023 (“2023 Transcripts”).²² According to the Smakaj Defence, the alleged statements made by or in the presence of the Accused on those dates, as referred to in numerous paragraphs in the Confirmation Decision, are not supported by articulable evidence attributing the speakers’ voices to the Accused and the other individuals present on those dates, but instead rely solely on the SPO’s unsupported attribution by way of said transcripts.²³ Consequently, the Smakaj Defence claims that, in the absence of articulable evidence of speaker voice attribution, the 2023 Transcripts cannot support a grounded suspicion for the purposes of Article 41(6) of the Law.²⁴

C. LEAVE TO REPLY AND SPO REPLY

13. In its Leave to Reply, the SPO argues that good cause exists to grant it, on the basis that the Smakaj Response raises a new issue which could not have

²⁰ SPO Submissions, para. 6.

²¹ Smakaj Response, paras 2, 7 and 8.

²² Smakaj Response, paras 4-5.

²³ Smakaj Response, para. 6.

²⁴ Smakaj Response, para. 7.

been anticipated at the time of the SPO Submissions and, as a result, the SPO has had no opportunity to respond thereto.²⁵

14. In the SPO Reply, the SPO contends that the Smakaj Defence's allegation that the Confirmation Decision fatally relies on unsupported assertions – as regards the attribution of the speakers' voices identified in the 2023 Transcripts – rather than the required articulable evidence, is incorrect and belied by the evidence record of the case. The SPO thus submits that the Smakaj Defence's request for immediate release should be denied.²⁶

D. RESPONSE TO LEAVE TO REPLY

15. The Smakaj Defence argues that the Leave to Reply should be rejected, as the arguments in the Smakaj Response concerning the requirements to prove a “grounded suspicion” under Article 41(6) of the Law do not raise a new issue.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 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

²⁵ SPO Reply, paras 1-2.

²⁶ SPO Reply, paras 1, 3-8.

²⁷ Response to Leave to Reply, paras 5-6.

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. PRELIMINARY MATTER

20. The Pre-Trial Judge notes that the SPO seeks leave to reply, while at the same time replying in full to the arguments of the Smakaj Response.²⁸ The Pre-Trial Judge reminds the SPO that, according to the briefing schedule in the Third Review Decision, the SPO is not foreseen to reply.²⁹ The briefing schedule for submissions

²⁸ See *supra* paras 13-14.

²⁹ [Third Review Decision](#), para. 43(b)-(c), which mentions Rule 76 of the Rules *only* if the Smakaj Defence decides to make submissions first. Should the Smakaj Defence decide not to make submissions, the Pre-Trial Judge has set specific deadlines, in derogation from the Rule 76 deadlines,

in the context of review of detention decisions is designed to allow the Defence, in principle, to have the last word. Nevertheless, contrary to the Smakaj Defence submission,³⁰ the Pre-Trial Judge finds that the Smakaj Response does raise a new issue as regards the finding of a grounded suspicion and, more specifically, the supporting material underlying said finding.³¹ Consequently, and considering: (i) the SPO's formal request for leave to reply; and (ii) the fairness vis-à-vis the SPO to present its arguments in this litigation,³² the Pre-Trial Judge grants the Leave to Reply and, accordingly, considers the arguments raised in the SPO Reply for the present decision.

B. DETENTION REVIEW

1. Applicable Standard

21. The standard governing the review of detention on remand has been laid out extensively in earlier decisions and is hereby incorporated by reference.³³ Accordingly, the Pre-Trial Judge will apply this standard to the present decision.

2. Grounded Suspicion

22. 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

for the Parties' submissions. *See similarly* [Second Review Decision](#), para. 19, with references cited therein.

³⁰ *See supra* para. 15.

³¹ *See supra* para. 12.

³² *See* [Second Review Decision](#), para. 19, with references cited therein.

³³ *See* [Second Review Decision](#), paras 20-21 (general requirements), 22 (grounded suspicion), 26-29 (necessity of detention), 40 (conditional release) and 43 (proportionality), with 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), with references cited therein.

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.³⁴

23. The Pre-Trial Judge notes the Smakaj Defence's argument that, due to the absence of speaker voice attribution, the 2023 Transcripts do not constitute articulable evidence capable of supporting a grounded suspicion.³⁵

24. The Pre-Trial Judge recalls that, according to Article 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ("KCPC"), "articulable" means that "the party offering the information or evidence must specify in detail the information or evidence being relied upon". Thus, as emphasized by the Court of Appeals, the term "articulable" does not speak directly to the standard or threshold, but to the specificity of the information or evidence required.³⁶ In this respect, the Pre-Trial Judge notes that her findings on Mr Smakaj's criminal responsibility in the Confirmation Decision rest on specific and detailed supporting material presented by the SPO and assessed as a whole, the transcripts in question constituting but one aspect of a wider evidentiary basis relied upon for the confirmation of charges.³⁷ The Pre-Trial Judge thus considers that the Smakaj Defence's argument – by singling out one evidentiary question – disregards the broader evidentiary basis underpinning her findings in the Confirmation Decision as regards Mr Smakaj's criminal responsibility.

³⁴ [Confirmation Decision](#), para. 313(c).

³⁵ See *supra* paras 11-12.

³⁶ This also follows from Article 19(1.9) and (1.10) of the KCPC, referring to "articulable evidence". See, for example, KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 27.

³⁷ See similarly [Second Review Decision](#), para. 24; KSC-BC-2023-12, F00247, Pre-Trial Judge, *Decision on Bashkim Smakaj's Application for Stay of Proceedings*, 7 April 2025, confidential, para. 30; a public redacted version was issued on the same date, [F00247/RED](#). See also the comprehensive analysis in the [Confirmation Decision](#), paras 145-155, 203, 282-283, 285-286, 292, with references and supporting material cited therein.

25. The Pre-Trial Judge further recalls that her findings in the Confirmation Decision 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.³⁸ The Smakaj Defence’s argument concerning the SPO’s disclosure of evidence³⁹ fails to contradict or disturb these findings for the purpose of the present review. Beyond that, whether or not the evidence – and, in particular, as regards the question of speaker voice attribution – suffices to hold Mr Smakaj accountable is a matter to be aired and discussed at trial, in light of the evidence as a whole.⁴⁰

26. Accordingly, the Pre-Trial Judge finds the Smakaj Defence’s arguments without merit.

27. 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 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.⁴¹

3. Necessity of Detention

(a) Risk of Flight

28. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge finds that all considerations set out in the Third Review Decision are still relevant, namely: (i) Mr Smakaj’s awareness of the gravity of the offences

³⁸ See [Confirmation Decision](#), paras 42-43; and also [Decision on Arrest](#), para. 43. See similarly, KSC-BC-2020-04, F00224/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#), 22 June 2022, public, para. 24; and F00075/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#), 10 September 2021, public, para. 22.

³⁹ See *supra* para. 12.

⁴⁰ See KSC-BC-2023-12, F00376, Defence for Mr Taçi, *Taçi Defence Notice of Objection and Reservation of Rights*, 17 July 2025, confidential; F00380, Specialist Prosecutor, *Prosecution Response to F00376*, 18 July 2025, confidential.

⁴¹ See similarly, [Third Review Decision](#), para. 22; [Second Review Decision](#), para. 25; [First Review Decision](#), para. 23; Initial Appearance Transcript, p. 42, lines 20-24; [Decision on Arrest](#), para. 43.

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;⁴² (ii) his demonstrated blatant disregard for the laws and the rules of the SC;⁴³ (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;⁴⁴ 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.⁴⁵ The Pre-Trial Judge also remains persuaded that the Accused can rely on a significant network of influential individuals from whom he may seek and secure resources and support for the purpose of fleeing.⁴⁶ The Pre-Trial Judge is further attentive to the fact that, since the Third Review Decision, Mr Smakaj has gained increased insight into the evidence underpinning the charges through the ongoing disclosure process.⁴⁷

29. Having weighted all of the above consideration as a whole, the Pre-Trial Judge lastly remains of the view that the factors favourable to Mr Smakaj – namely his positive character and reputation, as well as his rooted family,

⁴² See [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; Initial Appearance Transcript, p. 42, lines 3-7; [Decision on Arrest](#), para. 69, with references cited therein.

⁴³ See [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 69.

⁴⁴ See [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 70.

⁴⁵ See [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 71.

⁴⁶ See [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 71.

⁴⁷ The Pre-Trial Judge notes that, since the Third Review Decision, the SPO has made additional disclosures pursuant to Rule 102(1)(b) of the Rules. See Disclosure Packages Nos 50, 54 and 55.

community, and professional ties in Kosovo – insufficiently mitigate the risk that he will flee.⁴⁸

30. In light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that, to date, the risk of flight in relation to Mr Smakaj continues to exist.

(b) Risk of Obstructing the Progress of SC Proceedings

31. 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 Third 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;⁴⁹ (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;⁵⁰ and (iii) Mr Smakaj's increased awareness of the incriminating evidence against him, as a result of the ongoing disclosure,⁵¹ which creates further incentives to interfere with witnesses.⁵² In this respect, the Pre-Trial Judge recalls that the risk of obstruction need not materialise by Mr Smakaj personally approaching any witnesses, 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 The Pre-Trial Judge further

⁴⁸ See [Third Review Decision](#), paras 23, 25; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 30; Initial Appearance Transcript, p. 42, lines 7-9; [Decision on Arrest](#), para. 72.

⁴⁹ See [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74, with further explanations.

⁵⁰ [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74.

⁵¹ See *supra* footnote 47.

⁵² [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 34; [First Review Decision](#), para. 33; [Decision on Arrest](#), para. 75.

⁵³ See [Third Review Decision](#), para. 29; [Second Review Decision](#), para. 34, with references cited therein.

remains persuaded that: (i) the risk of obstruction, which is also assessed in relation to proceedings in the case of *The Specialist Prosecutor v. Hashim Thaçi et al.* ("*Thaçi et al.* trial"), has not ceased to exist with the closing of the SPO's case in chief, as the proceedings remain ongoing;⁵⁴ and (ii) 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 *Thaçi et al.* trial and future trial proceedings in the present case.⁵⁵

32. Lastly, the Pre-Trial Judge underlines that she still assesses the above considerations and factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.⁵⁶ In this context, the risk of Mr Smakaj exerting pressure on witnesses remains particularly high, in light of his ties,⁵⁷ as referenced above.⁵⁸

33. In light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that, to date, the risk that Mr Smakaj will obstruct the progress of SC proceedings continues to exist.

(c) Risk of Committing Further Offences

34. 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.⁵⁹ In this

⁵⁴ [Third Review Decision](#), para. 28, with references cited therein. See also KSC-2020-06, F03371, Trial Panel II, [Further Order on the Scheduling of the Defence Case and Related Matters](#), 25 July 2025, public, para.42.

⁵⁵ [Third Review Decision](#), para. 28, with references cited therein.

⁵⁶ [Third Review Decision](#), para. 30; [Second Review Decision](#), para. 35; [First Review Decision](#), para. 34; [Decision on Arrest](#), para. 76, with references cited therein.

⁵⁷ [Third Review Decision](#), para. 30; [Second Review Decision](#), para. 35, with references cited therein.

⁵⁸ See *supra* paras 28, 31.

⁵⁹ See [Decision on Arrest](#), para. 78.

regard, the Pre-Trial Judge notes that the relevant factors – to be considered collectively – are the same as those outlined in paragraphs 31-32 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.⁶⁰ Upon a fresh examination of these factors, the Pre-Trial Judge remains persuaded that there is still 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 the *Thaçi et al.* trial and/or the present case.⁶¹

35. In light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that, to date, the risk that Mr Smakaj will commit further offences continues to exist.

(d) Conclusion

36. In view of the foregoing, the Pre-Trial Judge finds that, to date, 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.

⁶⁰ See *supra* para. 32; see similarly, [Third Review Decision](#), para. 32; [Second Review Decision](#), para. 37; [First Review Decision](#), para. 37.

⁶¹ See *supra* para. 31; and also [Third Review Decision](#), paras 28, 32, with references cited therein.

4. Conditional Release

37. 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*,⁶² 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.⁶³

38. Having received no relevant contrary intervening information, 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.⁶⁴ 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;⁶⁵ and (ii) the Registrar and the Panel, who have unrestricted access to confidential information

⁶² 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.

⁶³ See [Third Review Decision](#), paras 35-37; [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.

⁶⁴ [Third Review Decision](#), para. 36; [Second Review Decision](#), para. 41; [First Review Decision](#), para. 43.

⁶⁵ [Third Review Decision](#), para. 36; [Second Review Decision](#), para. 41; [First Review Decision](#), para. 44, with references cited therein.

concerning witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.⁶⁶

39. 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.

5. Proportionality of Detention

40. The Pre-Trial Judge recalls that: (i) Mr Smakaj has been detained since his arrest on 5 December 2024;⁶⁷ (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) months, respectively;⁶⁸ 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.⁶⁹

41. The Pre-Trial Judge also takes into consideration that, since the Third Review Decision: (i) the SPO has (largely) completed the disclosure of evidence in its possession pursuant to Rule 102(1)(b) of the Rules⁷⁰ and made further

⁶⁶ [Third Review Decision](#), para. 36; [Second Review Decision](#), para. 41; [First Review Decision](#), para. 44, with references cited therein.

⁶⁷ See *supra* para. 1.

⁶⁸ See KSC-BC-2023-12, F00264/A02, Specialist Prosecutor, [Public Redacted Amended Confirmed Indictment](#), 16 April 2025, public, para. 47.

⁶⁹ See *supra* paras 37-39.

⁷⁰ See Disclosure Packages Nos 50, 54 and 55. 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. The Pre-Trial Judge had further set a related deadline for the disclosure of certain material pursuant to Rule 102(1)(b) of the Rules to two (2) months from the date of transfer of said material to the SPO, which was executed on 17 July 2025 (see KSC-BC-2023-12, F00368, Pre-Trial Judge, *Decision on Prosecution Request for Access to Material and Related Matters* ("Decision on Access to Material"), 9 July 2025, confidential, paras 53, 57(i), with Annex 1, confidential; F00377, Registry, *Notification of Transfer of Materials Pursuant to F00368* ("Notification of Transfer"), 17 July 2025, confidential).

disclosures pursuant to Rule 103 of the Rules;⁷¹ (ii) the SPO has filed its third notice pursuant to Rule 102(3) of the Rules⁷² and disclosed a number of items, as requested by the Defence;⁷³ (iii) remaining investigative steps are progressing steadily,⁷⁴ and further disclosure of material is anticipated following completion of these steps;⁷⁵ (iv) all preliminary motions filed by Defence Counsel have been ruled upon and are pending associated appeals,⁷⁶ including as a result of granted leaves to appeal through certification by the Pre-Trial Judge;⁷⁷ and (v) the Pre-Trial Judge has set the deadline for the filing of the SPO's Pre-Trial Brief pursuant to Rule 95(4) of the Rules and for subsequent steps.⁷⁸ Thus, in the

⁷¹ See Disclosure Packages Nos 46 and 48.

⁷² KSC-BC-2023-12, F00341, Specialist Prosecutor, *Prosecution's Third Rule 102(3) Notice*, 17 June 2025, public, with Annex 1, confidential.

⁷³ See Disclosure Packages Nos 47, 49, 51-53 and 56-57.

⁷⁴ See KSC-BC-2023-12, F00342, Registrar, *Registry Report Pursuant to Order F00221*, 19 June 2025, confidential, with Annexes 1-6, confidential; F00346, Pre-Trial Judge, *Decision on the Independent Entity to Review Preserved Material*, 24 June 2025, confidential; F00350, Pre-Trial Judge, *Decision on Outstanding Kuçi Electronic Devices and Related Request for Assistance*, 26 June 2025, confidential; F00357, Pre-Trial Judge, *Decision Appointing Independent Counsel and Initiating Stage 2 of the Mechanism to Review Preserved Material*, 1 July 2025, confidential; F00360, Registrar, *Notification of Assignment of Independent Counsel*, 2 July 2025, confidential, with Annex 1, confidential; *Decision on Access to Material*; *Notification of Transfer*; F00386, Registrar, *Registrar's Report on the Execution of Independent Counsel's Review Related to Stage 2*, 21 July 2025, strictly confidential and *ex parte*; F00399, Registrar, *Registrar's Report on Transfer of Materials Pursuant to F00368*, 30 July 2025, confidential.

⁷⁵ See *Decision on Access to Material*, paras 53, 57(i).

⁷⁶ KSC-BC-2023-12, F00343, Pre-Trial Judge, [Decision on the Thaçi Defence Preliminary Motion on Jurisdiction](#), 19 June 2025, public; F00347, Pre-Trial Judge, [Decision on Preliminary Motions Alleging Defects in the Indictment](#), 24 June 2025, public; F00354, Pre-Trial Judge, *Decision on Preliminary Motions for Adjournment and Severance of the Proceedings*, 30 June 2025, confidential; a public redacted version was issued on 1 July 2025, [F00354/RED](#). See also IA005/F00001, Defence for Mr Thaçi, *Appeal against Decision on the Thaçi Defence Preliminary Motion on Jurisdiction*, 2 July 2025, confidential and *ex parte*, with Annexes 1-3, public. A public redacted version of the main filing and a corrected version thereof were issued on 4 July 2025 and 7 July 2025, IA005/F00001/RED and IA005/F00001/RED/COR, respectively.

⁷⁷ KSC-BC-2023-12, F00390, Pre-Trial Judge, *Decision on the Thaçi Defence Request for Leave to Appeal the "Decision on Preliminary Motions for Adjournment and Severance of the Proceedings"*, 23 July 2025, confidential; a public redacted version was issued on the same day, [F00390/RED](#); F00391, Pre-Trial Judge, [Decision on the Thaçi Defence Request for Certification to Appeal the "Decision on the Thaçi Defence Preliminary Motion on Jurisdiction"](#), 23 July 2025, public; F00392, Pre-Trial Judge, [Decision on the Thaçi and Fazliu Requests for Certification to Appeal the "Decision on Preliminary Motions Alleging Defects in the Indictment"](#), 24 July 2025, public.

⁷⁸ KSC-BC-2023-12, F00395, Pre-Trial Judge, [Order Relating to the Calendar for the Remaining Pre-Trial Proceedings](#), 25 July 2025, public.

view of the Pre-Trial Judge, the proceedings continue to move forward expeditiously, edging the case closer to its transmission to a Trial Panel.

42. The Pre-Trial Judge has duly considered the additional time Mr Smakaj has spent in detention since the Third Review Decision, but finds that – when weighed against the remaining factors set out in paragraphs 40-41 above – his detention remains proportionate.

43. 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.

44. 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

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

- a) **GRANTS** the SPO's Leave to Reply;
- b) **ORDERS** Mr Smakaj's continued detention;
- c) **ORDERS** Mr Smakaj, if he so wishes, to file submissions on the next review of detention by **Friday, 29 August 2025**, with response and reply following the timeline set out in Rule 76 of the Rules;
- d) **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, 8 September 2025 at 16h00**, and Mr Smakaj, if he so wishes, to file his response by **Monday, 15 September 2025 at 16h00**; and

- e) **ORDERS** the Smakaj Defence to file public redacted versions of the Smakaj Response (F00369) and the Response to Leave to Reply (F00389), or request their reclassification as public, by **Monday, 18 August 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Tuesday, 5 August 2025

At The Hague, the Netherlands.