



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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Fifth 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") 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

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](#). The Confirmation Decision was later amended, but the amendments did not concern Mr Smakaj; see 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.

3. On 7 February 2025,⁶ 7 April 2025,⁷ 5 June 2025,⁸ and 5 August 2025 (“Fourth Review Decision”),⁹ the Pre-Trial Judge ordered Mr Smakaj’s continued detention.

4. On 8 September 2025, the Specialist Prosecutor’s Office (“SPO”) made submissions on the periodic review of Mr Smakaj’s detention (“SPO Submissions”).¹⁰

5. The Defence for Mr Smakaj (“Smakaj Defence”) did not respond to the SPO Submissions.

II. SUBMISSIONS

6. The SPO submits that Mr Smakaj should remain in detention,¹¹ as no consequential changes or meaningful developments have arisen that would undermine the findings made by the Pre-Trial Judge in the Fourth Review Decision.¹²

7. 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 clear at this time.¹³ In particular, the SPO submits that: (i) the persistent climate of intimidation of witnesses and victims in Kosovo continues to be a relevant

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](#) (“Third Review Decision”), 5 June 2025, public.

⁹ KSC-BC-2023-12, F00406, Pre-Trial Judge, [Fourth Decision on Review of Detention of Bashkim Smakaj](#), 5 August 2025, public.

¹⁰ KSC-BC-2023-12, F00439, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Bashkim Smakaj*, 8 September 2025, confidential. A public redacted version was filed on 11 September 2025, F00439/RED.

¹¹ SPO Submissions, para. 9.

¹² SPO Submissions, paras 2-4, 7.

¹³ SPO Submissions, para. 5.

contextual factor that must be considered, especially in the context of criminal proceedings instituted against former members of the Kosovo Liberation Army (“KLA”); and (ii) the risk of Mr Smakaj exerting pressure on witnesses “remains particularly high”, as previously found by the Pre-Trial Judge.¹⁴

8. Moreover, according to the SPO, no potential conditions of release are sufficient to appropriately mitigate the articulable risks attributable to Mr Smakaj, which can only be effectively managed in the Specialist Chambers’ (“SC”) Detention Facilities.¹⁵

9. 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) of the Law 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.¹⁶ The SPO identifies the following developments as indicators of the expeditious progress of the proceedings: (i) its Pre-Trial Brief, Witness List, and Exhibit List are scheduled to be filed on 19 September 2025, while any Defence Pre-Trial Briefs – on 20 October 2025, reflecting significant pre-trial milestones; (ii) the remaining investigative steps continue to progress; (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 fourth notice pursuant to Rule 102(3) of the Rules and disclosed the requested material to all Accused; and (v) appeals arising from preliminary motions have been briefed and are currently pending decisions by the Court of Appeals.¹⁷

¹⁴ SPO Submissions, para. 5.

¹⁵ SPO Submissions, para. 5.

¹⁶ SPO Submissions, para. 6.

¹⁷ SPO Submissions, para. 6.

III. APPLICABLE LAW

10. 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.

11. 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.

12. 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.

13. 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

14. The standard governing the review of detention on remand has been laid out extensively in earlier decisions and is hereby incorporated by reference.¹⁸ Accordingly, the Pre-Trial Judge will apply this standard to the present decision.

B. GROUNDED SUSPICION

15. The Pre-Trial Judge recalls that, in the Confirmation Decision, she found, pursuant to Article 39(2) of the Law, that 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, respectively, of the 2019 Kosovo Criminal Code, Code No. 06/L-074, in violation of Article 15(2) of the Law.¹⁹ 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.²⁰ The Pre-Trial Judge observes that, to date, there have been no developments in the case negating these findings.

16. 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

¹⁸ 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.

¹⁹ [Confirmation Decision](#), para. 313(c).

²⁰ 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.

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.²¹

C. NECESSITY OF DETENTION

1. Risk of Flight

17. 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 Fourth Review Decision 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;²² (ii) his demonstrated blatant disregard for the laws and the rules of the SC;²³ (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;²⁴ 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 KLA commanders.²⁵ The Pre-Trial Judge thus remains persuaded that Mr Smakaj can still rely on a significant network of influential individuals from whom he may seek and secure resources and support for the purpose of fleeing.²⁶ The Pre-Trial Judge is further attentive to the fact that, since

²¹ See similarly, [Fourth Review Decision](#), para. 27; [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.

²² See [Fourth Review Decision](#), para. 28; [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.

²³ See [Fourth Review Decision](#), para. 28; [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 69.

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

²⁵ See [Fourth Review Decision](#), para. 28; [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 71.

²⁶ See [Fourth Review Decision](#), para. 28; [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 71.

the Fourth Review Decision, Mr Smakaj has gained increased insight into the evidence underpinning the charges through the ongoing disclosure process.²⁷

18. Having weighted all of the above consideration as a whole,²⁸ the Pre-Trial Judge remains of the view that the factors favourable to Mr Smakaj – namely his positive character and reputation, as well as his rooted family, community, and professional ties in Kosovo – insufficiently mitigate the risk that he will flee.²⁹

19. 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.

2. Risk of Obstructing the Progress of SC Proceedings

20. 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 Fourth 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;³⁰ (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;³¹ (iii) Mr Smakaj's increased awareness of the incriminating evidence against him, as a result of the ongoing disclosure,³² which creates

²⁷ The Pre-Trial Judge notes that, since the Fourth Review Decision, the SPO has made additional disclosures pursuant to Rule 102(1)(b) of the Rules. *See* Disclosure Packages Nos 59, 61, 64, 68, 70, 71, 74, 76.

²⁸ The Pre-Trial Judge also takes note of the absence of any submissions by the Smakaj Defence that she could have considered when assessing the risk of flight in relation to Mr Smakaj.

²⁹ *See* [Fourth Review Decision](#), para. 29; [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.

³⁰ *See* [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74, with further explanations.

³¹ [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74.

³² *See supra* footnote 27.

further incentives to interfere with witnesses.³³ 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.³⁴

21. The Pre-Trial Judge also recalls that the risk of obstruction has not ceased to exist with the closure of the SPO's case in *The Specialist Prosecutor v. Hashim Thaçi et al.* ("Case 06"), as the proceedings remain ongoing, and (i) a Trial Panel may, under exceptional circumstances, hear additional evidence even after the closing of the case under Rule 136 of the Rules, and (ii) witnesses who have already testified may be retaliated against or incentivised to recant.³⁵ The Pre-Trial Judge further recalls that the risk of obstruction is assessed not only in relation to the proceedings in Case 06, but also in relation to the present case.³⁶ In this respect, the Pre-Trial Judge notes that, since the Fourth Review Decision, the SPO has submitted its list of witnesses.³⁷ While the Pre-Trial Judge is of the view that the risk of interference concerning said SPO witnesses is low, this does not invalidate her conclusion in the

³³ [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 34; [First Review Decision](#), para. 33; [Decision on Arrest](#), para. 75.

³⁴ See [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 29; [Second Review Decision](#), para. 34, with references cited therein.

³⁵ [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 28. See KSC-BC-2023-12, IA004/F00005, Court of Appeals Panel, [Decision on Isni Kilaj's Appeal Against Third Decision on Review of Detention](#) ("Decision on Kilaj Appeal"), 1 September 2025, public, para. 74 and references therein. See also KSC-BC-2020-06, IA033/F00006, Court of Appeals Panel, [Decision on Rexhep Selimi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention](#), 13 August 2025, public, para. 54; IA035/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention](#), 13 August 2025, public, para. 34.

³⁶ [Fourth Review Decision](#), para. 31.

³⁷ KSC-BC-2023-12, F00459/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Pre-Trial Brief, Witness and Exhibit Lists*, 19 September 2025, confidential. The SPO re-filed the list of witnesses following the submission of a corrected version of its Pre-Trial Brief (see F00467/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Pre-Trial Brief, Witness and Exhibit Lists*, 26 September 2025, confidential).

Fourth Review Decision, considering all the other factors relied upon, that there continues to be a risk of obstruction.

22. 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.³⁸ In this context, the risk of Mr Smakaj exerting pressure on witnesses remains particularly high, in light of his ties,³⁹ as referenced above.⁴⁰

23. 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.

3. Risk of Committing Further Offences

24. 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.⁴¹ In this regard, the Pre-Trial Judge notes that the relevant factors – to be considered collectively – are the same as those outlined in paragraphs 20-22 above with respect to the risk of obstruction of proceedings. In particular, the Pre-Trial Judge underlines that, insofar as Mr Smakaj 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

³⁸ [Fourth Review Decision](#), para. 32; [Third Review Decision](#), para. 30; [Second Review Decision](#), para. 35; [First Review Decision](#), para. 34; [Decision on Arrest](#), para. 76, with references cited therein. See also [Decision on Kilaj Appeal](#), para. 83.

³⁹ [Fourth Review Decision](#), para. 32; [Third Review Decision](#), para. 30; [Second Review Decision](#), para. 35, with references cited therein.

⁴⁰ See *supra* paras 17, 20.

⁴¹ See [Decision on Arrest](#), para. 78.

pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.⁴² Upon a fresh examination of these factors, the Pre-Trial Judge remains persuaded that there is still a risk that Mr Smakaj 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.⁴³

25. 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.

4. Conclusion

26. 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.

D. CONDITIONAL RELEASE

27. The Pre-Trial Judge recalls her previous finding that none of the conditions proposed by the Smakaj Defence, nor any other conditions imposed *proprio motu*,⁴⁴ could sufficiently mitigate the existing risks, particularly the risks of obstruction of the progress of SC proceedings and the risk of commission of

⁴² See *supra* para. 22; see similarly, [Fourth Review Decision](#), para. 34; [Third Review Decision](#), para. 32; [Second Review Decision](#), para. 37; [First Review Decision](#), para. 37.

⁴³ See *supra* para. 21; and also [Fourth Review Decision](#), para. 34; [Third Review Decision](#), paras 28, 32, with references cited therein.

⁴⁴ 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.

further offences, considering in particular the significant network of influential individuals within Mr Smakaj's KLA network and/or political circles.⁴⁵

28. 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.⁴⁶ 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;⁴⁷ 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.⁴⁸

29. In light of the above, the Pre-Trial Judge concludes that the conditions for Mr Smakaj's release, including those (previously) 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.

⁴⁵ See [Fourth Review Decision](#), paras 37-39; [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.

⁴⁶ [Fourth Review Decision](#), para. 38; [Third Review Decision](#), para. 36; [Second Review Decision](#), para. 41; [First Review Decision](#), para. 43.

⁴⁷ [Fourth Review Decision](#), para. 38; [Third Review Decision](#), para. 36; [Second Review Decision](#), para. 41; [First Review Decision](#), para. 44, with references cited therein.

⁴⁸ [Fourth Review Decision](#), para. 38; [Third Review Decision](#), para. 36; [Second Review Decision](#), para. 41; [First Review Decision](#), para. 44, with references cited therein.

E. PROPORTIONALITY OF DETENTION

30. The Pre-Trial Judge recalls that: (i) Mr Smakaj has been detained since his arrest on 5 December 2024;⁴⁹ (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;⁵⁰ 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.⁵¹

31. The Pre-Trial Judge also takes into consideration that, since the Fourth Review Decision: (i) the SPO has filed its Pre-Trial Brief and its lists of witnesses and exhibits, on 19 September 2025;⁵² (ii) the SPO has made further disclosures pursuant to Rules 102(1)(b)⁵³ and 103 of the Rules;⁵⁴ (iii) the SPO has filed its fourth notice pursuant to Rule 102(3) of the Rules⁵⁵ and disclosed a number of items, as requested by the Defence;⁵⁶ (iv) the SPO has provided the Pre-Trial Judge with the points of agreement on matters of fact, as envisaged by Rule

⁴⁹ See *supra* para. 1.

⁵⁰ See KSC-BC-2023-12, F00264/A02, Specialist Prosecutor, [Public Redacted Amended Confirmed Indictment](#), 16 April 2025, public, para. 47.

⁵¹ See *supra* paras 27-29.

⁵² KSC-BC-2023-12, F00459, Specialist Prosecutor, *Prosecution Submission of Pre-Trial Brief, Witness and Exhibit Lists*, 19 September 2025, public, with Annexes 1-5, confidential. A corrected version was filed on 26 September 2025 (see F00467, Specialist Prosecutor, *Prosecution Submission of Corrected Pre-Trial Brief*, 26 September 2025, public, with Annexes 1-5, confidential).

⁵³ See Disclosure Package Nos 59, 61, 64, 68, 70, 71, 74, 76. See also KSC-BC-2023-12, F00420, Specialist Prosecutor, *Prosecution Submissions pursuant to Order F00395* ("SPO Progress Submissions"), 25 August 2025, confidential, paras 2, 3. A public redacted version was filed on 5 September 2025, F00420/RED. The Pre-Trial Judge also notes the pending request for further disclosure pursuant to Rule 102(1)(b) of the Rules (see KSC-BC-2023-12, F00458, Specialist Prosecutor, *Prosecution Request for Rule 102(1)(b) Disclosure*, 19 September 2025, confidential; F00462, Specialist Prosecutor, *Clarification to 'Prosecution Request for Rule 102(1)(b) Disclosure'*, F00458, 23 September 2025, confidential).

⁵⁴ See Disclosure Package No. 60.

⁵⁵ KSC-BC-2023-12, F00417, Specialist Prosecutor, *Prosecution's Fourth Rule 102(3) Notice*, 18 August 2025, public, with Annex 1, confidential.

⁵⁶ See Disclosure Packages Nos 58, 62, 63, 65, 66, 69, 75. See also SPO Progress Submissions, paras 17, 19.

95(3) of the Rules;⁵⁷ (v) remaining SPO investigative steps are progressing steadily,⁵⁸ and further disclosure of material is anticipated following completion of these steps;⁵⁹ (vi) the Pre-Trial Judge has invited the Defence to submit their Pre-Trial Briefs and notify the SPO of their intent to invoke any grounds excluding criminal responsibility by 20 October 2025;⁶⁰ and (vii) the Pre-Trial Judge has informed the Parties that she intends to transmit the case to a Trial Panel in the first half of November 2025, in the event the decisions of the Court of Appeals Panel on the pending appeals relating to pre-trial motions allow for such transfer.⁶¹ Thus, in the view of the Pre-Trial Judge, the proceedings continue to move forward expeditiously, edging the case closer to its imminent transmission to a Trial Panel.

32. The Pre-Trial Judge has duly considered the additional time Mr Smakaj has spent in detention since the Fourth Review Decision, but finds that – when

⁵⁷ KSC-BC-2023-12, F00469, Specialist Prosecutor, *Notification of Agreed Facts*, 29 September 2025, public, with Annex 1, confidential.

⁵⁸ See KSC-BC-2023-12, F00407, Pre-Trial Judge, *Decision on SPO Request for an Order (F00361) and Further Modalities for Independent Counsel Review*, 5 August 2025, confidential; F00431, Pre-Trial Judge, *Decision on the Continuation of Stage 2 of the Mechanism to Review Preserved Material and Related Matters*, 29 August 2025, confidential, with Annex 1, confidential; F00432, Independent Counsel, *Independent Counsel Provision of Preliminary Results*, 1 September 2025, confidential, with Annex 1, confidential, and Annexes 2-5, strictly confidential and *ex parte*; F00433, Registry, *Registrar's Filing of 130 Responsive Files Resulting from Search Queries 2 and 3, Pursuant to Decision F00431, and Request for Extension of Time Limit for Production of Forensic Firm Report on Interpretation of Metadata*, 3 September 2025, confidential, with Annexes 1-2, confidential; F00434, Independent Counsel, *Independent Counsel Transmission of Redacted Responsive Files Pursuant to Decision F00431*, 5 September 2025, confidential, with Annexes 1-11, confidential; F00437, Pre-Trial Judge, *Decision on Prosecution Request for EFC Follow-up and Registry Information*, 8 September 2025, confidential; F00442, Pre-Trial Judge, *Decision on Request for Extension of Time for the Production of Forensic Firm Report on Interpretation of Metadata*, 9 September 2025, confidential; F00471, Registrar, *Submission of Forensic Firm Report Pursuant to Decision F00431*, 30 September 2025, confidential, with Annex 1, confidential; F00472, Registrar, *Registrar's Third Monthly Report Pursuant to F00350*, 30 September 2025, confidential.

⁵⁹ See KSC-BC-2023-12, F00368, Pre-Trial Judge, *Decision on Prosecution Request for Access to Material and Related Matters*, 9 July 2025, confidential, paras 53, 57(i), with Annex 1, confidential.

⁶⁰ KSC-BC-2023-12, F00453, Pre-Trial Judge, [Decision on the Remaining Calendar of the Pre-Trial Proceedings](#) ("Pre-Trial Calendar Decision"), 16 September 2025, public, paras 17-18.

⁶¹ [Pre-Trial Calendar Decision](#), paras 21 and 23(e).

weighed against the remaining factors set out in paragraphs 30-31 above – his detention remains proportionate.

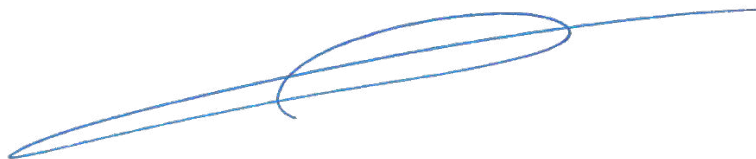
33. Moreover, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Smakaj's detention will be regularly reviewed upon the expiry of two (2) months from the last ruling on detention or at any time upon request, or *proprio motu*, where a change in circumstances since the last review has occurred.

34. 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

35. 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 **Tuesday, 11 November 2025, at 16h00**, with the response and reply following the timeline set out in Rule 76 of the Rules;
- 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 **Tuesday, 18 November 2025, at 16h00**, and Mr Smakaj, if he so wishes, to file his response by **Tuesday, 25 November 2025, at 16h00**; and
- d) **ORDERS** the Registry to reclassify the SPO Submissions (F00439) as public, by **Wednesday, 8 October 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Friday, 3 October 2025

At The Hague, the Netherlands.