



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: Single Trial Judge
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Prosecution submissions on review of detention of Bashkim Smakaj

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I. INTRODUCTION

1. Pursuant to Decision F00477¹ and following the Pre-Trial Judge ('PTJ')'s recent transmission of the complete case file to the Single Trial Judge ('STJ')² – including recurrent matters such as detention review – the Specialist Prosecutor's Office ('SPO') files its submissions on the next review of Bashkim SMAKAJ's detention.

2. In her prior decisions, the PTJ made reasoned and sustained findings of: (i) a grounded suspicion that SMAKAJ committed crimes within the jurisdiction of the Kosovo Specialist Chambers ('KSC');³ (ii) the existence of a risk of flight;⁴ (iii) articulable grounds to believe that SMAKAJ will obstruct the progress of KSC proceedings⁵ and will commit further offences;⁶ (iv) that no release conditions can

¹ Fifth Decision on Review of Detention of Bashkim Smakaj, KSC-BC-2023-12/F00477, 3 October 2025 ('Decision F00477'), para.35(c).

² See generally Decision Transmitting the Case File to Single Trial Judge, KSC-BC-2023-12/F00544, 12 November 2025 ('Transmittal Decision').

³ 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; Third Decision on Review of Detention of Bashkim Smakaj, KSC-BC-2023-12/F00326, 5 June 2025 ('Decision F00326'), paras 21-22; Fourth Decision on Review of Detention of Bashkim Smakaj, KSC-BC-2023-12/F00406, 5 August 2025 ('Decision F00406'), paras. 22-27; Decision F00477, KSC-BC-2023-12/F00477, paras 15-16.

⁴ 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; Decision F00406, KSC-BC-2023-12/F00406, paras 28-30, 36; Decision F00477, KSC-BC-2023-12/F00477, paras 17-19, 26.

⁵ 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; Decision F00406, KSC-BC-2023-12/F00406, paras 31-33, 36; Decision F00477, KSC-BC-2023-12/F00477, paras 20-23, 26.

⁶ 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; Decision F00406, KSC-BC-2023-12/F00406, paras 34-36; Decision F00477, KSC-BC-2023-12/F00477, paras 24-26.

mitigate the Article 41(6)(b) of the Law⁷ risks;⁸ and (v) that SMAKAJ's continued detention is proportional.⁹

3. There are no new factors or information which have arisen that undermine the above-summarised findings of the PTJ. As these consistent and sound conclusions remain undisturbed, SMAKAJ's continued detention remains necessary and proportionate.

II. SUBMISSIONS

4. Following the well-grounded and repeated findings outlined above, there have been no consequential changes or meaningful developments which undercut Decision F00477. Accordingly, all three Article 41(6)(b) risks remain clear and present at this time, supporting the continued detention of SMAKAJ. Consequently, and as a review of detention under Rule 57(2) of the Rules¹⁰ considers what has changed, *if anything*, since the prior ruling,¹¹ the continued detention of SMAKAJ remains necessary and proportionate. Importantly, the competent panel is not required to make findings on factors already decided upon in an earlier ruling – rather, it only needs to satisfy itself that any such factors still exist.¹²

⁷ 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.

⁸ 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; Decision F00406, KSC-BC-2023-12/F00406, paras 37-39; Decision F00477, KSC-BC-2023-12/F00477, paras 27-29.

⁹ 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; Decision F00406, KSC-BC-2023-12/F00406, paras 40-44; Decision F00477, KSC-BC-2023-12/F00477, paras 30-34.

¹⁰ 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.

¹¹ *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.

¹² *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. See also Decision on Isni Kilaj's Appeal

5. As to Article 41(6)(b)(i), the predominant factors which continue to establish SMAKAJ's risk of flight are: (i) the gravity of the charged offences, and the potential sentence if convicted; (ii) his demonstrated blatant disregard for the laws and the rules of the KSC; (iii) the fact that he possesses an active Albanian passport and would have the opportunity to travel beyond the reach of the KSC; and (iv) his means to evade justice, particularly considering his former positions in Kosovo and his KLA links.¹³

6. With respect to Article 41(6)(b)(ii), numerous prevailing considerations serve as the foundation substantiating SMAKAJ's risk of obstructing the progress of KSC proceedings, including: (i) the nature of the confirmed charges aimed at unlawfully influencing witnesses in KSC-BC-2020-06 ('Case 6'); (ii) his persistence in furthering obstruction efforts in KSC proceedings, including following THAÇI's orders; and (iii) his (increased) awareness of the incriminating evidence against him, creating further incentive to interfere with witnesses.¹⁴ Furthermore, this established risk of obstruction continues independent of the current stage of proceedings in Case 6.¹⁵ Finally, the persistent climate of intimidation of witnesses and victims in Kosovo continues to be a relevant contextual factor that must be considered,¹⁶ all the more so

Against Third Decision on Review of Detention, KSC-BC-2023-12/IA004/F00005, 1 September 2025, paras 31-32.

¹³ 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; Decision F00406, KSC-BC-2023-12/F00406, paras 28-30, 36; Decision F00477, KSC-BC-2023-12/F00477, paras 17-19, 26.

¹⁴ 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; Decision F00406, KSC-BC-2023-12/F00406, paras 31-33, 36; Decision F00477, KSC-BC-2023-12/F00477, paras 20-23, 26. This risk of obstruction need not materialise (only) by SMAKAJ personally approaching witnesses, but may occur through further coordination with people loyal to KLA commanders and/or people from his political circles.

¹⁵ See Decision F00326, KSC-BC-2023-12/F00326, para.28; Decision F00406, KSC-BC-2023-12/F00406, para.31; Decision F00477, KSC-BC-2023-12/F00477, para.21.

¹⁶ See for example *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Request for Provisional Release, KSC-BC-2020-06/IA034/F00005/RED, 13 August 2025, para.44.

when criminal proceedings are against former KLA members, such that SMAKAJ's risk of exerting pressure on witnesses 'remains particularly high'.¹⁷

7. Regarding Article 41(6)(b)(iii), it has been consistently found that the factors underpinning a risk of obstruction are relevant to the risk of committing further offences, and as such, the considerations enumerated in paragraph 6 above similarly establish SMAKAJ's likelihood of renewed offending.¹⁸

8. In any event, it is recalled that the presence of only one risk factor is sufficient to require continued detention.¹⁹ Further, it remains the case that no potential condition(s) of release can appropriately mitigate the Article 41(6)(b) risks.²⁰ The articulable grounds to believe that SMAKAJ may flee, obstruct the progress of KSC proceedings, and commit further offences – as appropriately identified in Decision F00477 and earlier decisions – can only be effectively managed in the KSC Detention Centre, whether they are considered individually or collectively. When these risks are established, and no lesser measures than detention are available, the accused shall continue to be detained.²¹ The repeated findings as to the articulable risks attributable to SMAKAJ, pursuant to Article 41, have been made on the basis of numerous individualised and well-grounded factors,²² reflecting an appropriate holistic approach in the specific circumstances of this case.

¹⁷ Decision F00477, KSC-BC-2023-12/F00477, para.22.

¹⁸ Decision F00477, KSC-BC-2023-12/F00477, para.24. *See also* 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; Decision F00406, KSC-BC-2023-12/F00406, paras 34-36.

¹⁹ *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').

²⁰ Decision F00477, KSC-BC-2023-12/F00477, paras 27-29. *See also* 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; Decision F00406, KSC-BC-2023-12/F00406, paras 37-39.

²¹ *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.

²² *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

9. While just over six (6) weeks have elapsed since Decision F00477, this limited passage of time does not undermine the conclusion that continued detention is proportionate in the particular circumstances of SMAKAJ. A potentially lengthy sentence lies ahead for him, if convicted, as he is charged with two (2) counts of Article 15(2) offences. Additionally, the continued expeditious progress of these proceedings – most directly exemplified by the transmission of this case to the STJ,²³ along with the scheduling of a Trial Preparation Conference pursuant to Rules 117 and 118 on 28 November 2025²⁴ – militates in favour of SMAKAJ’s detention.²⁵ Other significant and recent developments buttressing this earlier finding include: (i) the filing of Defence Pre-Trial Briefs on/before 20 October 2025;²⁶ (ii) continued progress as to ongoing and narrowly tailored investigative steps, particularly arising from PTJ Decision F00537²⁷ and Decision F00539²⁸, along with other investigative steps being undertaken by an external forensic company and the Independent Counsel;²⁹ (iii) the SPO’s filing of its Fifth Rule 102(3) Notice on 17 October 2025³⁰ and the disclosure of requested material to the Defence teams of all Accused; and (iv) the resolution of appeals arising from preliminary motions by the Court of Appeals Panel, on 28 October 2025.³¹ Finally,

23-34; Decision F00406, KSC-BC-2023-12/F00406, paras 28-36; Decision F00477, KSC-BC-2023-12/F00477, paras 17-26.

²³ See Transmittal Decision, KSC-BC-2023-12/F00544.

²⁴ See Order Scheduling the Trial Preparation Conference and Requesting Submissions, KSC-BC-2023-12/F00549, 17 November 2025.

²⁵ See Decision F00477, KSC-BC-2023-12/F00477, para.31.

²⁶ Public Redacted Version of the Thaçi Defence Pre-Trial Brief, KSC-BC-2023-12/F00518/RED, 23 October 2025; Smakaj Pre-Trial Brief in Accordance with Rule 95(5), KSC-BC-2023-12/F00513, 19 October 2025, Confidential; Public Redacted Version of Fazliu Pre-Trial Brief, KSC-BC-2023-12/F00517/RED, 20 October 2025.

²⁷ Public Redacted Version of Decision on the Request for Stage 2 Follow-Up, KSC-BC-2023-12/F00537/RED, 10 November 2025 (‘Decision F00537’).

²⁸ Public Redacted Version of Decision further to “Independent Counsel Report pursuant to Decision F00437”, KSC-BC-2023-12/F00539/RED, 10 November 2025 (‘Decision F00539’).

²⁹ See Annex 1 to Decision Transmitting the Case File to Single Trial Judge, KSC-BC-2023-12/F00544/A01, 12 November 2025, Section IV(C)-(D).

³⁰ Prosecution’s fifth Rule 102(3) notice, KSC-BC-2023-12/F00515, 17 October 2025.

³¹ Decision on Appeals Against “Decision on the Thaçi Defence Preliminary Motion on Jurisdiction” and “Decision on Preliminary Motions for Adjournment and Severance of the Proceedings”, KSC-BC-2023-12/IA006/F00009, 28 October 2025; Decision on Appeals Against “Decision on the Thaçi Defence

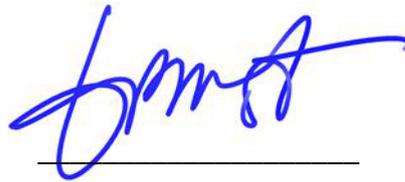
SMAKAJ continues to gain increased insight into the evidence against him through ongoing disclosure.³²

10. The current review of detention on remand is informed by the backdrop outlined above, which has not changed since Decision F00477. Considered in their totality, the numerous relevant factors result in a conclusion that SMAKAJ's continued detention remains necessary and proportionate.

III. RELIEF REQUESTED

11. For the foregoing reasons, the STJ should order SMAKAJ's continued detention.

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Kimberly P. West

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Tuesday, 18 November 2025

At The Hague, the Netherlands

Preliminary Motion on Jurisdiction" and "Decision on Preliminary Motions for Adjournment and Severance of the Proceedings", KSC-BC-2023-12/IA007/F00007, 28 October 2025.

³² See Decision F00477, KSC-BC-2023-12/F00477, paras 17, 20.