



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2023-12/IA008

Before: A Panel of the Court of Appeals Chamber
Judge Michèle Picard
Judge Emilio Gatti
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 5 December 2025

Original language: English

Classification: Public

Decision on Fadil Fazliu's Appeal Against Fifth Decision on Review of Detention

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 15 October 2025 by Mr Fadil Fazliu (“Appeal” and “Fazliu” or “Accused”, respectively),² against the “Fifth Decision on Review of Detention of Fadil Fazliu” (“Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 27 October 2025 that the Appeal should be rejected (“Response”).⁴ Fazliu replied on 3 November 2025 (“Reply”).⁵

I. BACKGROUND

1. On 5 December 2024, Fazliu was arrested in Kosovo⁶ pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge,⁷ and further to the confirmation of an indictment against him, Mr Hashim Thaçi (“Thaçi”), Mr Bashkim Smakaj, Mr Isni Kilaj and Mr Hajredin Kuçi (“Kuçi”).⁸

¹ IA008/F00002, Decision Assigning a Court of Appeals Panel, 17 October 2025 (confidential, reclassified as public on 3 December 2025).

² IA008/F00001, Fazliu Appeal Against the Fifth Detention Review Decision, 15 October 2025 (confidential) (“Appeal”). See also IA008/F00001/A01, Annex 1 to Fazliu Appeal Against the Fifth Detention Review Decision, 15 October 2025 (confidential) (“Annex to Appeal”).

³ F00479, Fifth Decision on Review of Detention of Fadil Fazliu, 3 October 2025 (“Impugned Decision”).

⁴ IA008/F00003, Prosecution response to ‘Fazliu Appeal Against the Fifth Detention Review Decision’, 27 October 2025 (confidential) (“Response”), paras 2, 23.

⁵ IA008/F00005, Fazliu Defence Reply to Prosecution Response to Fazliu Appeal, 3 November 2025 (confidential) (“Reply”).

⁶ F00045, Notification of Arrest of Fadil Fazliu Pursuant to Rule 55(4), 5 December 2024 (strictly confidential and *ex parte*, reclassified as confidential on 6 December 2024, reclassified as public on 14 January 2025).

⁷ F00037/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Related Matters, 19 December 2024 (strictly confidential and *ex parte* version filed on 29 November 2024, reclassified as confidential on 6 December 2024) (“Decision on Arrest”).

⁸ F00036/RED, Public Redacted Version of Decision on the Confirmation of the Indictment, 12 February 2025 (strictly confidential and *ex parte* version filed on 29 November 2024, reclassified as confidential on 13 December 2024) (“Confirmation Decision”). On 2 December 2024, the SPO filed the indictment as confirmed. See F00055, Submission of public redacted version of Confirmed Indictment, 6 December 2024; F00055/A01, Annex 1 to Submission of public redacted version of Confirmed Indictment,

2. On 8 December 2024, at the initial appearance of Fazliu,⁹ the Pre-Trial Judge ordered his continued detention.¹⁰
3. The Pre-Trial Judge subsequently reviewed and extended Fazliu's detention on a bi-monthly basis until this stage.¹¹
4. On 3 October 2025, after having received submissions from the Parties,¹² the Pre-Trial Judge issued the Impugned Decision, ordering Fazliu's continued detention on the basis, *inter alia*, (i) that there is a grounded suspicion that Fazliu has committed crimes within the subject-matter jurisdiction of the Specialist Chambers, namely attempting to obstruct official persons in performing official duties and contempt of court within the meaning of Articles 401(2) and (5), and 393 of the 2019 Kosovo Criminal Code, Code No. 06/L-074, respectively, in violation of Article 15(2) of the Law, and (ii) that the risks that Fazliu will flee, obstruct the progress of the Specialist

6 December 2024 ("Confirmed Indictment"). See also F00040, Submission of Confirmed Indictment, 2 December 2024 (strictly confidential and *ex parte*, reclassified as strictly confidential on 3 December 2024, reclassified as confidential on 12 November 2025); F00040/A01, Annex 1 to Submission of Confirmed Indictment, 2 December 2024 (strictly confidential and *ex parte*, reclassified as strictly confidential on 3 December 2024, reclassified as confidential on 12 November 2025). On 14 April 2025, the Confirmation Decision was amended by the Pre-Trial Judge, but the amendments do not concern Fazliu. See F00260, Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions, 14 April 2025. On 16 April 2025, the SPO filed the amended confirmed indictment. See F00264, Submission of Amended Confirmed Indictment, 16 April 2025; F00264/A02, Annex 2 to Submission of Amended Confirmed Indictment, 16 April 2025 ("Amended Confirmed Indictment").

⁹ Transcript, 8 December 2024, pp. 45-69.

¹⁰ Transcript, 8 December 2024, pp. 65-69.

¹¹ F00163, Decision on Review of Detention of Fadil Fazliu, 7 February 2025 ("First Review Decision"); F00251/RED, Public Redacted Version of Second Decision on Review of Detention of Fadil Fazliu, 7 April 2025 (confidential version filed on 7 April 2025) ("Second Review Decision"); F00327, Third Decision on Review of Detention of Fadil Fazliu, 5 June 2025 ("Third Review Decision"); F00404, Fourth Decision on Review of Detention of Fadil Fazliu, 5 August 2025 ("Fourth Review Decision").

¹² F00428/RED, Public Redacted Version of Fazliu Defence Submissions on the Fifth Detention Review, 4 September 2025 (confidential version filed on 29 August 2025) ("Defence Submissions Before the Pre-Trial Judge"); F00447/RED, Public redacted version of "Prosecution response to 'Fazliu Defence Submissions on the Fifth Detention Review'", 15 September 2025 (confidential version filed on 10 September 2025) ("SPO Response to Defence Submissions"); F00452, Fazliu Defence Reply to the SPO Response to F00428, 15 September 2025 (confidential, reclassified as public on 10 October 2025) ("Defence Reply to SPO Response").

Chambers proceedings or commit further offences continue to exist.¹³ The Pre-Trial Judge further found that neither the conditional interim release proposed by Fazliu, nor any additional reasonable conditions imposed by the Pre-Trial Judge, could sufficiently mitigate the risks under Article 41(6)(b)(i) to (iii) of the Law.¹⁴

5. On 12 November 2025, the Pre-Trial Judge transmitted the case file to the Single Trial Judge.¹⁵

6. On 24 November 2025, the Single Judge granted Fazliu's request for extension of time to respond to the SPO's submissions on the next review of his detention until after the Appeals Panel decides on the Appeal.¹⁶ On 28 November 2025, Fazliu transmitted a notification waiving his right to have his detention reviewed until the issuance of the present Decision.¹⁷ On 2 December 2025, the Defence notified the Single Judge of Fazliu's intention to withdraw his waiver.¹⁸ The Defence further provided submissions for the purpose of the next review of Fazliu's detention and requested his provisional release until the commencement of the trial.¹⁹ On 3 December 2025, the Single Judge issued a decision ordering Fazliu's continued detention.²⁰

7. In the Appeal, Fazliu develops four grounds of appeal consisting of alleged errors of law and fact committed by the Pre-Trial Judge.²¹ Fazliu requests that the

¹³ Impugned Decision, paras 24-25, 33, 39, 41-42, 53.

¹⁴ Impugned Decision, para. 47.

¹⁵ F00544, Decision Transmitting the Case File to Single Trial Judge, 12 November 2025, para. 28.

¹⁶ F00571, Decision on Fazliu Defence Request for an Extension of Time for Submissions on Review of Detention, 24 November 2025, paras 15-16, 19, where the Single Judge (i) authorised the SPO to supplement its submissions no later than three days following the Appeals Panel's decision on the Appeal; (ii) authorised Fazliu to respond by no later than five days after the expiry of the time limit for the SPO's supplemental submissions; and (iii) undertook to issue a decision on the review of Fazliu's detention within seven days of the expiry of the time limit for Fazliu to respond. See also F00562, Fazliu Request for Extension of Time Limit to Respond to Prosecution Submissions on the Sixth Detention Review, 21 November 2025, paras 1, 10, 16.

¹⁷ F00584, Fazliu Transmission of Waiver, 28 November 2025.

¹⁸ F00593, Fazliu Notification of Withdrawal of Waiver, 2 December 2025 ("Notification of Withdrawal of Waiver").

¹⁹ Notification of Withdrawal of Waiver, paras 4-10, 11(c).

²⁰ F00598, Sixth Decision on Review of Detention of Fadil Fazliu, 3 December 2025, para. 41.

²¹ Appeal, paras 18-44, 46. See also Appeal, paras 1-2.

Court of Appeals Panel reverse the Impugned Decision and order his immediate provisional release.²²

II. STANDARD OF REVIEW

8. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.²³

III. PUBLIC FILINGS

9. The Appeals Panel notes that the Impugned Decision was filed publicly. While Fazliu filed the Appeal as confidential, he now requests that the Appeal be reclassified as public.²⁴ The Response and the Reply were filed as confidential pursuant to Rule 82(4) of the Rules but the Parties indicated that these filings could be reclassified as public as they do not contain any confidential information.²⁵ The Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel.²⁶ The Panel therefore grants the Reclassification Request and orders that the Appeal,²⁷ the Response, the Reply and the Reclassification Request be reclassified as public pursuant to Rule 82(5) of the Rules.

²² Appeal, para. 47.

²³ KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati* Appeal Decision on Matters Related to Arrest and Detention"), paras 4-14. See also IA001/F00005, Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, 28 January 2025 ("*Kilaj* First Appeal Decision on Detention"), paras 15-17.

²⁴ See IA008/F00004, Fazliu Defence Request for Reclassification of IA008-F0001, 29 October 2025 (confidential) ("Reclassification Request"), para. 1. Fazliu additionally requests that the Reclassification Request be reclassified as public. See Reclassification Request, para. 2.

²⁵ Response, para. 22; Reply, para. 5.

²⁶ See e.g. KSC-BC-2020-06, IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("*Veseli* Second Appeal Decision on Detention"), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

²⁷ The reclassification does not concern the Annex to Appeal which should remain confidential.

IV. DISCUSSION

A. ALLEGED ERRORS REGARDING THE DUTY TO PROVIDE A REASONED OPINION (GROUND 1)

1. Submissions of the Parties

10. Fazliu submits that the Pre-Trial Judge failed to engage with the Defence submissions and erred in law in failing to provide a reasoned opinion in the Impugned Decision.²⁸ More specifically, Fazliu contends that the Impugned Decision merely repeats previous findings,²⁹ and neither specifies the Defence arguments being discussed nor addresses the new facts he provided.³⁰ He notably submits that the Impugned Decision does not contain any reference to his non-fighting role in the Kosovo Liberation Army (“KLA”), his life-long occupation in the private sector, and the absence of any contact with Thaçi other than the 2 July 2023 visit.³¹

11. Fazliu further argues that it is impossible to discern how the Pre-Trial Judge could conclude that he had the means to obstruct while he does not know or “was even aware” of certain persons of interest in proceedings before the Specialist Chambers.³² In his view, the Impugned Decision ignores jurisprudence from the Court of Appeals Chamber according to which a general climate of intimidation in Kosovo cannot in and of itself constitute a risk of obstruction in relation to a particular individual.³³

12. Pointing out that he occupies no political position and that his support network “consists only of his family”, Fazliu contends that the Impugned Decision did not

²⁸ Appeal, paras 18, 27, 30. See also Appeal, paras 19, 28-29, 46.

²⁹ Appeal, para. 27. Fazliu also points out that the Impugned Decision incorrectly refers to the Third Review Decision instead of the Fourth Review Decision. See Appeal, fn. 36, referring to Impugned Decision, para. 50.

³⁰ Appeal, paras 20-22.

³¹ Appeal, para. 20.

³² Appeal, para. 23.

³³ Appeal, para. 24.

point to any evidential link between him and the climate of intimidation.³⁴ He further argues that it is impossible to discern how the Pre-Trial Judge reached her finding in light of the Court of Appeals Chamber's findings concerning the lack of influence to obstruct proceedings of Mr Rexhep Selimi ("Selimi") and Mr Jakup Krasniqi ("Krasniqi").³⁵ According to Fazliu, the Impugned Decision contains no reasoning as to how he would have "better practical means" to abscond than a "more potentially influential Albanian passport holder" such as Kuçi, especially since his travel documents were confiscated.³⁶

13. Fazliu finally submits that the Impugned Decision merely reiterates previous findings and is "not just brief" but "creates an inexhaustible range of ambiguities" "without any articulated justification", to such an extent that no reasonable reader could discern how the conclusion was reached.³⁷

14. The SPO responds that Fazliu merely disagrees with and/or misrepresents the Impugned Decision.³⁸ The SPO specifically argues that: (i) the Impugned Decision "exhaustively recalls" Fazliu's submissions and "explicitly considers" his arguments and the information he provided;³⁹ (ii) whether Fazliu personally knows certain individuals has no bearing on the finding that he has the means to obstruct;⁴⁰ (iii) the Impugned Decision appropriately assessed the general climate of witness intimidation;⁴¹ and (iv) there is no need to provide a comparative analysis to other persons when determining the existence of the risks under Article 41(6)(b) of the Law.⁴²

³⁴ Appeal, para. 25.

³⁵ Appeal, para. 25.

³⁶ Appeal, para. 26.

³⁷ Appeal, paras 27-29. See also Appeal, para. 30.

³⁸ Response, para. 6. See also Response, paras 2, 7-9.

³⁹ Response, para. 7.

⁴⁰ Response, para. 8.

⁴¹ Response, para. 9.

⁴² Response, para. 10.

15. According to the SPO, the Impugned Decision is a “thorough and holistic” consideration of Fazliu’s circumstances, reflects a “careful and thoroughly reasoned” assessment, and correctly applies the appropriate legal framework.⁴³

2. Assessment of the Court of Appeals Panel

16. The Appeals Panel will first turn to Fazliu’s claim that the Impugned Decision fails to engage with the Defence submissions.⁴⁴ At the outset, the Appeals Panel recalls that while a panel must provide reasoning in support of its findings on the substantive considerations relevant for a decision, it is neither required to articulate every step of its reasoning, nor to address all of the arguments raised by the parties or every item of evidence relevant to a particular finding, provided that it indicates with sufficient clarity the basis for its decision.⁴⁵

17. In the present case, the Panel notes that the reasoning in the Impugned Decision in relation to the risks under Article 41(6)(b) of the Law is relatively brief and that the Pre-Trial Judge does not set out in much detail how she reached her factual conclusions. Rather, the Pre-Trial Judge made general references in the footnotes to conclusions from her previous decisions on Fazliu’s review of detention. That being said, the Panel observes that the Pre-Trial Judge also made express references to the Defence submissions that Fazliu claims she ignored,⁴⁶ submissions which are summarised in detail elsewhere in the Impugned Decision.⁴⁷ In the Panel’s view, and

⁴³ Response, paras 6, 11.

⁴⁴ See Appeal, paras 18, 20-22, 27-30.

⁴⁵ See KSC-CA-2023-02, F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023 (confidential version filed on 14 December 2023) (“*Mustafa* Appeal Judgment”), para. 34; KSC-CA-2024-03, F00069/RED, Public Redacted Version of Appeal Judgment, 14 July 2025 (confidential version filed on 14 July 2025) (“*Shala* Appeal Judgment”), para. 43. See also KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 33; KSC-BC-2020-06, IA003/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi’s Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) (“*Selimi* First Appeal Decision on Detention”), para. 45 and references cited therein.

⁴⁶ See Impugned Decision, paras 29, 35.

⁴⁷ See Impugned Decision, paras 9-10, referring *inter alia* to Defence Submissions Before the Pre-Trial Judge, paras 8-15, 19-21, 23, 29-30, 32-35.

contrary to Fazliu's assertion, a combined reading of the relevant parts of the Impugned Decision makes it possible to identify which specific Defence arguments the Pre-Trial Judge discussed in paragraphs 29 and 35 of the Impugned Decision.⁴⁸ Likewise, in the Panel's view, the duty to provide a reasoned opinion does not go as far as requiring the lower panel to refer to "the granular details" underpinning the Defence's arguments,⁴⁹ or to the "strength and reasonableness of the Defence's extrapolation from the factual details".⁵⁰ Fazliu's contentions in that regard are dismissed accordingly.

18. As to the fact that the Pre-Trial Judge "merely reiterated" previous findings,⁵¹ the Appeals Panel recalls that when conducting the risk assessment pursuant to Article 41(6)(b) of the Law, nothing prevents a lower panel from relying on a factor that it previously relied upon, regardless of when the evidence underpinning this factor was first presented, as long as it is persuaded that the evidence, at the time of the decision, remains sufficient to justify the finding in question.⁵² What matters is that the factors previously considered by the lower panel continue to be sufficient to demonstrate that such risk still exists, and that there has been no new factor arising

⁴⁸ Contra Appeal, para. 20. In addition, the Panel notes that the Pre-Trial Judge directly references the Defence submissions in her assessment of the risk of obstruction. See Impugned Decision, para. 35, fns 63-64, 66-67, referring to Defence Submissions Before the Pre-Trial Judge, paras 11-15, 23-25, 28-30, 32-33.

⁴⁹ Contra Appeal, para. 20.

⁵⁰ Contra Appeal, para. 21.

⁵¹ See Appeal, para. 27. As to the fact that the Pre-Trial Judge referred to the Third Review Decision in her consideration of the proportionality of Fazliu's detention, the Panel finds that this reference was a clerical error and finds that it is clear from the rest of the Impugned Decision that the Pre-Trial Judge assessed the additional time Fazliu spent in detention since the Fourth Review Decision. *Compare* Impugned Decision, para. 50 *with* Impugned Decision, paras 48-49.

⁵² See e.g. KSC-BC-2020-06, IA035/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, 14 August 2025 (confidential version filed on 13 August 2025) ("*Krasniqi* Fifth Appeal Decision on Detention"), para. 28. See also KSC-BC-2020-04, IA003/F00005/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, 11 February 2022 (confidential version filed on 11 February 2022), para. 18.

which would warrant reconsideration of these prior factors.⁵³ The Panel notes that Fazliu fails to point to any new factor warranting a reconsideration of the previously established ones, or to demonstrate that the Pre-Trial Judge's reliance on these factors is no longer warranted.

19. With respect to Fazliu's claim that the Pre-Trial Judge failed to address the "new facts" he brought to her attention,⁵⁴ the Panel notes that Fazliu does not identify on appeal the new facts or information he adduced, and which were allegedly disregarded by the Pre-Trial Judge. In any event, the Panel observes that the Pre-Trial Judge in fact expressly took into consideration the fact that Fazliu brought "additional" information.⁵⁵

20. In light of the above, the Panel is satisfied that the Pre-Trial Judge fully addressed the Defence arguments and provided sufficient reasons as to how she reached her conclusion. Fazliu's contentions in that regard are dismissed accordingly.

21. The Panel will now address Fazliu's arguments concerning the Pre-Trial Judge's findings that he had the ability to reach out to associates and gain support from people loyal to him in order to abscond and/or obstruct the proceedings.⁵⁶ In this respect, the Panel recalls that the question posed by Article 41(6)(b) of the Law is whether the SPO presented *specific reasoning based on evidence* supporting the belief of a sufficiently real possibility that (one or more of) the risks under Article 41(6)(b)(i) to (iii) of the Law exist.⁵⁷ The assessment as to whether the evidence presented by the

⁵³ See e.g. *Krasniqi* Fifth Appeal Decision on Detention, para. 28; KSC-BC-2020-06, IA006/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed 1 October 2021) ("*Krasniqi* Second Appeal Decision on Detention"), paras 14-16.

⁵⁴ See Appeal, paras 19, 22. See also Defence Reply to SPO Response, para. 6.

⁵⁵ See Impugned Decision, para. 17, referring to "the newly presented information" from the Defence.

⁵⁶ See Appeal, paras 22, 25. See also Impugned Decision, paras 29, 35.

⁵⁷ See e.g. KSC-BC-2020-06, IA033/F00006, Decision on Rexhep Selimi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, 13 August 2025 ("*Selimi* Fifth Appeal Decision on Detention"), para. 28 (emphasis in original); KSC-BC-2020-06, IA001/F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2001 ("*Veseli* First

SPO is sufficient is a question of fact depending on the individual circumstances of each case.⁵⁸ The Panel further recalls that the appraisal of evidence lies, in the first place, with the panel considering the request for interim release. Therefore, in determining whether the Pre-Trial Judge has misappreciated facts in a decision on interim release, the Appeals Panel will only intervene in the case of a clear error, namely where it cannot discern how the Pre-Trial Judge's conclusion could have reasonably been reached from the evidence before her.⁵⁹

22. The Panel notes that to support her conclusion that Fazliu could obtain the support of influential KLA veterans and/or people loyal to him, the Pre-Trial Judge merely refers to findings she made in previous decisions.⁶⁰ Having reviewed the underlying supporting evidence adduced by the SPO and assessed by the Pre-Trial Judge in these decisions, the Appeals Panel can easily discern how the Pre-Trial Judge reached her factual conclusion, notably in light of her references to the Decision on Arrest, referring in turn to the submissions and supporting documentation from the SPO.⁶¹

23. The Panel further notes that while Fazliu appears to take issue with the Pre-Trial Judge's findings on his stature and his ties with his community on appeal and in his most recent submissions before the Pre-Trial Judge, he emphasised these

Appeal Decision on Detention"), para. 19; IA004/F00005, Decision on Isni Kilaj's Appeal Against Third Decision on Review of Detention, 1 September 2025 ("Kilaj Second Appeal Decision on Detention"), para. 67.

⁵⁸ *Selimi* Fifth Appeal Decision on Detention, para. 28; *Selimi* First Appeal Decision on Detention, para. 44.

⁵⁹ See e.g. *Selimi* First Appeal Decision on Detention, para. 64.

⁶⁰ See Impugned Decision, paras 26, 29, 35, fns 53, 56-57.

⁶¹ See Impugned Decision, para. 29, fn. 56, referring *inter alia* to Decision on Arrest, para. 83, referring in turn to F00023/RED, Public redacted version 'Prosecution Submissions Pursuant to F00022 with strictly confidential and *ex parte* Annexes 1-5', 13 December 2024 (strictly confidential and *ex parte* version filed on 17 October 2024, strictly confidential and *ex parte* confidential redacted version filed on 27 November 2024, reclassified as confidential on 6 December 2024) ("SPO Submissions on Arrest"), paras 6-8 and F00023/A02, Annex 2 to Prosecution submissions pursuant to F00022, 18 October 2024 (strictly confidential and *ex parte*). A confidential redacted version of Annex 2 was filed subsequently. See F00069/A01, Confidential redacted version of 'Annex 2 to Prosecution submissions pursuant to F00022', 9 December 2024 (confidential) ("Annex to SPO Submissions on Arrest").

aspects in his previous submissions.⁶² Furthermore, while it is correct that Fazliu occupies no political position at the present time,⁶³ Fazliu described himself as a “well-known activist”⁶⁴ and further ignores evidence confirming his political career.⁶⁵ Likewise, with respect to Fazliu’s contention on appeal that “his support network consists only of his family”,⁶⁶ the Appeals Panel recalls Fazliu’s previous submissions

⁶² Compare Appeal, para. 25 (“Mr Fazliu occupies no political position; his support network consists only of his family”) and Defence Submissions Before the Pre-Trial Judge, paras 11 (“Mr. Fazliu does not have a ‘long-standing political career. He is not a politician by any stretch of imagination. He has never held a public office or pursued a political career.”), 12 (“The confusion around Mr. Fazliu’s political stature may have risen from the fact that the Fazliu family is indeed well respected in Kosovo. However, the respect is born out of the sacrifice this family has made to the independence of Kosovo”), 13 (“Mr. Fazliu has led an ordinary and humble life, largely outside the public eye. Prior to his arrest, the limited media attention Mr. Fazliu received arose only in connection with commemorations of his brothers. Even after the present proceedings became newsworthy, coverage has continued to identify him through his kinship with the heroes, rather than as an influential figure in and of himself.”), 14 (“Mr. Fazliu’s ties with the former KLA commanders is confined to this context as well.”), with F00245/RED, Public Redacted Version of Fazliu Defence submissions on Detention Review, 4 April 2025 (confidential version filed on 2 April 2025) (“Defence Submissions for Second Review of Detention”), paras 8 (“He is a well-known activist for the national cause, and someone who has an excellent reputation in the community where he lived and worked. The Fazliu family is a respected one and has indeed been decorated with high state honours for their efforts in the freedom of the people. It has received recognition from the Presidency of the Republic of Kosovo and the Government of Kosovo.”), 9 (“The Fazliu family is known throughout Kosovo. [...] Mr. Fazliu himself has contributed to the freedom of his homeland and has been regarded with respect and consideration. [...] His authority, acquired through considerable effort on his part, has been a source of assistance for those who turned to him for help. He has supported the village of his birthplace and his family in every aspect, where he was able so to do, both morally and materially.”) and F00278/RED, Public Redacted Version of Fazliu Defence Submissions on the Third Review of Detention, 8 May 2025 (confidential version filed on 4 May 2025), para. 16 (“Mr Fazliu has demonstrated unwavering ties to Kosovo; a lifelong resident of over 47 years, a devoted husband and father, with a strong reputation within his community.”).

⁶³ See Appeal, para. 25.

⁶⁴ See Defence Submissions for Second Review of Detention, para. 8. In addition, some of the media articles provided by Fazliu in his Submissions before the Pre-Trial Judge in fact depict Fazliu as a “national activist” and as being honoured by Ramush Haradinaj in 2021 “for his extraordinary contribution to the national cause” and as someone “always supportive of national activity, along with his brothers, continuing to contribute to the building of the country even after liberation.” See Defence Submissions Before the Pre-Trial Judge, fn. 18, referring *inter alia* to “Haradinaj honors the brother of two Heroes, Fadil Fazliu” (20 April 2021) *Indeksonline* <<https://indeksonline.net/en/haradinaj-nderon-vellain-e-dy-heronjve-fadil-fazliun/>> (accessed 2 December 2025).

⁶⁵ See e.g. SPO Submissions on Arrest, para. 7, referring to Annex to SPO Submissions on Arrest, pp. 68, 83 (SPOE00360385) (where Fazliu is listed as a candidate of the coalition of the parties PDK, AAK and Nisma for the 2017 Kosovo parliamentary elections). See also Decision on Arrest, para. 83. In addition, Fazliu indicates that he unsuccessfully ran as a candidate for the “Movement for Unification” for the Kosovo parliamentary elections in 2014. See Defence Submissions Before the Pre-Trial Judge, fn. 11.

⁶⁶ See Appeal, para. 25.

where he described himself as someone with “authority”, “known throughout Kosovo”, “regarded with respect and consideration” and who supported his village “in every aspect”.⁶⁷ As to his links with KLA influential leaders such as Thaçi, Fazliu himself indicates that his relationship with Thaçi is “decades-long” and “sentimental and commemorative”.⁶⁸

24. Consequently, and in light of the supporting evidence from the SPO, the Panel sees no error in the Pre-Trial Judge holding that her previous findings concerning Fazliu’s political career and ties and his ability to abscond and obstruct proceedings remain undisturbed.⁶⁹ The Panel further fails to see how the fact that Fazliu worked in the private sector, had no fighting role in the KLA and that he allegedly ceased all contacts with Thaçi since 2 July 2023 could impact the Pre-Trial Judge’s conclusions.⁷⁰ Fazliu’s arguments are therefore dismissed.

25. The Panel will now turn to Fazliu’s reference to the fact that Selimi and Krasniqi were deemed to lack influence to obstruct despite their high-ranking positions within the KLA.⁷¹ The Panel first notes that Fazliu makes this argument for the first time on appeal, which as such warrants its summary dismissal.⁷² Second, the Panel finds that a comparison with findings concerning different accused in other cases before the

⁶⁷ See Defence Submissions for Second Review of Detention, para. 9. See also Second Review Decision, para. 34, where the Pre-Trial Judge found that Fazliu’s submissions regarding his family and community ties in fact reinforced her finding that Fazliu benefits from an extensive support network in Kosovo.

⁶⁸ See Defence Submissions Before the Pre-Trial Judge, para. 23. The Panel further notes that in his visitor application form to visit Thaçi at the Specialist Chambers Detention Facilities, Fazliu indicated that he “miss[es] [Thaçi]”, that he has “known [him] for 30 years” and that they have “[s]trong social and family ties”. See Defence Submissions Before the Pre-Trial Judge, fn. 47, referring to 121877-121884-ET. See also SPO Response to Defence Submissions, para. 7.

⁶⁹ See Impugned Decision, paras 29, 35.

⁷⁰ Contra Appeal, para. 20.

⁷¹ See Appeal, para. 25, referring to *Selimi* First Appeal Decision on Detention, paras 16-17 and KSC-BC-2020-06, IA002/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) (“*Krasniqi* First Appeal Decision on Detention”), para. 52.

⁷² See e.g. KSC-BC-2020-07, IA002/F00005, Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention, 9 February 2021 (“*Haradinaj* First Appeal Decision on Detention”), para. 29. See also *Mustafa* Appeal Judgment, para. 30; *Shala* Appeal Judgment, para. 39.

Specialist Chambers bears no relevance to the risk assessment under Article 41(6)(b) of the Law since this assessment is necessarily case specific and based on the individual circumstances of each accused. In any event, the Panel notes that none of the Pre-Trial Judge's findings concerning Fazliu's "support network" involves Selimi or Krasniqi.⁷³ In addition, the Pre-Trial Judge's findings with respect to Fazliu in the present case are distinguishable from the Court of Appeals Chamber's findings with respect to Selimi and Krasniqi.⁷⁴

26. While Fazliu takes issue with the Pre-Trial Judge dismissing his claim that he did not know or was not aware of persons of interest in proceedings before the Specialist Chambers,⁷⁵ the Panel observes that in fact Fazliu merely repeats arguments that were addressed by the Pre-Trial Judge, without identifying any error in the Pre-Trial Judge's assessment that would warrant the Appeals Panel's intervention.⁷⁶ This argument therefore warrants summary dismissal.⁷⁷ In any event, the Panel sees no error in the Pre-Trial Judge holding that his alleged lack of familiarity with persons of interest does not detract from the finding that he has the means to obstruct.⁷⁸ Indeed, the Panel finds that whether an accused does not personally know persons of interest and/or protected witnesses in proceedings before the Specialist Chambers is irrelevant to the determination of whether there is a risk that this accused obstruct the

⁷³ See notably Decision on Arrest, para. 83, and persons referenced therein.

⁷⁴ In case KSC-BC-2020-06, the Court of Appeals Chamber, recognising Selimi's and Krasniqi's positions of influence, yet found that they did not have the ability to mobilise a support network since there was no evidence adduced as to the support network's composition, its capacity or its resources. See *Selimi* First Appeal Decision on Detention, para. 66; *Krasniqi* First Appeal Decision on Detention, para. 55. By contrast, in the present case, the Pre-Trial Judge made no finding on the alleged influence of Fazliu *himself*, but only found that he could seek the support from former KLA commanders "with rooted political influence" due to his "close ties" with such persons. See Impugned Decision, para. 29; Decision on Arrest, para. 83.

⁷⁵ See Appeal, para. 23.

⁷⁶ Compare Defence Submissions Before the Pre-Trial Judge, para. 29 with Appeal, para. 23.

⁷⁷ See e.g. *Shala* Appeal Judgment, para. 42; *Mustafa* Appeal Judgment, para. 33; *Haradinaj* First Appeal Decision on Detention, para. 29.

⁷⁸ See Impugned Decision, para. 35.

proceedings. This is even more the case when the accused has access to the identity of these persons, as is currently the case.⁷⁹

27. Turning to Fazliu's claim that the Pre-Trial Judge failed to explain why Fazliu has "better practical means to abscond" than Kuçi,⁸⁰ the Panel finds that the Pre-Trial Judge was under no obligation to undertake the comparison Fazliu suggests. The Panel recalls that the Pre-Trial Judge's findings on the risks that another co-accused may or may not pose is of no relevance since the risk assessment is based on an individualised assessment of the personal circumstances of each accused.⁸¹ In any event, the Panel notes that Fazliu's claim that Kuçi is a "better connected person" or is "more politically influential" is unsupported.⁸² The Panel further notes that the Pre-Trial Judge, in concluding that Kuçi does not present a risk of flight, did not rely on Kuçi's (political) influence or network but on the relative gravity of the offence and relatively low sentence he faced – namely, imprisonment of up to six months.⁸³

28. The Panel now turns to Fazliu's contention regarding the Pre-Trial Judge's reference to the climate of witness intimidation that persists in Kosovo. The Appeals Panel recalls that while it is a relevant contextual factor to be taken into account in the determination of whether risks under Article 41(6)(b)(ii) of the Law exist, this factor alone is insufficient to justify continued detention.⁸⁴

⁷⁹ See F00172/RED, Public Redacted Version of Decision on Prosecution Request for Protective Measures, 11 March 2025 (confidential version filed on 11 February 2025); F00295/RED, Public Redacted Version of Second Decision on Protective Measures and the Handling of Confidential Information and Witness Contacts, 5 September 2025 (strictly confidential and *ex parte* version filed on 12 May 2025, confidential redacted version filed on 12 May 2025). See also F00428/A01, Annex 1 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025 (confidential) ("Annex 1 to Defence Submissions Before the Pre-Trial Judge"), fn. 1.

⁸⁰ See Appeal, para. 26.

⁸¹ See above, para. 25.

⁸² Contra Appeal, para. 26; Defence Submissions Before the Pre-Trial Judge, para. 17.

⁸³ See Decision on Arrest, paras 93-94.

⁸⁴ See e.g. *Selimi* Fifth Appeal Decision on Detention, para. 31; *Kilaj* Second Appeal Decision on Detention, para. 82.

29. However, the Panel notes that this factor was only considered as a background contextual factor by the Pre-Trial Judge.⁸⁵ A plain reading of the Impugned Decision shows that the Pre-Trial Judge assessed the risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law in light of other factors,⁸⁶ and clearly stressed that she assessed these factors “against the backdrop” of the climate of fear and intimidation in Kosovo against (potential) witnesses testifying before the Specialist Chambers.⁸⁷ Therefore, contrary to Fazliu’s assertion, the Pre-Trial Judge did not “ignore” the Court of Appeals Chamber’s jurisprudence and did not rely on this factor alone to conclude that the risk that Fazliu will obstruct the proceedings remains particularly high.⁸⁸ Fazliu’s argument is therefore dismissed.

30. In light of the above, the Appeals Panel finds that Fazliu has failed to demonstrate that the Pre-Trial Judge did not provide reasons and erred in concluding that there are articulable grounds to believe that the risks that Fazliu will flee, obstruct the progress of proceedings of the Specialist Chambers and/or commit further offences, if released, as set out in Article 41(6)(b) of the Law, continue to exist.⁸⁹ Therefore, the Panel dismisses Fazliu’s first ground of appeal.

⁸⁵ Impugned Decision, para. 38.

⁸⁶ See Impugned Decision, paras 34-37. The Pre-Trial Judge took into account the following factors: (i) the nature of the charges confirmed against Fazliu, who was part of a group, led by Thaçi, aiming at unlawfully influencing witnesses; (ii) Fazliu’s demonstrated knowledge of Thaçi’s obstructive intentions, and his own intention to pursue them; (iii) his persistence and proneness to obstruct the Specialist Chambers proceedings by furthering the senior KLA leadership’s interests and orders; (iv) his ability to gain consent from people loyal to him, including his son, for the purpose of obstructing Specialist Chambers proceedings; and (v) his increased awareness of the incriminating evidence against him. See Impugned Decision, para. 34.

⁸⁷ Impugned Decision, para. 38.

⁸⁸ Contra Appeal, para. 24.

⁸⁹ See Impugned Decision, paras 33, 39, 41-42.

B. ALLEGED ERRORS REGARDING THE PRE-TRIAL JUDGE'S ASSESSMENT OF FAZLIU'S
GUARANTEES (GROUND 2)

1. Submissions of the Parties

31. Fazliu submits that the Pre-Trial Judge erred in law by dismissing his declaration of intent and reputational claims as unable to displace the objective assessment to the risks of flight and obstruction.⁹⁰ In his view, the Pre-Trial Judge's interpretation of the factors that are relevant to conduct an objective risk assessment is erroneous and constitutes an error of law.⁹¹

32. Regarding his declaration of intent, Fazliu specifically refers to a letter he submitted as an annex to the Defence Submissions Before the Pre-Trial Judge.⁹² Commenting on this letter, Fazliu emphasises that he expressed his willingness to cooperate with the Specialist Chambers and to face the charges against him.⁹³ Fazliu recalls that he further expressed his willingness to comply with any conditions imposed on him by the Pre-Trial Judge, should his request for conditional release be granted. He also expressed his respect for the authority of the Specialist Chambers.⁹⁴ In addition, Fazliu recalls that he committed not to take advantage of the recognition and respect he garnered in the community, due to his brothers' martyrdom, to evade justice.⁹⁵

33. Fazliu argues that this commitment as well as the undertakings from two members of his family,⁹⁶ that were also submitted as annexes to the Defence

⁹⁰ Appeal, paras 2, 31. See also Appeal, paras 32-35.

⁹¹ Appeal, para. 35.

⁹² See Annex 1 to Defence Submissions Before the Pre-Trial Judge.

⁹³ Appeal, para. 32.

⁹⁴ Appeal, para. 32.

⁹⁵ Appeal, para. 32.

⁹⁶ Appeal, para. 34, referring to F00428/A02, Annex 2 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025 (confidential) ("Annex 2 to Defence Submissions Before the Pre-Trial Judge") and F00428/A03, Annex 3 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025 (confidential) ("Annex 3 to Defence Submissions Before the Pre-Trial Judge").

Submissions Before the Pre-Trial Judge, were erroneously dismissed as “not objective”.⁹⁷

34. In this regard, Fazliu submits that the jurisprudence of the European Court of Human Rights (“ECtHR”) supports his claim that factors pertaining to the Accused’s state of mind, his personality and moral character remain relevant to the assessment to be conducted under Article 41(6) of the Law.⁹⁸ Fazliu submits that the memories and reputation of his brothers as well as his understanding of the potential consequences of the violation of the commitment he made in his declaration of intent “fall squarely into [the] category” of relevant factors for the purpose of this assessment.⁹⁹

35. The SPO responds that Fazliu’s submissions merely reflect his disagreement with the Impugned Decision and that, contrary to what he alleges, the Pre-Trial Judge properly weighed all relevant factors in assessing the risks that Fazliu would flee or obstruct the proceedings of the Specialist Chambers.¹⁰⁰

36. The SPO submits that Fazliu’s allegations are self-serving and that: (i) Fazliu’s declaration of respect for the authority of the Specialist Chambers cannot be reconciled with the existence of a grounded suspicion that he committed crimes within the jurisdiction of the Specialist Chambers and the objective risks of flight and obstruction that he poses;¹⁰¹ (ii) in referring to the family members’ undertakings, Fazliu wilfully ignores that the finding on the risk of obstruction was notably based on the observation that he has the ability to gain consent from people loyal to him, including

⁹⁷ Appeal, para. 34. Fazliu adds that the severity of the sentence risked and the incriminating facts, albeit easy to identify, are not in themselves decisive. See Appeal, para. 34, referring to ECtHR, *Maksim Savov v. Bulgaria*, no. 28143/10, Judgment, 13 October 2020 (“*Maksim Savov v. Bulgaria* Judgment”), para. 48; ECtHR, *Becciev v. Moldova*, no. 9190/03, Judgment, 4 October 2005 (“*Becciev v. Moldova* Judgment”), para. 58.

⁹⁸ Appeal, para. 33, referring to *Maksim Savov v. Bulgaria* Judgment, para. 48.

⁹⁹ Appeal, para. 33.

¹⁰⁰ Response, para. 12. See also Response, paras 13-14.

¹⁰¹ Response, para. 13.

from one of the family members who provided an undertaking;¹⁰² and (iii) the memories and reputation of his brothers are irrelevant for the purpose of the assessment conducted by the Pre-Trial Judge.¹⁰³

37. Fazliu replies that the SPO's submissions "clearly overlook[] the scenario where [he] is factually innocent" and adds that the existence of a grounded suspicion that he committed the crimes charged against him in the Indictment does not constitute actual evidence of contempt.¹⁰⁴ Fazliu further argues that his declaration of intent "proposes a verifiable safeguard mechanism to effectively mitigate risk and ensure compliance".¹⁰⁵ In Fazliu's view, the Pre-Trial Judge should have considered what would happen if he chose to violate the release conditions.¹⁰⁶

2. Assessment of the Court of Appeals Panel

38. In this ground of appeal, Fazliu challenges the Pre-Trial Judge's findings in relation to: (i) his declaration of intent;¹⁰⁷ (ii) an undertaking provided by a family member offering a financial security of 40,000 euros and the pledge of his home as a collateral;¹⁰⁸ and (iii) an undertaking authored by his son (altogether "Guarantees").¹⁰⁹

39. The Panel observes that, in support of his allegation that the Pre-Trial Judge erred in law by dismissing the Guarantees he proposed, Fazliu largely repeats

¹⁰² Response, para. 13, referring specifically to Annex 3 to Defence Submissions Before the Pre-Trial Judge.

¹⁰³ Response, para. 13.

¹⁰⁴ Reply, para. 2. See also Reply, para. 3.

¹⁰⁵ Reply, para. 4.

¹⁰⁶ Reply, para. 4, referring to ICTY, *Prosecutor v. Mrkšić*, IT-95-13/1-AR65, Decision on Appeal Against Refusal to Grant Provisional Release, 8 October 2002 ("*Mrkšić* Appeal Decision on Provisional Release"), para. 9.

¹⁰⁷ Appeal, para. 32. See also Impugned Decision, paras 7, 9; Annex 1 to Defence Submissions Before the Pre-Trial Judge.

¹⁰⁸ Appeal, para. 34. See also Impugned Decision, para. 11; Annex 2 to Defence Submissions Before the Pre-Trial Judge.

¹⁰⁹ Appeal, para. 34. See also Impugned Decision, para. 11; Annex 3 to Defence Submissions Before the Pre-Trial Judge.

allegations made before the Pre-Trial Judge.¹¹⁰ Recalling that a party alleging an error of law must present arguments in support of its claim and explain how the error invalidates the decision,¹¹¹ the Panel finds that Fazliu fails to comply with these requirements. However, in light of Fazliu's allegation that the Pre-Trial Judge's dismissal is based on an erroneous *interpretation* of the factors that could be relevant to conduct a risk assessment,¹¹² and out of fairness to the Accused, the Panel will consider Fazliu's arguments to the extent they relate to the weight given by the Pre-Trial Judge to the Guarantees.

40. The Panel agrees with Fazliu's submission that, according to ECtHR jurisprudence, factors pertaining to the Accused's state of mind, his personality and moral character are relevant to the assessment to be conducted under Article 41(6) of the Law.¹¹³ The Panel notes that in the *Maksim Savov v. Bulgaria* Judgment relied upon by Fazliu,¹¹⁴ the ECtHR stressed that the risk of absconding must be assessed in the light of factors relating to the applicant's personality, moral character, place of residence, profession, resources, family ties and other types of links with the country in which he or she is being prosecuted.¹¹⁵ The Panel further notes that this settled ECtHR jurisprudence¹¹⁶ reflects the requirement under Article 5(3) of the European Convention on Human Rights ("ECHR") laying down the right to liberty and security and proclaiming that release may be conditioned by guarantees to appear for trial.¹¹⁷

¹¹⁰ Compare Appeal, paras 31-32, 34-35 with Defence Submissions Before the Pre-Trial Judge, paras 12, 16-18, 21.

¹¹¹ See e.g. *Mustafa* Appeal Judgment, para. 18; *Shala* Appeal Judgment, para. 28.

¹¹² Appeal, para. 35 (emphasis added).

¹¹³ Appeal, para. 33.

¹¹⁴ Appeal, paras 33-34, fns 44, 46.

¹¹⁵ *Maksim Savov v. Bulgaria* Judgment, para. 48.

¹¹⁶ See ECtHR, *Wemhoff v. Germany*, no. 2122/64, Judgment, 27 June 1968, para. 15. See also ECtHR, *Khudoyorov v. Russia*, no. 6847/02, Judgment, 8 November 2005, para. 183; ECtHR, *Lelièvre v. Belgium*, no. 11287/03, Judgment, 8 November 2007 ("*Lelièvre v. Belgium* Judgment"), para. 97; ECtHR, *Shabani v. Switzerland*, no. 29044/06, Judgment, 5 November 2009 ("*Shabani v. Switzerland* Judgment"), para. 62.

¹¹⁷ See ECHR, Article 5(3).

41. As to the extent of the judges' obligation in this matter, the Panel refers to the *Lelièvre v. Belgium* Judgment where the failure of the authorities to address any of the guarantees to appear for trial provided by the accused and, more generally, the complete failure to consider alternatives to detention was found to constitute a breach of Article 5(3) of the ECHR.¹¹⁸ *A contrario*, in the context of the *Shabani v. Switzerland* Judgment, the ECtHR found that the authorities did not err in deciding that the applicant's pre-trial detention was warranted in light of the fact he was suspected of belonging to a criminal organisation and the risk of flight could not be mitigated by the surety he proposed as a guarantee in light of the dubious origin of the money.¹¹⁹ In this case, the ECtHR was satisfied that guarantees to appear for trial were properly considered and found no violation of Article 5(3) of the ECHR.¹²⁰ The Panel deduces from the ECtHR jurisprudence that although judges have to take guarantees to appear for trial into consideration, they have discretion in their determination of the weight to attach to these guarantees.

42. The above finding is consistent with previous decisions of the Court of Appeals Panel providing that decisions concerning detention on remand are discretionary.¹²¹ In that regard, the Panel recalls that lower level panels have the discretion to evaluate, within the Specialist Chambers' legal framework, the circumstances militating in favour of or against extending the detention of a suspect or accused. Because of the fact-specific nature of provisional release decisions, lower level panels are better placed to assess these circumstances.¹²²

43. In the present case, addressing Fazliu's Guarantees, the Pre-Trial Judge found that: "[d]eclarations of intent or reputational claims on the part of the Accused cannot

¹¹⁸ *Lelièvre v. Belgium* Judgment, paras 98, 102, 108.

¹¹⁹ *Shabani v. Switzerland* Judgment, para. 63.

¹²⁰ *Shabani v. Switzerland* Judgment, para. 63.

¹²¹ See e.g. INV/F00273/RED, Public Redacted Version of Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention, 15 May 2024 (confidential version filed on 13 May 2024) ("*Kilaj* Case 18-01 Appeal Decision on Release"), para. 15.

¹²² *Kilaj* Case 18-01 Appeal Decision on Release, para. 15.

displace the objective assessment of the existence” of a risk of flight under Article 41(6)(b)(i) of the Law.¹²³ The Pre-Trial Judge reached a similar finding in relation to her assessment of the risk of obstruction of proceedings under Article 41(6)(b)(ii) of the Law.¹²⁴

44. The Panel notes that the reasoning in the Impugned Decision in relation to Fazliu’s declarations of intent and reputational claims is relatively brief. In particular, the Pre-Trial Judge did not elaborate on the weight she attached to these submissions, if any, besides indicating that declarations of intent on the part of the Accused “cannot displace the objective assessment” of the existence of risks under Article 41(6)(b) of the Law.¹²⁵ However, recalling that while a panel must provide reasoning in support of its findings on the substantive considerations relevant for a decision, it is not required to articulate every step of its reasoning.¹²⁶ The Panel is therefore satisfied that the Pre-Trial Judge fulfilled her duty to take Fazliu’s declarations of intent and reputational claims into consideration.

45. The Panel now turns to Fazliu’s argument that his declaration of intent “proposes a verifiable safeguard mechanism to effectively mitigate risk and ensure compliance”.¹²⁷ The Panel finds that Fazliu merely disagrees with the weight the Pre-Trial Judge attached to his statement and fails to demonstrate that the Pre-Trial Judge committed any error or abused her discretion. The Panel notes that, in his declaration of intent, Fazliu commits, *inter alia*, to attend courts hearings when required, to comply with any conditions imposed on him by the Pre-Trial Judge and to refrain from interfering with witnesses.¹²⁸ The Panel considers that compliance with the law and court-imposed orders is expected of any person,¹²⁹ and that refraining

¹²³ Impugned Decision, para. 31.

¹²⁴ Impugned Decision, para. 35.

¹²⁵ See Impugned Decision, paras 31, 35. See also Impugned Decision, para. 37.

¹²⁶ See above, para. 16.

¹²⁷ Reply, para. 4.

¹²⁸ Annex 1 to Defence Submissions Before the Pre-Trial Judge.

¹²⁹ *Shala* Appeal Judgment, para. 916. See also e.g. *Kilaj* First Appeal Decision on Detention, para. 45.

from prohibited conduct should be the norm.¹³⁰ Accordingly, the Panel fails to see how Fazliu's declaration of intent would, in itself, constitute a "mechanism to effectively mitigate risk and ensure compliance" as he suggests. Contrary to Fazliu's assertion, the Panel sees some merit in the SPO's submissions that his allegations are self-serving,¹³¹ and finds that it was open to the Pre-Trial Judge to choose not to elaborate further on Fazliu's declarations of intent or reputational claims.

46. The Panel further notes that in support of his claim that the Pre-Trial Judge should have addressed his declaration of intent in light of its enforceability by interrogating what would happen if he chose to violate the release conditions,¹³² Fazliu relies on a decision issued by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia ("ICTY") in the *Mrkšić* case.¹³³ At the outset, the Panel recalls that conducting an enquiry to establish whether conditions of release could be effectively implemented and enforced falls within the discretionary powers the Pre-Trial Judge is vested with pursuant to Article 39(13) of the Law with regard to detention-related matters, depending on the circumstances of the case.¹³⁴ In the circumstances of this case, it did not constitute an abuse of discretion for the Pre-Trial Judge to refrain from conducting such an enquiry with regard to Fazliu's undertaking.

47. Furthermore, the Panel notes that the ICTY appeal decision in the *Mrkšić* case specifically addresses the reliability of guarantees given by states and what would occur if the relevant authorities were obliged, under the guarantee they provided, to arrest the accused.¹³⁵ The Panel disagrees that the *Mrkšić* case and the present case

¹³⁰ *Krasniqi* Fifth Appeal Decision on Detention, para. 27. See also *Shala* Appeal Judgment, para. 916.

¹³¹ See Response, para. 13.

¹³² See Reply, para. 4.

¹³³ See Reply, para. 4, referring to *Mrkšić* Appeal Decision on Provisional Release, para. 9.

¹³⁴ See e.g. KSC-BC-2020-06, IA015/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022 (confidential version filed on 25 March 2022), para. 22. See also KSC-BC-2020-06, IA007/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), para. 56; *Krasniqi* Second Appeal Decision on Detention, para. 56.

¹³⁵ See *Mrkšić* Appeal Decision on Provisional Release, para. 9.

reflect analogous circumstances,¹³⁶ and finds that, in fact, the *Mrkšić* Appeal Decision on Provisional Release rather confirms that the reliability of a guarantee must be determined in relation to the circumstances which arise in a particular case.¹³⁷ Fazliu's argument is therefore dismissed.

48. Overall, the Panel is satisfied that the Pre-Trial Judge's assessment shows that she properly weighed Fazliu's Guarantees, including his declaration of intent against the risks she identified. In particular, the Pre-Trial Judge stressed that the conditions put forward by Fazliu could not ensure the effective control and monitoring of his communications. The Pre-Trial Judge further expressed concerns over the Accused's ability, motive, and opportunity to approach witnesses through his son and other associates.¹³⁸

49. Finally, the Panel notes that in assessing whether any of the risks she identified could be adequately mitigated by conditions for Fazliu's release, the Pre-Trial Judge considered his proposed financial surety.¹³⁹ The Pre-Trial Judge found that an assessment as to whether bail could serve as an effective deterrent would need to be based on documentation relating to the Accused's financial circumstances. Since Fazliu did not provide such material, the Pre-Trial Judge found that the additional information contained in Annex 2 to Defence Submissions Before the Pre-Trial Judge

¹³⁶ The Panel observes that the nature of the guarantees provided in the two cases is very different. While *Mrkšić* submitted states guarantees, Fazliu, on the other hand, submitted undertakings authored by him and family members. See above, para. 38. The Panel further notes that the ICTY Appeals Chamber made this finding in a very specific context where the states that provided the guarantees had never arrested the two other co-accused in the *Mrkšić* case nor "other high-ranking individuals indicted by the Tribunal". See *Mrkšić* Appeal Decision on Provisional Release, para. 7. The Panel observes that in the context of this decision, the Appeals Chamber upheld the Trial Chamber's decision to treat the state guarantees with caution in light of concerns as to their reliability and further upheld the Trial Chamber's decision to deny *Mrkšić*'s request for provisional release. See *Mrkšić* Appeal Decision on Provisional Release, paras 7-16.

¹³⁷ See *Mrkšić* Appeal Decision on Provisional Release, para. 9.

¹³⁸ Impugned Decision, para. 45.

¹³⁹ Impugned Decision, para. 44. See also Annex 2 to Defence Submissions Before the Pre-Trial Judge.

was not capable of altering her assessment on the matter.¹⁴⁰ In light of this, the Panel is satisfied that the Pre-Trial Judge properly considered Fazliu's proposed surety.

50. In the Panel's view, the Pre-Trial Judge's reasoning shows that she considered Fazliu's Guarantees. After having weighed them against the factors militating in favour of extending detention that she had recalled,¹⁴¹ she found that the conditions for Fazliu's release previously proposed by him, and/or any additional reasonable conditions imposed by the Pre-Trial Judge, remained insufficient to adequately mitigate the risks under Article 41(6)(b)(i) to (iii) of the Law.¹⁴²

51. As a result, the Court of Appeals Panel finds that Fazliu has failed to show that the Pre-Trial Judge erred or abused her discretion with regard to the weight she attached to the Guarantees. Fazliu's second ground of appeal is therefore dismissed.

C. ALLEGED ERRORS REGARDING FAZLIU'S ALLEGED "PERSISTENCE AND PRONENESS" TO OBSTRUCT PROCEEDINGS (GROUND 3)

1. Submissions of the Parties

52. Fazliu submits that the Pre-Trial Judge's finding on his purported "persistence and proneness" to obstruct the proceedings of the Specialist Chambers, as a ground for continued detention, is devoid of any factual basis and only rests on previous filings issued by the Pre-Trial Judge.¹⁴³ Fazliu argues that the evidence in this case pertains to the singular incident that he is charged with in relation to a singular witness.¹⁴⁴ Fazliu argues that this evidence does not demonstrate any repetition of

¹⁴⁰ Impugned Decision, para. 44.

¹⁴¹ See Impugned Decision, paras 26-42.

¹⁴² Impugned Decision, para. 47.

¹⁴³ Appeal, para. 36. Fazliu also submits that the danger of an accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*; it has to be supported by factual evidence. See Appeal, para. 37, referring to *Becciev v. Moldova* Judgment, para. 59, citing ECtHR, *Trzaska v. Poland*, no. 25792/94, Judgment, 11 July 2000, para. 65. Fazliu further refers to the Annex to Appeal in which he compiled "the directly and indirectly referenced excerpts relied on by the Impugned Decision".

¹⁴⁴ Appeal, para. 38.

pre-existing tendency attributable to him and that the Pre-Trial Judge's inference is erroneous.¹⁴⁵

53. The SPO responds that Fazliu relies on language taken out of context from the Impugned Decision, and fails to demonstrate any error.¹⁴⁶ Relying on the Decision on Arrest and the Amended Confirmed Indictment, the SPO further responds that Fazliu's persistence and proneness to obstruct the proceedings is borne out by the confirmed charges in this case, based on a multitude of relevant facts.¹⁴⁷

2. Assessment of the Court of Appeals Panel

54. The Panel notes that, in the context of her assessment of the risk that Fazliu obstructs the proceedings of the Specialist Chambers, the Pre-Trial Judge found that the considerations set out in the Fourth Review Decision, including Fazliu's "persistence and proneness to obstruct" the proceedings by furthering the senior KLA leadership's interests and orders, continued to apply.¹⁴⁸

55. While it is indeed true that the impugned references rest on previous filings issued by the Pre-Trial Judge,¹⁴⁹ the Panel dismisses Fazliu's allegation of error for the following reasons.

56. The Panel notes that the Pre-Trial Judge's reference to Fazliu's "persistence" to further obstruction efforts was made in connection with her observation that Fazliu

¹⁴⁵ Appeal, paras 39-40.

¹⁴⁶ Response, paras 15, 17.

¹⁴⁷ Response, para. 16.

¹⁴⁸ Impugned Decision, para. 34.

¹⁴⁹ Appeal, para. 36, referring to Annex to Appeal in which Fazliu asserts that he compiled "the directly and indirectly referenced excerpts relied on by the Impugned Decision". See Appeal, para. 37. The Panel notes that the Pre-Trial Judge referred to Fazliu's alleged persistence in furthering obstruction efforts for the first time in the context of the Decision on Arrest. See Decision on Arrest, para. 86. As for Fazliu's alleged proneness to obstruct the proceedings, the Pre-Trial Judge made this finding for the first time in the context of the First Review Decision. See First Review Decision, para. 24. Both references were then repeated in each of the subsequent decisions extending Fazliu's detention. See Second Review Decision, para. 38; Third Review Decision, para. 27; Fourth Review Decision, para. 16. See also Impugned Decision, para. 34.

allegedly engaged in the conduct charged in the Indictment with the knowledge that such conduct aimed at obstructing the proceedings of the Specialist Chambers and that he nevertheless pursued it.¹⁵⁰ Accordingly, considered in the context in which it was first mentioned by the Pre-Trial Judge,¹⁵¹ the Panel understands that the reference to “persistence” shall not be interpreted as meaning “repetition” of an action as alleged by Fazliu,¹⁵² but rather as “continuation of a course of action in spite of knowing its nature”. This interpretation is further consistent with the terms of the Indictment charging the Accused for being part of a group aiming to unlawfully influence the testimony of SPO witnesses in the *Thaçi et al.* case.¹⁵³

57. As for the reference to Fazliu’s alleged proneness to obstruct the proceedings,¹⁵⁴ a review of prior decisions of the Pre-Trial Judge,¹⁵⁵ shows that she made this reference in the context of her assessment of the risk of obstruction of proceedings under Article 41(6)(b)(ii) of the Law.¹⁵⁶ In the Panel’s view, “proneness” shall be understood as “predisposition” [to witness intimidation]. As for Fazliu’s assertion that there is no evidence demonstrating any tendency or likelihood attributable to him,¹⁵⁷ the Panel finds that it was reasonable for the Pre-Trial Judge to consider that Fazliu is predisposed or prone to witness intimidation in light of her other finding that there is a grounded suspicion that he disclosed privileged information to unauthorised third parties.¹⁵⁸ The Panel stresses that the very specific nature of the confirmed charges is a relevant factor that the Pre-Trial Judge considered in the assessment of the existence

¹⁵⁰ Decision on Arrest, para. 86.

¹⁵¹ Decision on Arrest, para. 86.

¹⁵² Appeal, para. 39.

¹⁵³ Amended Confirmed Indictment, paras 8, 45, 49, 51.

¹⁵⁴ Appeal, para. 36.

¹⁵⁵ First Review Decision, para. 24, referring to Decision on Arrest, para. 86.

¹⁵⁶ First Review Decision, paras 24-27.

¹⁵⁷ Appeal, para. 39.

¹⁵⁸ See Confirmation Decision, paras 42-43; Decision on Arrest, para. 43. See also *Selimi* Fifth Appeal Decision on Detention, para. 53.

of a risk of obstruction to the proceedings.¹⁵⁹ Further and as previously recalled,¹⁶⁰ the Pre-Trial Judge only relied on Fazliu's alleged persistence and proneness to obstruct the proceedings, as one factor among others, in support of her finding that the risk of obstruction of proceedings under Article 41(6)(b)(ii) of the Law continued to exist.¹⁶¹ Accordingly, Fazliu fails to show that it was unreasonable for the Pre-Trial Judge to draw such inference.¹⁶²

58. Finally, the Panel agrees with the Pre-Trial Judge's observation that Fazliu's challenge to his alleged persistence and proneness to obstruct the proceedings is in fact a challenge to evidence.¹⁶³ In support of his argument, Fazliu relies on what he considers as being the "only concrete evidence" supporting the Pre-Trial Judge's finding.¹⁶⁴ In that regard, the Panel recalls that the quality and strength of the SPO's case and evidence are matters to be discussed at trial and that the present decision on detention is not an appropriate forum to address this argument.¹⁶⁵ Accordingly, the Panel declines to address Fazliu's argument that the evidence in this case pertains to the singular incident that he is charged with in relation to a singular witness,¹⁶⁶ as well as the corresponding SPO's argument relying on the charges in the Indictment.¹⁶⁷

¹⁵⁹ *Kilaj* Second Appeal Decision on Detention, para. 71. See also KSC-BC-2020-07, IA007/F00004 and IA008/F00004, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, 6 April 2022 ("*Haradinaj* Consolidated Appeal Decision on Detention"), para. 45. The Panel further recalls that for the purpose of detention review, Fazliu did not dispute the existence of a grounded suspicion. See Defence Submissions Before the Pre-Trial Judge, para. 8.

¹⁶⁰ See above, para. 54.

¹⁶¹ Impugned Decision, para. 34.

¹⁶² Contra Appeal, para. 39.

¹⁶³ Impugned Decision, para. 35.

¹⁶⁴ Appeal, para. 38. The Panel notes that the SPO responds by relying on the "multitude of relevant facts" it presented in support of the confirmed charges in this case. See Response, para. 16, referring generally to Decision on Arrest and Amended Confirmed Indictment.

¹⁶⁵ *Kilaj* Second Appeal Decision on Detention, para. 36. See also *Veseli* Second Appeal Decision on Detention, para. 23; KSC-BC-2020-06, IA010/F00008/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021 (confidential version filed on 27 October 2021) ("*Thaçi* Second Appeal Decision on Detention"), para. 40.

¹⁶⁶ Appeal, para. 38.

¹⁶⁷ Response, para. 16.

59. As a result, the Court of Appeals Panel finds that Fazliu has failed to show that the Pre-Trial Judge erred or abused her discretion in referring to his purported persistence and proneness to obstruct the proceedings of the Specialist Chambers. Fazliu's third ground of appeal is therefore dismissed.

D. ALLEGED ERRORS REGARDING FAZLIU'S INCREASED AWARENESS OF THE CHARGES AND INSIGHT INTO THE EVIDENCE (GROUND 4)

1. Submissions of the Parties

60. Fazliu submits that the Pre-Trial Judge erred in relying on his increased awareness of the charges against him and insight into the case to conclude that this increased the risks of flight, obstruction, and reoffending.¹⁶⁸ Pointing out that disclosure of evidence to the accused is "a cornerstone of procedural fairness" and that it is essential for the preparation of an effective defence, Fazliu argues that the mere exercise of this right cannot legitimately be treated as a risk in itself or give rise to any presumption of risk.¹⁶⁹

61. Fazliu also contends that the Pre-Trial Judge's reliance on the mere notification of evidence for the risk assessment under Article 41(6) of the Law without any substantiated indication that the accused used it unlawfully is erroneous.¹⁷⁰ According to Fazliu, this scenario would lead to the "illogical and absurd conclusion" that an accused may only be released before disclosure occurs.¹⁷¹

62. The SPO responds that Fazliu fails to establish any error in the assessment of the risks under Article 41(6)(b) of the Law conducted in the Impugned Decision.¹⁷² It argues that Fazliu's claim of improper reliance on the continued disclosure of SPO material is refuted by case law which confirms that this is a relevant discretionary

¹⁶⁸ Appeal, paras 41-44.

¹⁶⁹ Appeal, para. 42.

¹⁷⁰ Appeal, para. 43.

¹⁷¹ Appeal, para. 43.

¹⁷² Response, para. 20. See also Response, para. 21.

factor in the context of assessing the existence of a risk of obstruction.¹⁷³ The SPO further contends that Fazliu fails to engage with the finding that this is also a consideration relevant to his incentive to flee. In the SPO's view, Fazliu ignores that this was only one factor "among numerous others" which were considered by the Pre-Trial Judge in her assessment of the risks.¹⁷⁴

2. Assessment of the Court of Appeals Panel

63. The Panel will first address Fazliu's argument that the mere exercise of his right to disclosure should not be treated as a risk in and of itself.¹⁷⁵

64. At the outset, the Appeals Panel recalls the importance of the disclosure process in ensuring the fairness of the proceedings and that the rights of the Defence are respected, and that this should remain paramount.¹⁷⁶ In that sense, the Panel agrees with Fazliu that disclosure of material by the SPO to the accused in view of the trial proceedings is a mandatory procedural step essential for the preparation of the defence.¹⁷⁷

65. That being said, the Panel recalls that an accused's access to and increased knowledge of the SPO's case through the disclosure of evidence may be a relevant factor, when considered together with other factors, to determine the existence of a

¹⁷³ Response, paras 18-19.

¹⁷⁴ Response, para. 19.

¹⁷⁵ See Appeal, para. 42.

¹⁷⁶ See KSC-CA-2022-01, F00044/RED, Public Redacted Version of Decision on Prosecution Notifications, 31 January 2023 (confidential and *ex parte* version filed on 15 September 2022, confidential redacted version filed on 26 September 2022), para. 20; KSC-CA-2024-03, F00028, Decision on Defence's Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 21 November 2024 (confidential, reclassified as public on 25 November 2024), para. 15; KSC-CA-2024-03, F00034/RED, Public Redacted Version of Decision on Defence's Request Regarding Disclosure, 10 January 2025 (confidential version filed on 10 January 2025), para. 11.

¹⁷⁷ See Rule 102 of the Rules. In that regard, the Panel notes however that the jurisprudence of the ECtHR Fazliu refers to rather relates to the right of the accused to be informed of the factual and legal basis of the charges against him or her, not access to the evidence itself. See Appeal, para. 42, fn. 56, referring to ECtHR, *Pélissier and Sassi v. France*, no. 25444/94, Judgment, 25 March 1999, para. 54; ECtHR, *Dallos v. Hungary*, no. 29082/95, Judgment, 1 March 2001, para. 47.

risk of obstruction,¹⁷⁸ and it provides an increased *ability* to obstruct the proceedings as more detailed information becomes available to the accused.¹⁷⁹ However, the Panel is also mindful that this is but one factor that may be taken into account when determining whether continued detention appears necessary, and it is not sufficient in itself to justify the denial of provisional release.¹⁸⁰

66. In the present circumstances, and in light of the other factors relied upon by the Pre-Trial Judge,¹⁸¹ the Appeals Panel finds that it was within the Pre-Trial Judge's discretion to also rely on the ongoing disclosure in the case and Fazliu's increased awareness of the incriminating evidence against him.¹⁸²

67. In the same vein, the Panel is not persuaded by Fazliu's speculative assertion according to which if the reasoning applied in the Impugned Decision was followed

¹⁷⁸ See e.g. *Kilaj* First Appeal Decision on Detention, para. 44. See also *Kilaj* Second Appeal Decision on Detention, para. 80; *Selimi* Fifth Appeal Decision on Detention, para. 30; *Krasniqi* Fifth Appeal Decision on Detention, para. 43.

¹⁷⁹ See *Kilaj* Second Appeal Decision on Detention, para. 80; *Thaçi* Second Appeal Decision on Detention, para. 40.

¹⁸⁰ See *Selimi* Fifth Appeal Decision on Detention, para. 30; *Krasniqi* Fifth Appeal Decision on Detention, para. 43. See also *Kilaj* Second Appeal Decision on Detention, para. 80.

¹⁸¹ See Impugned Decision, paras 26, 34. The Panel recalls that for the risk of flight, the Pre-Trial Judge took into consideration the following factors: (i) Fazliu's awareness of the gravity of the offences he is charged with, together with the potential sentence that these offences could attract, if convicted; (ii) his demonstrated blatant disregard for the laws and the rules of the Specialist Chambers; (iii) the fact that Fazliu has the opportunity to flee, by travelling freely to jurisdictions beyond the reach of the Specialist Chambers; (iv) the fact that he also has the means to evade justice, given his long-standing political career in Kosovo and close ties with former KLA commanders, including KLA veterans with rooted political influence – among them *Thaçi* – from whom he may seek and secure resources and support for the purpose of fleeing; and (v) the fact that, since his arrest, Fazliu is aware of the indictment-supporting evidence against him, and is being progressively informed – through disclosure – of the full evidentiary record of his alleged criminal conduct. As to the risk of obstruction, the Pre-Trial Judge took into account: (i) the nature of the charges confirmed against Fazliu, who was part of a group, led by *Thaçi*, aiming at unlawfully influencing witnesses; (ii) Fazliu's demonstrated knowledge of *Thaçi*'s obstructive intentions, and his own intention to pursue them; (iii) his persistence and proneness to obstruct the Specialist Chambers proceedings by furthering the senior KLA leadership's interests and orders; (iv) his ability to gain consent from people loyal to him, including his son, for the purpose of obstructing Specialist Chambers proceedings; (v) his increased awareness of the incriminating evidence against him; and (vi) the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the Specialist Chambers. See Impugned Decision, paras 26, 34, 38.

¹⁸² See Impugned Decision, paras 26, 34.

then all accused would be released “only before disclosure occurs”.¹⁸³ First, disclosure is only one factor among others relied upon by the Pre-Trial Judge.¹⁸⁴ Second, as recalled above, disclosure on its own is not sufficient to deny provisional release.¹⁸⁵

68. Turning to Fazliu’s claim that there is no indication that he ever used unlawfully the evidence he has access to,¹⁸⁶ the Panel first recalls that the standard for assessing the risks under Article 41(6)(b)(ii) of the Law does not require a demonstration that Fazliu *has* intimidated or interfered with witnesses or he *will* do so.¹⁸⁷ The Panel emphasises that in determining the necessity of detention, the question revolves around the possibility, not the inevitability, of a future occurrence,¹⁸⁸ and that Article 41(6)(b) of the Law does not require proof that the conduct has actually occurred in the past.¹⁸⁹ Accordingly, Fazliu’s suggestion that there is no evidence that he ever used this evidence unlawfully is irrelevant for the purpose of this decision.¹⁹⁰

69. In light of the above, the Appeals Panel finds that Fazliu has failed to demonstrate any error in the Pre-Trial Judge’s reliance on his increased awareness of the charges against him and insight into the case in her assessment of the risks under

¹⁸³ See Appeal, para. 43.

¹⁸⁴ See above, fn. 181.

¹⁸⁵ See above, para. 65.

¹⁸⁶ See Appeal, para. 43.

¹⁸⁷ *Selimi* Fifth Appeal Decision on Detention, para. 53; *Kilaj* Second Appeal Decision on Detention, para. 70.

¹⁸⁸ See *Selimi* Fifth Appeal Decision on Detention, para. 53; *Kilaj* Second Appeal Decision on Detention, para. 70; *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 67. See also *Veseli* First Appeal Decision on Detention, para. 19.

¹⁸⁹ See *Veseli* First Appeal Decision on Detention, para. 38; *Kilaj* Second Appeal Decision on Detention, para. 70.

¹⁹⁰ See e.g. *Kilaj* Second Appeal Decision on Detention, para. 70; *Kilaj* First Appeal Decision on Detention, para. 43. See also *Haradinaj* Consolidated Appeal Decision on Detention, para. 44. The Panel observes that the circumstances are distinguishable from the present case as in the *Stanišić and Simatović* case the accused had previously been provisionally released. See Appeal, fn. 58, referring to ICTY, *Stanišić and Simatović*, IT-03-69-AR56.4, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008, para. 55.

Article 41(6)(b) of the Law.¹⁹¹ Therefore, the Panel dismisses Fazliu's fourth ground of appeal.

V. DISPOSITION


70. For these reasons, the Court of Appeals Panel:

DENIES the Appeal in its entirety;

GRANTS the Request for Reclassification;

ORDERS that the Appeal (IA008/F00001), the Response (IA008/F00003), the Reply (IA008/F00005) and the Reclassification Request (IA008/F00004) be reclassified as public pursuant to Rule 82(5) of the Rules;¹⁹² and

INSTRUCTS the Registry to execute the reclassification of the above-mentioned filings as public.



Judge Michèle Picard,
Presiding Judge

Dated this Friday, 5 December 2025

At The Hague, the Netherlands

¹⁹¹ See Impugned Decision, paras 26, 30, 34. See also Impugned Decision, para. 40.

¹⁹² The reclassification does not concern the Annex to Appeal which should remain confidential. See above, para. 9, fn. 27.