



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2023-12
The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: Single Trial Judge
Judge Christopher Gosnell

Registrar: Fidelma Donlon

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Decision on Smakaj Defence's Request for Interim Review of Detention on Remand and Order for Further Submissions

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THE SINGLE TRIAL JUDGE, pursuant to Article 41(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers,¹ hereby issues this decision.

I. PROCEDURAL BACKGROUND

1. On 3 October 2025, the Pre-Trial Judge issued her decision on the fifth bi-monthly review of detention of Bashkim Smakaj ("Mr Smakaj" or "Accused"). She ordered his continued detention and set the deadline of 11 November 2025 for Mr Smakaj to file submissions in relation to the sixth review of his detention or, alternatively, 18 November 2025 for the Specialist Prosecutor's Office ("SPO") to file such submissions, with a deadline of 25 November 2025 for any response by Mr Smakaj.²

2. On 1 December 2025, the Defence for Mr Smakaj ("Smakaj Defence") filed "Smakaj Submissions on Review of Detention of Bashkim Smakaj", requesting "that the STJ reviews his detention on remand pursuant to Rule 57(2)".³ No reference was made in this filing to the pre-existing deadlines for the sixth detention review. On the same date, the Single Trial Judge, via email to the Parties, varied the time limits for responses and replies to the Smakaj Defence Request, requiring: (i) the SPO to respond by 8 December 2025; and (ii) any reply by the Smakaj Defence to be filed by 10 December 2025.⁴

¹ All references to "Article" and "Rule" shall be understood, unless otherwise indicated, as referring to the Law and Rules, respectively.

² KSC-BC-2023-12, F00477, Pre-Trial Judge, [Fifth Decision on Review of Detention of Bashkim Smakaj](#), 3 October 2025, public, para. 35(b).

³ KSC-BC-2023-12, F00589, Smakaj Defence, *Smakaj Submissions on Review of Detention of Bashkim Smakaj* ("Smakaj Defence Request"), 1 December 2025, confidential, para. 1.

⁴ See KSC-BC-2023-12, CRSPD172, 1 December 2025 (notified on 3 December 2025), confidential.

3. On 3 December 2025, the Single Trial Judge issued a decision on the sixth bi-monthly detention review of Mr Smakaj, ordering his continued detention, declining to consider the submissions made in the Smakaj Defence Request as part of the sixth detention review, and noting the deadlines that had been set for the Parties in respect of the Smakaj Defence Request.⁵

4. On 5 December 2025, the SPO filed its response to the Smakaj Defence Request.⁶

5. On 10 December 2025, the Smakaj Defence filed its reply.⁷

II. SUBMISSIONS

6. The Smakaj Defence Request expressly identifies two “significant change[s] in the circumstances of the case since the last review of detention”:⁸ (i) a change in the SPO’s estimate of its readiness for trial, which had been pushed back from shortly after 14 November 2025 to “February 2026 at the earliest”, implying “another further 4 months, if not longer, in custody awaiting trial unless his interim release is ordered”;⁹ and (ii) the closing of evidence in the case of *The Specialist Prosecutor v. Hashim Thaçi et al.* (“Case 06”), thus eliminating the risks that had been previously taken into account to justify continued detention.¹⁰ Further factors relied upon that do not appear to be based on any change of circumstance include: (i) certain conditions of release that “proportionately” address what are described as “entirely speculative” risks “of further offences/obstruction”;¹¹ and (ii) circumstances and

⁵ KSC-BC-2023-12, F00596, Single Trial Judge, [Sixth Decision on Review of Detention of Bashkim Smakaj](#) (“Sixth Detention Review Decision”), 3 December 2025, public.

⁶ KSC-BC-2023-12, F00604, Specialist Prosecutor, *Prosecution Response to ‘Smakaj Submissions on Review of Detention of Bashkim Smakaj’ (F00589)* (“SPO Response”), 5 December 2025, confidential.

⁷ KSC-BC-2023-12, F00616, Smakaj Defence, *Smakaj Reply to Prosecution Response re ‘Smakaj Submissions on Review of Detention of Bashkim Smakaj’* (“Smakaj Defence Reply”), 10 December 2025, confidential.

⁸ Smakaj Defence Request, para. 10.

⁹ Smakaj Defence Request, paras 4-7.

¹⁰ Smakaj Defence Request, para. 10.

¹¹ Smakaj Defence Request, para. 11.

conditions of release that mitigate and reduce the risk of flight, including a willingness to be subject to house arrest, and a security offered by a colleague that would be forfeited if Mr Smakaj does not return to attend proceedings when so required by the Specialist Chambers (“SC”).¹²

7. The SPO Response cites the findings of the Sixth Detention Review Decision, which was issued on 3 December 2025, subsequent to the Smakaj Defence Request. In particular, the SPO avers that: (i) as found in the Sixth Detention Review Decision, the Rule 41(6)(b) risks “remain clear and present” and cannot be adequately mitigated;¹³ (ii) detention “remains proportional” in relation to these risks;¹⁴ and (iii) proportionality is not to be assessed in relation to a prospect of detention until the start of trial (which, in any event, is set for 24 February 2026), as posited by the Smakaj Defence, but rather in relation to the next detention review, which occurs “every two (2) months”.¹⁵ In conclusion, the SPO argues that “as almost no time has passed since the issuance of [the Sixth Detention Review Decision], there can be no meaningful change in its well-reasoned conclusions”.¹⁶

8. The Smakaj Defence replies that: (i) the Sixth Detention Review Decision reached no finding in respect of the risk of flight, which in any event can be addressed by the proposed conditions for release;¹⁷ (ii) the evidentiary proceedings in Case 06 have now been closed;¹⁸ (iii) the Sixth Detention Review Decision acknowledged an increased certainty that the SPO’s evidence in the present proceedings will not rely on witnesses who could be influenced by Mr Smakaj;¹⁹ (iv) Mr Smakaj’s period of detention has now exceeded the statutory minimum sentence for the charges he faces and that the balance of proportionality, in view of

¹² Smakaj Defence Request, paras 12-17.

¹³ SPO Response, paras 2-3.

¹⁴ SPO Response, paras 2, 6.

¹⁵ SPO Response, para. 5.

¹⁶ SPO Response, para. 6.

¹⁷ Smakaj Defence Reply, para. 4.

¹⁸ Smakaj Defence Reply, para. 6.

¹⁹ Smakaj Defence Reply, para. 5.

a trial set to start on 24 February 2026 at the earliest, “now falls in favour of interim release on conditions”;²⁰ (v) the acknowledgement in the Sixth Detention Review Decision that “some of the persons alleged by the SPO to have assisted Mr Smakaj have not been charged in this case and presumably remain at liberty” is a factor which weighs in favour of interim release of the Accused (who ought not to be unfairly singled out for detention);²¹ and (vi) any “theoretical risk” of obstruction or further offending “is proportionately addressed” by the proposed conditions of release.²²

III. APPLICABLE LAW

9. Article 41(2) provides that any person deprived of his liberty by detention “shall be entitled [...] to challenge the lawfulness of his [...] arrest and the conditions of detention, and to have such challenge decided speedily by the [SC] and his [...] release ordered if the detention is not lawful”.

10. Rule 56(2) requires the Single Trial Judge to “ensure that a person is not detained for an unreasonable period prior to the opening of the case”.

11. Rule 57(2), which concerns detention on remand after the confirmation of charges, requires a review of detention every two (2) months “or at any time upon request by the Accused or Specialist Prosecutor, or *proprio motu*, where a change in circumstances since the last review has occurred”.

IV. DISCUSSION

12. This decision concerns a request by Mr Smakaj that the Single Trial Judge “reviews his detention on remand pursuant to Rule 57(2)”.²³ The Smakaj Defence Request made no reference to, let alone requested that the submissions

²⁰ Smakaj Defence Reply, paras 7-9.

²¹ Smakaj Defence Reply, para. 10.

²² Smakaj Defence Reply, para. 11.

²³ Smakaj Defence Request, para. 1.

be considered as part of, the sixth review of Mr Smakaj's detention. Accordingly, the Smakaj Defence Request is understood to be the exercise of the Accused's right under Rule 57(2) to request a review of his continued detention "at any time".

13. Rule 57(2) also expressly requires, however, that such a review be justified by "a change in circumstances since the last review". The Court of Appeals Panel has confirmed that such an interim review is "more limited in scope than the assessment conducted for the purpose of the bi-monthly mandatory review of detention".²⁴ Whereas the latter involves a *de novo* assessment as to whether the factors justifying detention "still exist", the former requires a showing of "new relevant factors that would have arisen in the interval or a change in circumstances warranting reconsideration of the previous ruling on detention".²⁵ The use of the word "reconsideration" by the Court of Appeals Panel implies that the standard for reconsidering decisions²⁶ applies to the interim review of detention.

14. Some of the factors identified in the Smakaj Defence Request have been already addressed in the Sixth Detention Review Decision and, accordingly, do not qualify as "a change in circumstances since the last review". This applies, in

²⁴ KSC-BC-2020-06, IA034/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Request for Provisional Release](#) ("Veseli Appeal Decision"), 13 August 2025, public, para. 17.

²⁵ [Veseli Appeal Decision](#), para. 17. See also KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, [Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020](#), 22 May 2020, public, para. 67 ("In that light, the new wording in paragraphs (1) and (2) of Rule 57 on 'change in circumstances' applies to review of detention in between the two-month intervals 'upon request by the Suspect [or the Accused] or the Specialist Prosecutor, or *proprio motu*'. Such review ensures that new relevant factors that arise in the intervals between reviews of detention can be assessed, especially where they might affect the lawfulness of or the justification for the accused's continued detention").

²⁶ KSC-BC-2020-07, F00546/COR, Trial Panel II, [Corrected Version of Decision on Request for Certification or Reconsideration of F00541](#), 1 February 2022, public, para. 14 ("Reconsideration is an exceptional measure and should only be undertaken if a clear error of reasoning has been demonstrated or if necessary to avoid an injustice. New facts and arguments arising since the impugned decision was rendered may be relevant to this assessment").

particular, to the likely start date of trial (of which indications had already been provided by the Parties before the deadline set for the Smakaj Defence submissions on the sixth detention review);²⁷ and the “imminent closure of the evidentiary proceedings in Case 06”.²⁸

15. The Smakaj Defence also argues in its reply that the period of Mr Smakaj’s detention now exceeds the statutory minimum sentence for the charges he faces, which is a change of circumstance since the Sixth Detention Review Decision.²⁹ Although this threshold is indeed significant, the concrete additional period of detention since the Sixth Detention Review Decision is relatively short – 19 days as of the date of this decision. Even assuming that the foreseeable passage of time could qualify as a “change in circumstances” justifying an interim review of detention, the Single Trial Judge does not consider that this circumstance, given its limited temporal duration, warrants reconsideration of the Sixth Detention Review Decision, or justifies Mr Smakaj’s immediate provisional release.

16. None of the other factors advanced by the Smakaj Defence, in particular in respect of the risk of re-offending or any measures available to mitigate those risks,³⁰ are identified as arising from a change in circumstances. Accordingly, the Single Trial Judge does not consider that any of the factors presented justify interim release between the statutory bi-monthly reviews of detention.

²⁷ See KSC-BC-2023-12, F00559, Specialist Prosecutor, *Prosecution Submissions Pursuant to F00549*, 20 November 2025, confidential; a public redacted version was filed on 26 November 2025, F00559/RED; F00565, Smakaj Defence, *Smakaj Submissions for the Trial Preparation Conference*, 24 November 2025, confidential; F00567, Defence for Hajredin Kuçi, *Kuçi Defence Submissions for the Trial Preparation Conference*, 24 November 2025, confidential; F00568, Defence for Hashim Thaçi, *Thaçi Defence Submissions for the Trial Preparation Conference*, 24 November 2025, confidential; F00569, Defence for Isni Kilaj, *Kilaj Submissions Ahead of Trial Preparation Conference*, 24 November 2025, public; F00570, Defence for Fadil Fazliu, *Fazliu Trial Preparation Submissions*, 24 November 2025, public.

²⁸ [Sixth Detention Review Decision](#), para. 16.

²⁹ See *supra* para. 8.

³⁰ Smakaj Defence Request, paras 11-17.

V. CONSEQUENCES OF THIS INTERIM REVIEW FOR THE SCHEDULE OF THE NEXT BI-MONTHLY REVIEW

17. The regular schedule of Mr Smakaj's bi-monthly detention reviews should not be impacted by his request for an interim review. An accused person in detention, according to Rule 57(2), is entitled to a *de novo* review every two (2) months. Accordingly, the seventh bi-monthly review of Mr Smakaj's detention will be decided on or before Tuesday, 3 February 2026, which will be preceded by submissions according to the schedule set out in paragraph 19(b) below.

18. The Single Trial Judge encourages the Parties to ensure that their submissions on the seventh bi-monthly review are comprehensive and current. In particular, the Single Trial Judge invites the SPO to offer updated submissions on: (i) the specific conditions proposed by the Smakaj Defence to mitigate the risk of flight, including house arrest and the proposed security; (ii) the specific conditions proposed by the Smakaj Defence to mitigate the risks of obstruction and repetition of offences; (iii) the relevance of Mr Smakaj having now served more than the statutory minimum sentence on the charges he faces; (iv) the conditions that can and should be imposed to mitigate any risks found under Article 41(6)(b), should Mr Smakaj be released; and (v) any other factor enhancing or diminishing any of the three risk factors under Article 41(6)(b). The Smakaj Defence is also requested to provide updated information concerning the relationship between Mr Smakaj and the source of the security proposed in the Smakaj Defence Request, and whether he or any relative are willing to be a source of any part of the security proposed.

VI. DISPOSITION

19. For the above-mentioned reasons, the Single Trial Judge hereby:

- a) **DENIES** the Smakaj Defence Request;
- b) **INVITES** the Smakaj Defence to file submissions on the next review of detention by no later than **Wednesday, 7 January 2026**, at **16h00**; the SPO to file its submissions, response by no later than **Wednesday, 14 January 2026**, at **16h00**; and the Smakaj Defence to file any reply by no later than **Friday, 16 January 2026**, at **16h00**; and
- c) **ORDERS** the Smakaj Defence to file public redacted versions of the Smakaj Defence Request (F00589) and the Smakaj Defence Reply (F00616), or request their reclassification as public, by **Wednesday, 7 January 2026**.



Judge Christopher Gosnell
Single Trial Judge

Dated this Monday, 22 December 2025

At The Hague, the Netherlands.