

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

Before: **Single Trial Judge**
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Fadil Fazliu

Date: 5 January 2026

Language: English

Classification: Public

**Fazliu Defence Submissions on the Seventh Detention Review
with Confidential Annex 1 and Confidential *Ex Parte* Annex 2**

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I. INTRODUCTION

1. The Defence for Mr. Fadil Fazliu ('Defence') hereby makes the following submissions on review of detention pursuant to Article 41(6) and (10) of the Law, Rule 57 of the Rules, and the Single Trial Judge's order.¹

II. PROCEDURAL HISTORY

2. On 5 December 2024, Mr. Fadil Fazliu was arrested in Kosovo.² His continued detention has been ordered following bi-monthly reviews on 8 December 2024,³ 7 February 2025,⁴ 7 April 2025,⁵ 5 June 2025,⁶ 5 August 2025,⁷ 3 October 2025,⁸ and 3 December 2025.⁹
3. On 19 December 2025, the Single Trial Judge rejected the Defence's request for an interim review of detention,¹⁰ due to a lack of 'change of circumstances' within the

¹ KSC-BC-2023-12, F00640, Decision on Fazliu Defence's Request for Interim Review of Detention on Remand and Order for Further Submissions, 19 December 2025, public ('Interim Review Decision'), para. 19(b).

² KSC-BC-2023-12, F00045, Notification of Arrest of Fadil Fazliu Pursuant to Rule 55(4), 5 December 2024, public.

³ KSC-BC-2023-12, Transcript of Hearing, 8 December 2024, public, p. 65, ln. 24 – p. 69, ln. 18.

⁴ KSC-BC-2023-12, F00163, Decision on Review of Detention of Fadil Fazliu, 7 February 2025, public ('First Review Decision').

⁵ KSC-BC-2023-12, F00251, Second Decision on Review of Detention of Fadil Fazliu, 7 April 2025, confidential ('Second Review Decision'). Public redacted version issued the same day as F00251/RED.

⁶ KSC-BC-2023-12, F00327, Third Decision on Review of Detention of Fadil Fazliu, 5 June 2025, public ('Third Review Decision').

⁷ KSC-BC-2023-12, F00404, Fourth Decision on Review of Detention of Fadil Fazliu, 5 August 2025, public ('Fourth Review Decision').

⁸ KSC-BC-2023-12, F00479, Fifth Decision on Review of Detention of Fadil Fazliu, 3 October 2025, public ('Fifth Review Decision') ruling on F00428/RED, Public Redacted Version of Fazliu Defence Submissions on the Fifth Detention Review, 4 September 2025, public ('Fifth Review Submissions').

⁹ KSC-BC-2023-12, F00598, Sixth Decision on Review of Detention of Fadil Fazliu, 3 December 2025, public ('Sixth Review Decision').

¹⁰ KSC-BC-2023-12, F00593, Fazliu Notification of Withdrawal of Waiver, 2 December 2025, public ('Interim Review Request'), paras 4-10; F00605, Prosecution further submissions on review of detention of Fadil

meaning of Rule 57(2) of the Rules since the Sixth Review Decision.¹¹

4. In the same decision, the Single Trial Judge prescribed the schedule for the seventh bi-monthly detention review,¹² and invited the Defence to provide updates regarding, inter alia, Mr. Fazliu's medical conditions and the security proposed in F00428/A02.¹³

III. APPLICABLE LAW

5. Pursuant to Article 41(6) of the Law, the detention of a person is only warranted when (a) there is a grounded suspicion that he or she has committed a crime within the court's jurisdiction; and (b) there are articulable grounds to believe that the person: (i) is a risk of flight; (ii) will destroy, hide, change or forge evidence of a crime, or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that the person has threatened to commit.
6. Pursuant to Article 41(12) of the Law, measures other than detention on remand may be ordered to ensure the presence of the accused, including by video-teleconference, to prevent reoffending or to ensure successful conduct of criminal proceedings. This includes, inter alia, summons, bail, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.
7. Pursuant to Rule 56(2) of the Rules, the seized Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case, and, in case of

Fazliu, 5 December 2025, public; F00623, Fazliu Reply to SPO Submissions on Review of Detention with Confidential Annex 1, 15 December 2025, public ('Interim Review Reply').

¹¹ Interim Review Decision, para. 15.

¹² Interim Review Decision, paras 16-17.

¹³ Interim Review Decision, para. 18.

any undue delay caused by the Specialist Prosecutor's Office ('SPO'), the Panel, having heard the Parties, may release the person under the conditions as deemed appropriate.

IV. SUBMISSIONS

A. Necessity of Detention

8. Detention on remand is justified only where there are articulable grounds to believe that the risks under Article 41(6)(b) exist. At the time of this review, such conclusion is not supported by the individualised circumstances of Mr. Fazliu.
9. *First*, there is no articulable basis to conclude that Mr. Fazliu is a flight risk. He is a life-long resident of Kosovo with strong family ties, no history of living abroad, and no practical infrastructure for absconding. He has no political office, no access to state resources, nor the kind of personal influence that is capable of mobilising individuals to facilitate a border crossing to countries out of the reach of the Specialist Chambers' ('SC') jurisdiction, notwithstanding an SC order enforceable by the competent national authorities.
10. *Second*, the asserted risk of obstruction and, relatedly, that of committing further offences have materially reduced at this juncture both in terms of opportunity and incentive. As the Single Trial Judge recognised, the SPO's case in Case 12 is largely documentary and the anticipated witnesses are not likely to be susceptible to influence by Mr. Fazliu or anyone acting on his behalf.¹⁴ The risk is further reduced given the completion of the presentation of evidence in Case 6.¹⁵ Where the evidentiary materials are secured, detention is not justified as a pre-emptive

¹⁴ Sixth Review Decision, para. 23.

¹⁵ Sixth Review Decision, para. 23.

protective measure for the integrity of the evidence.

11. Meanwhile, the disincentive against obstruction grows stronger over time. After a prolonged period in custody, any conduct that could be construed as obstruction would predictably result in further detention and potentially additional exposure. The longer detention continues, the less plausible it becomes that Mr Fazliu would jeopardise his position by engaging in behaviour that would prolong his loss of liberty.¹⁶
12. *Third*, Mr. Fazliu remains committed to his previous undertakings, including travel restrictions, surrender of travel documents, reporting obligations, and contact and disclosure refrainment.¹⁷ His son, Mr. Fahri Fazliu, has also undertaken to refrain from any direct or indirect contact with 'any witnesses or co-accused in this case, any accused or convicted persons in other cases before the KSC, any individuals identified in F00172 and F00295, or any individuals who, to the best of my knowledge, are or may be involved in the KSC proceedings'.¹⁸ The proposed security of 40,000 EUR, as contextualised by Mr. Fazliu's own financial situation,¹⁹ further reinforces compliance.

¹⁶ See KSC-BC-2023-12, Fifth Review Submissions, para. 30; Interim Review Reply, para. 5.

¹⁷ KSC-BC-2023-12, F00428/A01, Annex 1 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025. This is to be read together with his family members' undertaking to see to Mr. Fazliu's compliance: F00428/A02, Annex 2 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025, confidential, para. 5; F00428/A03, Annex 3 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025, confidential, para. 3(1) and (2).

¹⁸ KSC-BC-2023-12, F00428/A03, Annex 3 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025, confidential, para. 5, mirroring Mr. Fazliu's undertaking in KSC-2023-12, F00428/A01, Annex 1 to Fazliu Defence Submissions on the Fifth Detention Review, 29 August 2025, confidential, para. 4(4). *Compare* Sixth Review Decision, para. 22 (regarding a 'particularly salient' consideration, namely the 'allegations that such efforts [of unlawfully influencing witnesses] were undertaken in coordination with his son').

¹⁹ Interim Review Reply, para. 14, referencing F00623, Annex 1 to Fazliu Reply to SPO Submissions on Review of Detention with Confidential Annex 1, 15 December 2025, confidential.

13. These factors, taken together with his prior record of perfect compliance with the law,²⁰ leave no ground to believe that there is a sufficiently real possibility that Mr. Fazliu would abscond or further obstruct any SC proceedings if released. Indeed, none of the Article 41(6)(b) risks are of such nature, degree or practical reality that Mr. Fazliu's continued detention on remand remains justified.

B. Proportionality and Reasonableness

14. The proportionality assessment is not static. Even where detention was once justified, it can become unreasonable as time passes and as the justification for detention attenuates. This is independent of an assessment of risks.²¹

15. At the time of filing, Mr. Fazliu's pre-trial detention has surpassed by 31 days the minimum sentence carried by the two counts against Mr. Fazliu, namely one year's imprisonment.²² Whilst the Defence does not ask the Single Trial Judge to speculate as to any eventual sentence, not least because he is presumed innocent and may well be acquitted, this development alters the fine balance of factors that previously justified his continued detention.²³

16. According to Rule 56(2) of the *Rules*, a person should not be detained for an 'unreasonable period' prior to the opening of the case. The same constitutional and ECHR-based requirement of reasonableness continues to apply throughout trial proceedings.²⁴ The longer a person remains in pre-trial detention, the higher the

²⁰ Fifth Review Submissions, para. 19 and fns 38-40, citing 126930-126943 RED.

²¹ KSC-BC-2023-12, F00599/RED, Public Redacted Version of Sixth Decision on Review of Detention of Isni Kilaj, 3 December 2025, public ('Kilaj Release Decision'), para. 47.

²² 2019 Kosovo Criminal Code, No. 06/L-074, Articles 401(5) ('imprisonment of one (1) to five (5) years'), 393(1) ('a fine or imprisonment up to six (6) months').

²³ Kilaj Release Decision, para. 42.

²⁴ Kilaj Release Decision, para. 35 and fn. 68.

burden on the SC to justify continued detention.²⁵

17. The continuation of Mr. Fazliu's detention fails the reasonableness test on various grounds: the time Mr. Fazliu already served has entered the statutory sentencing range;²⁶ the degree of residual risks under Article 41(6)(b)(ii) and (iii) is far below serious;²⁷ and the progression of the proceedings towards trial and, by extension, an eventual judgment has been marked by delays that are neither through Mr. Fazliu's fault nor justified by the complexity of the case against Mr. Fazliu himself.²⁸
18. By now, any extension of Mr. Fazliu's pre-trial detention would be unreasonable and disproportionate. The interference with his fundamental right to liberty is not outweighed by the existence of any Article 41(6)(b) risks. The balance must now fall in favour of release pending trial.

C. Further Information

19. Regarding the additional information identified in paragraph 18 of the Interim Review Decision, the Defence is instructed to respectfully decline to provide an update on Mr. Fazliu's medical situation. Meanwhile, the surety provided another

²⁵ KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, public, para. 73.

²⁶ 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, paras 79-81; Sixth Review Decision, para. 33; Kilaj Release Decision, para. 36.

²⁷ KSC-BC-2020-06, IA010/F00008, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021, para. 49; Sixth Review Decision, para. 33; Kilaj Release Decision, para. 36; KSC-BC-2023-12, INV/F00129/COR/RED, Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj (F00658/COR/RED in KSC-BC-2018-01), 3 May 2024, public, para 60.

²⁸ KSC-BC-2020-06, IA010/F00008, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021, para. 52; KSC-BC-2023-12, INV-F00129/COR/RED, Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj, 15 May 2024, public; Sixth Review Decision, para. 35; Kilaj Release Decision, para. 36.

signed declaration.²⁹ The declaration further substantiates the legality of the source of the proffered funds. The bank statement accompanying the declaration attests to the immediate availability of the funds.³⁰

D. Remote Attendance

20. In his decision on the conduct of proceedings, the Single Trial Judge instructed that an accused at liberty must apply, if he so wishes, for authorisation to attend the hearing by video-conference no later than four weeks prior to the commencement of the evidence block.³¹
21. For the upcoming hearing scheduled on 24 February 2026, the four-week limit expires by 27 January 2026. This is likely before the decision on the seventh review will be issued.³²
22. In the event that the decision is against Mr. Fazliu's continued detention, the Defence also requests for the Single Trial Judge's authorisation for Mr. Fazliu's remote participation pursuant to Rule 68(2) of the Rules.
23. The Defence does not object to a suspension of time limit for the SPO to respond to the remote attendance request until the decision on the seventh review is issued.³³

V. CLASSIFICATION

²⁹ Confidential Annex 1, supplementing KSC-BC-2023-12, F00428/A02, Annex 2 to Fazliu Defence Submissions on the Fifth Detention Review, confidential.

³⁰ Confidential *ex parte* Annex 2.

³¹ KSC-BC-2023-12, F00642, Decision on the Conduct of the Proceedings, 22 December 2025, public, para. 43.

³² Interim Review Decision, para. 16 ('the seventh bi-monthly review of Mr Fazliu's detention will be decided on or before Tuesday, 3 February 2026').

³³ KSC-BC-2023-12, F00642, Decision on the Conduct of the Proceedings, 22 December 2025, public, para. 43 (prescribing a 5-day limit for any response and a 3-day limit for any reply).

24. Annex 1 is classified as confidential as it contains sensitive personal information and the signature of a third party who is not otherwise involved in the proceedings. Annex 2 is classified as confidential *ex parte*, only available to the SPO and the Fazliu Defence as it contains sensitive banking information of the aforementioned third party. The Defence requests their classification be maintained.

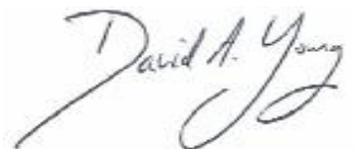
VI. CONCLUSION & RELIEF

25. Detention on remand is a measure of last resort. With the robust financial security and other measures available,³⁴ there are no articulable grounds to believe that if released, Mr. Fazliu may flee, obstruct the SC proceedings, or commit further offences. The continuation of his pre-trial detention is no longer necessary. Nor is it proportionate or reasonable given that the total duration of Mr. Fazliu's detention has surpassed the minimum statutory sentence for the crimes he is charged with.
26. The Defence therefore respectfully requests that the Single Trial Judge:
- (1) find that the continued detention of Mr. Fazliu is not warranted;
 - (2) order the conditional release of Mr. Fazliu until the end of the case; and
 - (3) authorise his remote attendance of the proceedings scheduled to commence on 24 February 2026 via video-conference.

³⁴ See, e.g., KSC-BC-2023-12, F00599/RED, Public Redacted Version of Sixth Decision on Review of Detention of Isni Kilaj, 3 December 2025, public, para. 50. The Defence notes that given the language barrier, any restriction of his communication to 'counsel only' should be interpreted as including an Albanian-speaking team member to facilitate the conversation.

Word count: 2391 words

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Young". The signature is written in a cursive style with a large, stylized initial "D".

David A. Young

Specialist Counsel for Fadil Fazliu

5 January 2026

The Hague, the Netherlands