

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 Bashkim Smakaj

Date: 6 January 2026

Language: English

Classification: **Public**

Smakaj Submissions on Seventh Review of Detention of Bashkim Smakaj with Nine Confidential Annexes

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I. INTRODUCTION

1. The Accused makes the following submissions in relation to the seventh review of the detention of the Accused pending trial requests that the STJ reviews his detention on remand pursuant to Article 41(10) of the Law (“Law”)¹.
2. The Accused submits that his release pending trial should be ordered in accordance with Article 41(5) of the Law.
3. Any residual Article 41(6)(b) risk(s) can be properly ameliorated by conditions imposed under Rule 56(2) of the Rules (“Rules”)².

II. SUBMISSIONS

4. The commencement of the trial has now been scheduled for 24 February 2026³.
5. By that date, the Accused will have spent 452 days (1 year, 2 months & 26 days) in detention on remand since the Accused’s initial appearance before the Kosovo Specialist Chambers following the Confirmation Decision on 29 November 2024.
6. The conclusion of the prosecution case-in-chief is presently scheduled for 6 March 2026⁴. By that date, the Accused will have spent 463 days (1 year, 3

¹ Law No.05/L-053

² KSC-BD-03/Rev3/2020

³ KSC-BC-2023-12/F00602, *Order Scheduling Commencement of Trial*, Single Trial Judge, 4 December 2025, Public

⁴ KSC-BC-2023-12/F00602, *Order Scheduling Commencement of Trial*, Single Trial Judge, 4 December 2025, Public at paragraph 22

months & 7 days) in detention on remand since the Accused's initial appearance before the Kosovo Specialist Chambers following the Confirmation Decision on 29 November 2024.

7. There is presently no timetable set for the defence cases (five defendants), and any rebuttal evidence, and thereafter the closure of the presentation of evidence in the case.
8. Whenever closure of the presentation of evidence occurs, the parties will have 30 days thereafter to file their Final Trial Briefs (in accordance with Rule 134(b) of the Rules. Closing statements shall take place within 21 days after the filing of the Final Trial Briefs.
9. It is now clear that there is a very real danger that the time the Accused will spend in pre-trial detention, unless interim release is granted (as has been granted to co-Accused, Isni Kilaj), will exceed any sentence of imprisonment if convicted on Counts 12 and 13 of the Confirmed Indictment⁵. Continued detention is neither reasonable nor proportionate, within the meaning of Article 41(5) of the Law and Rule 56(2) of the Rules.
10. The statutory minimum sentence for these charges has already been exceeded by the time spent in custody by the Accused.
11. The Sixth Review⁶ did not reach any finding in respect of Article 41(6)(b)(i) and a risk of flight. Given the length of time already served (which exceeds the statutory minimum sentence by some margin), the Single Trial Judge should

⁵ KSC-BC-2023-12/F00264/A01, *Annex 1 to Submission of Amended Confirmed Indictment*, Pre-Trial Judge, 16 April 2025, Confidential

⁶ KSC-BC-2023-12/F00596, *Sixth Decision on Review of Detention of Bashkim Smakaj*, Single Trial Judge, 3 December 2025, Public at paragraph 13

find that there is no risk, or only a minimal risk, of flight. The conditions proposed below are in any event ample to address any residual risk of flight.

12. Further, the Single Trial Judge should find that there is no risk, or only a minimal risk, of obstruction or the commission of further offences by the Accused.

13. The Single Trial Judge has previously found that:

“The risk of obstruction is reduced relative to previous detention reviews in light of: (i) the imminent closure of the evidentiary proceedings in Case 06; and (ii) the increased certainty that the SPO’s evidence in the present case will not rely on witnesses who could be influenced by Mr Smakaj or anyone likely to act on his behalf. The Single Trial Judge notes, in particular, that the SPO seeks to rely in this case almost exclusively on documentary evidence which cannot plausibly be tampered or interfered with by Mr Smakaj”⁷.

14. Although the Single Trial Judge in the Sixth Review found that there was a residual risk that “Mr Smakaj, if released, may obstruct the course of proceedings *by seeking to influence potential Defence witnesses*” (emphasis added), the court can be assured that all potential Defence witnesses have already been identified and accounts obtained from them by the SPO or defence counsel⁸.

⁷ KSC-BC-2023-12/F00596, *Sixth Decision on Review of Detention of Bashkim Smakaj*, Single Trial Judge, 3 December 2025, paragraph 16

⁸ KSC-BC-2023-12/F00513, *Smakaj Pre-Trial Brief in accordance with Rule 95(5)*, Smakaj, Confidential at paragraphs 16 and 17

15. In the circumstances, any risk of obstruction by seeking to influence potential defence is entirely speculative and is not articulable, and, in any event, is proportionately addressed by the conditions proposed below.
16. 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).
17. The Accused is a 49-year-old professional academic with no previous convictions and is of positive good character. The Accused has previously served his country with distinction as the head of intelligence and holds a doctorate in science. The Accused retains his professorship at the University of Business and Technology (UBT) in Pristina.
18. The Accused has deep family and community ties to Pristina. The Accused is married, with a permanent address and two young children, who because of their schooling find it difficult to maintain contact with the Accused whilst he is in custody in The Hague⁹.
19. Dr Sami Makolli remains ready to stand surety to the sum of €30,000 to guarantee that the Accused will attend court as and when required. Dr Makolli is a professor of Environmental Studies and a colleague of the Accused at UBT. Dr Makolli is also the owner of the Rikon Group Company, a company involved in distribution of printing equipment (photocopiers and other office IT equipment) and the exclusive representative of RICOH International for Kosovo, Albania and Montenegro. Pursuant to the request by the Single Trial

⁹ KSC-BC-2023-12/F00117/A01, ANNEX 1 to Submission on detention on remand, Smakaj, 16 January 2025, Confidential and *Ex Parte*

Judge to provide updated information concerning the relationship between the Accused and Dr Makolli¹⁰, an updated statement from Dr Makolli is annexed hereto¹¹ together with a copy of his bank statement and identification¹².

20. Pursuant to the request by the Single Trial Judge to indicate whether the Accused or any relative are willing to be a source of any part of the security proposed, the Accused confirms that the family is willing and able to offer an additional €20,000 as a security (consisting of €10,000 from the bank account of his wife, Fexhrije Smakaj, and €10,000 from the bank account of his son, Valdrin Smakaj). Copies of the identification of Fexhrije and Valdrin Smakaj, together with bank statements demonstrating that the sums proposed as security are available, are annexed hereto¹³.

21. Accordingly, The Accused proposes the following conditions for release, which the Single Trial Judge has held, when granting interim release on conditions to co-Accused, Isni Kilaj, amount to “a proven and appropriate framework for provisional release”¹⁴:

- a. The Accused shall not leave the territory of Kosovo unless so authorized by a competent panel of the SC;
- b. The Accused shall surrender to the Registrar his passport and any other travel documents, including visas and any other identity documents that can be used to travel – this extends to any new passport or travel document that is issued by the Kosovo authorities, or any other authorities, after the rendering of this

¹⁰ KSC-BC-2023-12/F00643, *Decision on Smakaj Defence’s Request for Interim Review of Detention on Remand and Order for Further Submissions*, Single Trial Judge, 22 December 2025, Public at paragraph 18

¹¹ Annex 1 and 1A

¹² Annex 2, 2A and 3

¹³ Annex 4, 4A, 5 and 5A

¹⁴ KSC-BC-2023-12/F00599/RED, *Public Redacted Version of Sixth Decision on Review of Detention of Isni Kilaj*, Single Trial Judge, 3 December 2025, Public at paragraph 48

decision; if the Accused's presence is required at the seat of the SC, the Registry will provide him with his passport for that sole purpose; his passport shall be re-surrendered upon his return to Kosovo;

- c. The Accused shall provide an address at which he will reside for the duration of the judicial proceedings and shall request permission from the SC prior to any change of residence;
- d. The Accused shall provide a financial security to the Registrar as a pre-condition for his release in the form of a monetary transfer in the amount of €50,000;
- e. The Accused shall refrain from any contact, or communication, direct or indirect (through any other person), of any kind and through any means, with his co-accused (Hashim Thaçi, Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi), or with any person whom he knows to be a visitor to any of his co-accused in the SC Detention Facilities;
- f. The Accused shall refrain from any contact or communication, direct or indirect (through any other person), of any kind and through any means, with any person whom he knows to be a witness in this or any other case before the SC;
- g. The Accused shall refrain from any contact or communication, direct or indirect (through any other person), with any person alleged in the Confirmed Indictment as having participated in or assisted the obstructive conduct in this case;

- h. The Accused shall not discuss, except with the designated members of his Defence team, the substance of his case, whether public or confidential information, with anyone, including close family members, and shall advise anyone who makes inquiries about his case that he is subject to such a prohibition by the SC;
- i. The Accused shall refrain from making, directly or indirectly (for example through family members), any public statement to the media and/or on social media regarding the SC, the SPO and/or any SC proceedings;
- j. The Accused shall make himself available for a weekly verification check by the Kosovo Police, in accordance with the procedures designated by the Registrar;
- k. The Accused shall surrender himself to the custody of the SC, if so ordered, and shall attend any hearing as required by the SC; any failure to appear before the SC, as ordered, will lead to the forfeiture of the financial security in sub-paragraph (d) and the immediate issuance of a warrant of arrest;
- l. The Accused shall inform the Registrar of the address where he will reside while present on the territory of the Host State for the purpose of attending court hearings and shall abide by any restrictions to his movements on the territory of the Host State, which may be imposed on him by the Host State during the period of his stay thereon;
- m. The Accused shall respect the classification of the present decision and shall not release, disclose or otherwise discuss its contents, directly or indirectly, with any person, including any accused in the Detention Facilities and his

family, with the exception of his counsel until the present decision has been made public upon order of the Single Trial Judge; and

n. The Accused shall abide by any other decision, order or instruction of the Single Trial Judge and the Registrar.

22. The above conditions amount to a huge ongoing restriction on the liberty of the Accused and should satisfy the court that the Accused, a man of hitherto good character, will attend court as and when required.

23. Interim release on the above conditions would demonstrate due regard to (i) the presumption of innocence, (ii) the Accused's good character and (iii) ensuring that the Accused is not detained for an unreasonable period.

24. As of the date of the Sixth Review (which was determined before the evidentiary proceedings in Case 06 had closed, before the period of detention had exceeded the statutory minimum sentence for these charges, before the date for the commencement of the trial had been fixed and before co-Accused, Isni Kilaj, had been granted interim release), the question of the Accused's detention pending trial was "now finely balanced"¹⁵. The balance now falls in favour of interim release on conditions.

III CONCLUSION

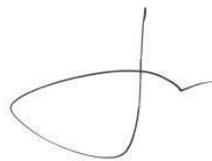
¹⁵ KSC-BC-2023-12/F00596, Sixth Decision on Review of Detention of Bashkim Smakaj, Single Trial Judge, 3 December 2025, Public at paragraph 30

25. For the reasons set out above, the STJ is requested to order the interim release of Mr Smakaj on the conditions as proposed (or on other such conditions as the court thinks fit).

IV. CLASSIFICATION

26. This filing is classified as public.

Word count: 2213 words



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