



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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**Public Redacted Version of
Seventh Decision on Review of Detention of Fadil Fazliu**

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THE SINGLE TRIAL JUDGE, pursuant to Article 41(6), (10) and (12) 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 5 December 2024, Fadil Fazliu ("Mr Fazliu") was detained in Kosovo pursuant to an arrest warrant issued by the Specialist Chambers ("SC") on the basis of an indictment confirmed against him and four others on 29 November 2024.²
2. On 8 December 2024, Mr Fazliu made his initial appearance, at which time his continued detention was ordered.³ He remains in custody to this day, following six bi-monthly detention reviews as required by Article 41(10),⁴ and one interim review, on 19 December 2025, pursuant to Rule 57(2).⁵

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

² KSC-BC-2023-12, F00045, Registrar, *Notification of Arrest of Fadil Fazliu Pursuant to Rule 55(4)*, 5 December 2024, public; F00037, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Related Matters* ("Decision on Arrest"), 29 November 2024, confidential, with Annexes 1-8, strictly confidential and *ex parte*; a public redacted version of the main filing was issued on 19 December 2024, [F00037/RED](#); F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* ("Confirmation Decision"), 29 November 2024, confidential; a public redacted version was issued on 12 February 2025, [F00036/RED](#).

³ KSC-BC-2023-12, Transcript of Hearing, *Initial Hearing of Fadil Fazliu*, 8 December 2024, public, p. 65, line 24 to p. 69, line 18; *see, in particular*, p. 68, lines 8-9.

⁴ KSC-BC-2023-12, F00163, Pre-Trial Judge, *Decision on Review of Detention of Fadil Fazliu* ("First Review Decision"), 7 February 2025, public; F00251, Pre-Trial Judge, *Second Decision on Review of Detention of Fadil Fazliu* ("Second Review Decision"), 7 April 2025, confidential; a public redacted version was issued on the same day, [F00251/RED](#); F00327, Pre-Trial Judge, *Third Decision on Review of Detention of Fadil Fazliu* ("Third Review Decision"), 5 June 2025, public; F00404, Pre-Trial Judge, *Fourth Decision on Review of Detention of Fadil Fazliu* ("Fourth Review Decision"), 5 August 2025, public; F00479, Pre-Trial Judge, *Fifth Decision on Review of Detention of Fadil Fazliu* ("Fifth Review Decision"), 3 October 2025, public; F00598, Single Trial Judge, *Sixth Decision on Review of Detention of Fadil Fazliu* ("Sixth Review Decision"), 3 December 2025, public.

⁵ KSC-BC-2023-12, F00640, Single Trial Judge, *Decision on Fazliu Defence's Request for Interim Review of Detention on Remand and Order for Further Submissions* ("Interim Review Decision"), 19 December 2025, public.

3. In the Interim Review Decision of 19 December 2025, the Single Trial Judge “encourage[d] the parties to ensure that their submissions on the seventh bi-monthly review are comprehensive and current”.⁶ In particular, the Specialist Prosecutor’s Office (“SPO”) was invited to provide submissions on: “the impact on the risk of flight of the security proposed by Mr Fazliu, in particular relative to F00623/A01”, which was a declaration of financial means that Mr Fazliu had provided to the Registry for the purpose of obtaining legal aid; (ii) “the relevance of Mr Fazliu having now served more than the statutory minimum sentence on the charges he faces”; and (iii) conditions that should be imposed on Mr Fazliu if he were to be released.⁷

4. On 5 January 2026, the Defence for Mr Fazliu (“Fazliu Defence”) made submissions in respect of the seventh periodic review of Mr Fazliu’s detention.⁸

5. On 14 January 2026, the SPO responded,⁹ to which the Fazliu Defence replied on 16 January 2026.¹⁰

II. SUBMISSIONS

A. DEFENCE SUBMISSIONS

6. The Fazliu Defence argues that none of the Article 41(6)(b) risks exists.¹¹ Even assuming that any of them do exist, the Fazliu Defence argues that

⁶ [Interim Review Decision](#), para. 17.

⁷ [Interim Review Decision](#), para. 17. In addition, the Defence for Mr Fazliu was invited to provide (i) updated information concerning Mr Fazliu’s current medical condition, including (if available), as assessed and treated in the SC Detention Centre; and (ii) updated information related to the security proposed by Mr Fazliu, see [Interim Review Decision](#), para. 18.

⁸ KSC-BC-2023-12, F00652, Fazliu Defence, *Fazliu Defence Submissions on the Seventh Detention Review* (“Fazliu Submissions”), 5 January 2026, public, with Annex 1, confidential, and Annex 2, confidential and *ex parte*.

⁹ KSC-BC-2023-12, F00664, Specialist Prosecutor, *Prosecution Submissions on Review of Fadil Fazliu* (“SPO Submissions”), 14 January 2026, public.

¹⁰ KSC-BC-2023-12, F00671, Fazliu Defence, *Fazliu Reply to the SPO Submissions on the Seventh Review Decision* (“Fazliu Reply”), 16 January 2026, public.

¹¹ *Fazliu Submissions*, para. 13.

continued detention, based on various considerations discussed below, "fails the reasonableness test".¹² The Fazliu Defence submits in reply that conditions can be imposed upon Mr Fazliu to adequately manage any risks that may arise from his provisional release.¹³

7. The Fazliu Defence provides additional information on the source of the proposed security that will be subject to forfeiture if Mr Fazliu absconds, and on the immediate availability of the funds.¹⁴

B. SPO RESPONSE

8. The SPO argues that previous judicial findings in respect of the risk of flight and the articulable grounds that Mr Fazliu will obstruct proceedings and commit further offences "remain undisturbed"¹⁵ and that there have been "no consequential changes of circumstance".¹⁶ The SPO also makes submissions on conditions that should be imposed on Mr Fazliu should he be provisionally released.¹⁷

III. APPLICABLE LAW

9. The standards applicable to the continued detention of a person by the SC are set out in Article 41(6), (10) and (12) and Rules 56-57. Article 41(6)(b) provides that the SC:

[S]hall only order the arrest and detention of a person when:

- a. there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the Specialist Chambers; and
- b. there are articulable grounds to believe that:

¹² *Fazliu* Submissions, para. 17.

¹³ *Fazliu* Reply, para. 8. The Fazliu Defence opposes house arrest (*Fazliu* Reply, paras 6-7).

¹⁴ Annexes 1 and 2 to *Fazliu* Submissions. The Fazliu Defence further informs the Single Trial Judge that it was instructed not to provide an update on Mr Fazliu's medical situation (*Fazliu* Submissions, para. 19).

¹⁵ SPO Submissions, paras 2-3.

¹⁶ SPO Submissions, para. 4.

¹⁷ SPO Submissions, para. 12.

- i. there is a risk of flight;
- ii. he or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or
- iii. the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.

10. In addition, Rule 56(2) provides that:

The Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case. In case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

11. These provisions must be interpreted and applied in conformity with the Constitution of Kosovo and the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”).¹⁸ The Single Trial Judge will apply these same standards to the present decision.

12. Decisions concerning detention on remand are fact-specific and discretionary insofar as “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”.¹⁹ Each bi-monthly review of detention is a *de novo* assessment²⁰ and the “duty to

¹⁸ See, for example, [Second Review Decision](#), paras 24-25 (general requirements), 26 (grounded suspicion), 29-32 (necessity of detention), 47 (conditional release) and 53 (proportionality), with references cited therein; and [First Review Decision](#), paras 10-11 (general requirements), 12 (grounded suspicion), 15-18 (necessity of detention), 32 (conditional release) and 37 (proportionality), with references cited therein.

¹⁹ KSC-BC-2023-12, IA008-F00006, [Decision on Fadil Fazliu's Appeal Against Fifth Decision on Review of Detention](#) (“Appeal Decision on Fazliu Fifth Review Detention”), 5 December 2025, public, para. 42.

²⁰ KSC-BC-2020-06, F03484, Trial Panel II, [Decision on Periodic Review of Detention of Jakup Krasniqi](#), 18 September 2025, public, para. 49 (“the Panel observes that detention is governed by strict

determine whether the circumstances underpinning detention ‘still exist’ is not a light one”.²¹ According to the Court of Appeals Panel:

The competent panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the competent panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.²²

13. Furthermore, “although the automatic review [...] is not strictly limited to whether or not a change of circumstances occurred in the case, such a change can nonetheless be determinative and shall be taken into consideration if raised before the Panel or *proprio motu*”.²³

14. The Single Trial Judge understands that although he is not required to revisit findings made in previous detention reviews, he may do so. Ultimately, the first instance panel must be “satisfied” that “grounds for continued detention still exist” including, but without being limited to, consideration of any changes of circumstances that may have arisen since the last detention review.

conditions set out in Article 41 and the Panel assesses the Parties’ submissions *de novo* as part of the bi-monthly detention review pursuant to Article 41(10”); *see also* F00177/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Hashim Thaci's Application for Interim Release](#), 22 January 2021, public, para. 26.

²¹ KSC-BC-2023-12, IA004-F00005, Court of Appeals Panel, [Decision on Isni Kilaj's Appeal Against Third Decision on Review of Detention](#) (“Second Kilaj Detention Appeal Decision”), 1 September 2025, public, para. 30.

²² KSC-BC-2020-06, IA006-F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention](#), 1 October 2021, public, para. 15 (“[T]he Panel underlines that the duty to determine whether the circumstances underpinning detention “still exist” is not a light one. It imposes on the competent panel the task to, *proprio motu*, assess whether, it is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the Accused remains warranted”); *see also* KSC-BC-2020-07, IA002-F00005, Court of Appeals Panel, [Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention](#), 9 February 2021, public, para. 55.

²³ [Second Kilaj Detention Appeal Decision](#), para. 31.

IV. DISCUSSION

A. GROUNDED SUSPICION

15. On the basis of the findings in the Confirmation Decision,²⁴ and in the absence of any submissions to the contrary by the Fazliu Defence or other intervening information or developments, the requirement of a “grounded suspicion” pursuant to Article 41(6)(a) is satisfied.

B. PRESENCE OF ARTICLE 41(6)(B) RISKS

1. Risk of Flight

16. The SPO argues that the factors substantiating a risk of flight in respect of Mr Fazliu remain unchanged, including an awareness of the gravity of the charged offences and the potential sentence as enhanced by his progressive awareness of the SPO’s evidence, his “demonstrated blatant disregard for the laws and the rules of the KSC”, and his means to flee to jurisdictions beyond the reach of the SC, including through his connections with the Kosovo Liberation Army (“KLA”) and stature in Kosovo.²⁵ The SPO also argues that Mr Fazliu’s financial means relative to the amount of the security offered should be accorded “little weight” since he is not the person providing the security that would be forfeited if he were to abscond.²⁶

17. The Fazliu Defence claims that Mr Fazliu is a life-long resident of Kosovo, where he has strong family ties, and has no history of living abroad.²⁷ It argues that Mr Fazliu has no “practical infrastructure” for absconding,²⁸ has previously given undertakings that he will not abscond, and will surrender all travel

²⁴ [Confirmation Decision](#), paras 42-43, 211, 260, 287-288, 299, 313(b).

²⁵ SPO Submissions, para. 5.

²⁶ SPO Submissions, footnote 16.

²⁷ *Fazliu* Submissions, para. 9.

²⁸ *Fazliu* Submissions, para. 9.

documents.²⁹ The Fazliu Defence proposes a security of €40,000 to be provided by [REDACTED], which, “as contextualized by Mr. Fazliu’s own financial situation” (i.e. “the amount offered is many times greater than the total value of Mr Fazliu’s assets”),³⁰ would “further reinforce[] compliance”.³¹

18. The nature of the “risks” to be determined under Article 41(6)(b) has been explained by the Court of Appeals Panel:

[T]he question revolves around the possibility, not the inevitability, of a future occurrence. [...] In so finding, the Panel acknowledged that a standard less than certainty was appropriate. That “certainty” cannot be required follows from the nature of the assessment under Article 41(6)(b) of the Law, namely that it entails a prediction about future conduct, and what lies in the future can never be predicted with certainty. This does not mean, however, that any possibility of a risk materialising is sufficient to justify detention [...] detention cannot be justified by any kind of possibility of a future occurrence, even if negligible [...] The Panel therefore finds that the standard to be applied is, on the one hand, less than certainty, but, on the other, more than a mere possibility of a risk materialising.³²

19. The Sixth Review Decision did not determine whether Mr Fazliu presents a risk of flight under Article 41(6)(b)(i). Previous bi-monthly reviews of detention did make that finding on the basis of: (i) Mr Fazliu’s awareness of the gravity of the offences with which he is charged and increased awareness of the evidence against him; (ii) his “demonstrated blatant disregard for the laws and rules of the SC”; (iii) his ability to “seek and secure resources and support for the purposes of fleeing” given his “long-standing political career in Kosovo and close ties with former KLA commanders”; and (iv) the possibility that flight

²⁹ *Fazliu* Submissions, para. 12.

³⁰ KSC-BC-2023-12, F00623, Fazliu Defence, [Fazliu Reply to SPO Submissions on Review of Detention](#) (“Interim Review Reply”), public, para 14, with Annex 1, confidential.

³¹ *Fazliu* Submissions, para. 12, citing [Interim Review Reply](#), para. 14, with Annex 1, confidential; and Annex 1 to Interim Review Reply, confidential, F00623/A01.

³² KSC-BC-2020-06, IA004-F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaci’s Appeal Against Decision on Interim Release](#), 30 April 2021, public, paras 21-22.

could be to countries “beyond the reach of the SC”.³³ The findings concerning Mr Fazliu’s ability to flee were not reversed on appeal; on the contrary, the Court of Appeals Panel commented that it “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”.³⁴

20. The factors relevant to Mr Fazliu’s risk of flight have changed in at least two respects since it was last assessed on 3 October 2025.³⁵

21. First, Mr Fazliu has now spent four additional months in detention, thus reducing by that same period any term of imprisonment that might be imposed upon him in these proceedings.³⁶ This concomitantly reduces the incentive to flee based on potential future sentence.³⁷ Concretely, the prospective additional period of detention to which Mr Fazliu could be subject in case of conviction in these proceedings (“Case 12”) now ranges from zero to three years and ten months, if he receives the maximum statutory sentence for the more serious offence with which he is charged.³⁸

³³ [Fifth Review Decision](#), para. 26; [Fourth Review Decision](#), para. 14; [Third Review Decision](#), para. 22; [Second Review Decision](#), para. 33; [First Review Decision](#), para. 20; Decision on Arrest, para. 82.

³⁴ [Appeal Decision on Fazliu Fifth Review Detention](#), para. 22.

³⁵ [Fifth Review Decision](#), paras 26-33.

³⁶ Rule 163(6) (“In imposing a sentence of imprisonment, the Panel shall deduct the time, if any, during which the Accused was detained in accordance with Chapter 4”).

³⁷ See [Kilaj Sixth Review Decision](#), para. 20 (“the potential duration of any future term of imprisonment, as a result of a sentence, that could be imposed on Mr Kilaj (and thus the incentive to flee) has been reduced by a further two months of pre-trial detention (which would offset any future sentence that might be imposed”).

³⁸ See Article 15(2); Article 401(5) of the 2019 Kosovo Criminal Code (“KCC”), Law No. 06/L-074 (“When the offense provided for in paragraph 1. or 2. of this Article is committed against a judge, a prosecutor, an official of a court, prosecution officer or a person authorized by the court and prosecution office, a police officer, a military officer, a customs officer or a correctional officer during the exercise of their official functions the perpetrator shall be punished by imprisonment of one (1) to five (5) years”). The KCC does not provide for a statutory minimum custodial sentence for the offence of contempt, and permits the imposition of a monetary fine alone, *see* Article 393(1) of the KCC (“Whoever fails to obey any final order, ruling, decision or judgment of any Court in the

22. Second, Mr Fazliu has now provided additional information, concerning his own financial means, to reinforce his claim that a security of €40,000 offered by a [REDACTED] relative constitutes a substantial disincentive to flight. The absence of this additional information was cited in the Fifth Review Decision as a reason for not according the proposed security any significant weight.³⁹ Mr Fazliu has now provided documentation concerning his financial means submitted previously to the Registry in support of his successful request for legal aid.⁴⁰ The documentation supports Mr Fazliu's claim that the security offered substantially exceeds his assets.

23. The Single Trial Judge does not accept the SPO's argument that this information should be accorded "little weight" because the security is "not to be derived from the Accused himself but instead from a 3rd party".⁴¹ Indeed, Mr Fazliu's financial situation is highly probative of both his own inability to offer a significant security, as well as the value that he would likely place on the sum of €40,000 when offered by [REDACTED].⁴² Mr Fazliu himself refers to

Republic of Kosovo or who refuses or obstructs the publication of any final decision or, judgment of such court shall be punished by a fine or imprisonment up to six (6) months".

³⁹ [Fifth Review Decision](#), para. 44 ("Regarding the Fazliu Defence's argument that the newly proposed surety and other proposed conditions would act as a deterrent to any of the risks under Article 41(6) of the Law, the Pre-Trial Judge recalls 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. In the absence of such material, the Pre-Trial Judge finds that the additional information provided by the Fazliu Defence, albeit more elaborate, is not capable of altering her assessment on the matter"); [Appeal Decision on Fazliu Fifth Review Detention](#), para. 49 ("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 was not capable of altering her assessment on the matter. In light of this, the Panel is satisfied that the Pre-Trial Judge properly considered Fazliu's proposed surety").

⁴⁰ KSC-BC-2023-12, F00623/A01, Fazliu Defence, *Annex 1 to Fazliu Reply to SPO Submissions on Review of Detention*, 15 December 2025, confidential; KSC-BC-2023-12, F00051, Registrar, *Notification of Assignment of Duty Counsel to Fadil Fazliu*, 6 December 2024, public, with Annex 1, confidential.

⁴¹ SPO Submissions, footnote 16.

⁴² KSC-BC-2023-12, F00428/A02, Fazliu Defence, *Annex 2 to Fazliu Defence Submissions on the Fifth Detention Review*, 29 August 2025, confidential, para. 2.

[REDACTED].⁴³ Accordingly, the offer of a security of €40,000 by a [REDACTED] relative, when viewed in the context of Mr Fazliu's own limited financial resources, constitutes a substantial disincentive to flee which has not been given weight in previous detention reviews.

24. The Single Trial Judge considers, as in previous review decisions,⁴⁴ that Mr Fazliu likely does have the capacity to flee. Although this finding continues to be contested by Mr Fazliu,⁴⁵ the Single Trial Judge accepts that his stature, regardless of whether his prior career is characterised as "political", would allow him to mobilise the support necessary to become a fugitive, and that this is a factor enhancing the risk of flight.⁴⁶ The Single Trial Judge also accepts that statements by Mr Fazliu that he would not harness these resources for reputational reasons are too subjective to be accorded substantial weight.⁴⁷

25. Other factors also indicate an incentive for Mr Fazliu to flee, including "the gravity of the offences with which he is charged, together with the potential

⁴³ KSC-BC-2023-12, F00428/A01, Fazliu Defence, *Annex 1 to Fazliu Defence Submissions on the Fifth Review Decision* ("Annex 1 to Fazliu Fifth Review Decision Submissions"), 29 August 2025, confidential, para. 4(8).

⁴⁴ [Fifth Review Decision](#), paras 26-33.

⁴⁵ [Fazliu Submissions](#), para. 9.

⁴⁶ SPO Submissions, para. 5 ("(iii) opportunity to flee to jurisdictions beyond the reach of the [SC]; (iv) means to evade justice, given his long-standing political career in Kosovo and his close KLA ties"). See [Appeal Decision on Fazliu Fifth Review Decision](#), paras 23-24 ("[W]hile it is correct that Fazliu occupies no political position at the present time, Fazliu described himself as a 'well-known activist' and further ignores evidence confirming his political career. Likewise, with respect to Fazliu's contention on appeal that 'his support network consists only of his family', the Appeals Panel recalls Fazliu's previous submissions where he described himself as someone with 'authority', 'known throughout Kosovo', 'regarded with respect and consideration' and who supported his village 'in every aspect'. 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'. 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. 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").

⁴⁷ SPO Submissions, para. 5; [Fifth Review Decision](#), para. 31 ("Declarations of intent or reputational claims on the part of the Accused cannot displace the objective assessment of the existence of such risk").

sentence that these offences could attract" and "progressive awareness of the SPO's evidence supporting the charges against him, due to ongoing disclosure".⁴⁸ However, in the Single Trial Judge's view, these factors are circumscribed by the total statutory sentence available. In addition, progressive awareness of evidence or sentencing practice from other cases should not be accorded undue weight; in fact, some Trial Panels have rejected outright these considerations as "speculative".⁴⁹ The Single Trial Judge therefore accords very limited weight to any incremental added incentive to flee purportedly arising from progressive disclosure of evidence in this case.

26. Another factor that has weighed in favour of the risk of flight in previous decisions is the "blatant disregard for the laws and rules of the SC" reflected in the charges themselves.⁵⁰ However, the Single Trial Judge does not consider that potentially engaging in surreptitious obstruction of proceedings can be taken as strongly predictive of a willingness to become a fugitive from justice. Indeed, the Court of Appeals Panel has emphasised that such an inference in respect of the risk of *obstruction* is justified on the basis of the "very specific nature of the confirmed charges"⁵¹ – a close similarity that does not apply to the risk of *flight*. Accordingly, the Single Trial Judge accords the charges themselves, which concern a single count of attempted obstruction of official persons and a single count of contempt, limited weight in assessing Mr Fazliu's flight risk, especially

⁴⁸ SPO Submissions, para. 5; [Fifth Review Decision](#), para. 26.

⁴⁹ KSC-BC-2020-06, F01720, Trial Panel II, [Decision on Periodic Review of Detention of Hashim Thaci](#), 16 August 2023, public, para. 15 ("With respect to the SPO's argument that the judgment in the *Prosecutor v. Salih Mustafa* case would increase Mr Thaci's perception of the possibility of receiving a lengthier sentence, the Panel finds this to be speculative"); F01721, Trial Panel II, [Decision on Periodic Review of Detention of Kadri Veseli](#), 16 August 2023, public, para. 17 ("[T]he SPO's general argument that the risk of flight increases in the context of the continuation of the trial is unpersuasive in the present circumstances".)

⁵⁰ [Fifth Review Decision](#), para. 26; SPO Submissions, para. 5.

⁵¹ [Appeal Decision on Fazliu Fifth Review Detention](#), para. 57 ("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 of a risk of obstruction to the proceedings").

in the absence of any wider pattern of unlawful conduct having been proffered by the SPO, let alone any prior criminal convictions.⁵²

27. Finally, the Single Trial Judge considers Mr Fazliu's age and his apparent settled family ties in [REDACTED] as a factor diminishing the risk of flight.⁵³ Mr Fazliu has apparently lived in [REDACTED] and now resides there [REDACTED].⁵⁴ He has another son, Fahri, [REDACTED].⁵⁵ Becoming a fugitive in these circumstances would substantially damage personal relationships that may be considered important to Mr Fazliu.⁵⁶

28. The Single Trial Judge finds, based on a holistic assessment of the foregoing considerations, that Mr Fazliu does not present a risk of flight under Article 41(6)(b)(i), provided that he is released on the conditions set out below, in particular the provision of a security of €40,000 bail that would be forfeited if he were to refuse to attend court proceedings and become a fugitive.

2. Risk of Obstructing the Progress of SC Proceedings

29. The SPO relies on the Single Trial Judge's finding in the Sixth Review Decision that "a 'real' risk remains that Mr Fazliu may, if released, obstruct the progress of SC proceedings".⁵⁷ It specifically raises the "significant risk" that Mr Fazliu "might use private, unmonitored access to his son outside of the confines of the [SC] Detention Centre to, *inter alia*, instruct him how to testify if called as a witness" and "concerns over FAZLIU's ability, motive and

⁵² ECtHR, [Panchenko v. Russia](#), no. 45100/98, Judgment (Merits and Just Satisfaction), 8 February 2005, paras 107-108 (referring to "the absence of a criminal record" as one of the "pertinent facts" that the domestic court had failed to timely consider in assessing whether to grant release).

⁵³ Decision on Arrest, para. 84; [First Review Decision](#), para. 22; [Second Review Decision](#), para 34; [Third Review Decision](#), para. 25.

⁵⁴ Annex 1 to Fazliu Fifth Review Decision Submissions, para. 1.

⁵⁵ KSC-BC-2023-12, F00428/A03, Fazliu Defence, *Annex 3 to Fazliu Defence Submissions on the Fifth Review Decision*, 29 August 2025, confidential, para. 1.

⁵⁶ The ECtHR has cited "family ties and all kinds of links with the country in which he is prosecuted" as a consideration relevant to assessing flight risk" (see ECtHR, *Becciev v. Moldova*, no. 9190/03, Judgment (Merits and Just Satisfaction), 4 October 2005, para. 58).

⁵⁷ SPO Submissions, para. 6, quoting Sixth Review Decision, para. 22.

opportunity to approach witnesses through his son and other associates”,⁵⁸ in particular given the absence of any effective means to monitor or prevent communications through electronic devices belonging to third parties.⁵⁹ The SPO moreover argues that the “imminent start of trial on 24 February [...] increases the existing ‘real risk’ that Fazliu will, if released, use the opportunity to influence potential witnesses in this case, including not just his son but also other uncharged co-perpetrators”.⁶⁰

30. The Fazliu Defence argues that the risk of obstruction under Article 41(6)(b)(ii) is “reduced at this juncture both in terms of opportunity and incentive”, citing the completion of presentation of evidence in *The Specialist Prosecutor v. Hashim Thaçi et al.* (“Case 06”) as well as the nature of the SPO’s evidence in the present proceedings, which is “not likely to be susceptible to influence by Mr. Fazliu or anyone acting on his behalf”.⁶¹ The Fazliu Defence also argues that the “disincentive against obstruction grows stronger over time [...] 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”.⁶² The Fazliu Defence moreover submits that it does not intend to call Mr Fazliu’s son Fahri as a witness at trial.⁶³

31. The Single Trial Judge considers that factors pointing towards the risk that Mr Fazliu would obstruct the progress of SC proceedings include: (i) the nature of the charges against him in this case, which involve allegations of unlawfully influencing witnesses,⁶⁴ and which are indicative of a “proneness to obstruct the

⁵⁸ SPO Submissions, para. 6.

⁵⁹ SPO Submissions, para. 8.

⁶⁰ SPO Submissions, para. 10.

⁶¹ *Fazliu* Submissions, para. 10.

⁶² *Fazliu* Submissions, para. 11.

⁶³ *Fazliu* Reply, para. 2.

⁶⁴ See [Sixth Review Decision](#), para. 22; [Fifth Review Decision](#), para. 34; [Fourth Review Decision](#), para. 16; [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 38; [First Review Decision](#), para. 24; [Decision on Arrest](#), para. 86, with further explanations.

proceedings of the Specialist Chamber”;⁶⁵ (ii) the allegation that such efforts were undertaken in coordination with his son, who is still at liberty and with whom he could be expected to wish to associate upon provisional release;⁶⁶ and (iii) Mr Fazliu’s increased awareness of the incriminating evidence against him, as a result of the ongoing disclosure in this case,⁶⁷ which may enhance a misguided belief that he could effectively influence the evidence to be heard.⁶⁸ These factors must be evaluated within the prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations and prosecutions of crimes attributed to ex-KLA members.⁶⁹

32. On the other hand, several circumstances diminish the risk that Mr Fazliu would engage in such conduct, including: (i) the complete closure of presentation of evidence in Case 06,⁷⁰ which substantially reduces (albeit does not eliminate)⁷¹ the practical opportunity or incentive for interference;⁷² (ii) the SPO is calling no witnesses in Case 12 whom Mr Fazliu or any likely associates

⁶⁵ [Fifth Review Decision](#), para. 34; [Appeal Decision on Fazliu Fifth Review Decision](#), paras 57-59.

⁶⁶ [Confirmation Decision](#), paras 126-127; [Fifth Review Decision](#), para. 37.

⁶⁷ The Single Trial Judge notes that, since the Sixth Review Decision, the SPO has made additional disclosures pursuant to Rule 102(1)(b). See Disclosure Packages Nos 86, 87, 91, 92, 94, 95, 97, 98, 100 and 101.

⁶⁸ See [Sixth Review Decision](#), para. 22; [Fifth Review Decision](#), para. 34; [Fourth Review Decision](#), para. 16; [Third Review Decision](#), para. 28; [Second Review Decision](#), para. 39; [First Review Decision](#), para. 25; [Decision on Arrest](#), para. 86.

⁶⁹ KSC-BC-2023-12, F00706, Single Trial Judge, [Decision on Prosecution Motion for Judicial Notice of an Adjudicated Fact](#), 29 January 2026, public, para. 20.

⁷⁰ See KSC-BC-2020-06, F03597, Trial Panel II, [Order Pursuant to Rules 134\(b\), \(d\) and 159\(6\) and Related Matters](#), 21 November 2025, public, para. 39(f)-(g); F03639, Trial Panel II, [Notice Regarding the Close of Evidentiary Proceedings](#), 18 December 2025, public, para. 21.

⁷¹ [Kilaj Sixth Review Decision](#), para. 26 (“The Single Trial Judge finds that these circumstances do not eliminate the possibility of witnesses who have already testified in Case 06 being retaliated against or otherwise improperly influenced to recant, particularly given the backdrop of a pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC”).

⁷² Obstruction of, and interference with, Case 06 proceedings appear to have been the predominant consideration in the initial decision on detention (see [Decision on Arrest](#), paras 86-87) and was still specifically relied upon in the Fifth Review Decision (see [Fifth Review Decision](#), para. 36). The incentive to pressure a witness to “recant”, which was specifically relied upon in the Fifth Review Decision, is not likely to be at its highest prior to the issuance of a verdict in Case 06.

would be in a position to influence;⁷³ and (iii) most of the SPO's evidence in Case 12 is documentary in nature and beyond the capacity of Mr Fazliu (or anyone else) to influence or affect.⁷⁴

33. Nonetheless, some opportunity does remain to obstruct these proceedings, in particular by seeking to improperly influence potential Defence witnesses. Fahri Fazliu, Mr Fazliu's son and alleged uncharged collaborator in the "Fazliu Group",⁷⁵ could be one such potential witness of importance, as identified by the SPO.⁷⁶ Yet, the Fazliu Defence avers "that it has no intention to call him as a defence witness at trial".⁷⁷ Furthermore, Defence teams are permitted, subject to the applicable Contact Protocol,⁷⁸ to contact potential Defence witnesses on the instructions of an accused, thus reducing the possibility of an accused perceiving any advantage in surreptitiously contacting such witnesses directly. However, the "ability, motive, and opportunity"⁷⁹ to improperly influence such witnesses, specifically Witness 1, who is the alleged object of Mr Fazliu's alleged obstructive behaviour or possibly that of "other uncharged co-perpetrators",⁸⁰

⁷³ KSC-BC-2023-12, F00459/A03, Specialist Prosecutor, *Annex 3, List of Witnesses, to Prosecution Submission of Pre-Trial Brief, Witness and Exhibit Lists* ("SPO Pre-Trial Brief"), 19 September 2025, confidential. [REDACTED].

⁷⁴ KSC-BC-2023-12, F00459/COR/A04, Specialist Prosecutor, *Annex 4 to Corrected Version of "Prosecution Submission of Pre-Trial Brief, Witness and Exhibit List"*, 6 October 2025, confidential; *Fazliu Submissions*, para. 10.

⁷⁵ Confirmation Decision, para. 182.

⁷⁶ SPO Submissions, para. 6.

⁷⁷ *Fazliu Reply*, para. 2.

⁷⁸ KSC-BC-2023-12, F00173, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information and Witness Contacts* ("Contact Protocol"), 11 February 2025, confidential, paras 40 (section II) and 41(d); a public redacted version was issued on 11 March 2025, [F00173/RED](#); F00295, Pre-Trial Judge, *Second Decision on Protective Measures and the Handling of Confidential Information and Witness Contacts*, 12 May 2025, strictly confidential and *ex parte*, paras 46, 47(c); a confidential redacted version was issued on the same day, F00295/CONF/RED, while a public redacted version was issued on 5 September 2025, [F00295/RED](#). See also F00642, Single Trial Judge, *Decision on the Conduct of Proceedings*, 22 December 2025, public, paras 21-22.

⁷⁹ SPO Submissions, para. 6.

⁸⁰ SPO Submissions, para. 10 ("The imminent start of trial on 24 February – in what is already acknowledged as a pervasive climate of witness intimidation – increases the existing 'real risk' that FAZLIU will, if released, use the opportunity to influence potential witnesses in this case, including not just his son but also other uncharged co-perpetrators").

remains present. On the other hand, since the number of potential witnesses in this category is very small, and one such potential witness has already been met by the SPO and provided an initial reaction to the allegations,⁸¹ the likelihood of detection of improper influence of potential Defence witnesses is relatively high. Accordingly, while there remains some opportunity to obstruct the course of proceedings, various factors also limit Mr Fazliu's incentive and ability to do so.

34. Lastly, Mr Fazliu's incentive to engage in such behaviour is also diminished in light of the previous detection of his alleged conduct and the consequences that have ensued. Mr Fazliu has already spent almost 14 months in detention in respect of the charged obstruction and contempt, which is an objective deterrent against any attempt to improperly influence these proceedings upon release.⁸² The longer Mr Fazliu's detention continues, the greater the consequences for the alleged prior conduct, and the lesser the potential advantages that could arise from any alleged further perversion of the course of justice.⁸³

35. Based on a holistic assessment of the circumstances above, the Single Trial Judge finds that there remains a risk that Mr Fazliu would obstruct the course of proceedings under Article 41(6)(b)(ii) if released. However, in light of the limited opportunities for negatively influencing the SPO evidence or positively influencing the Defence case in these proceedings, and the incentives against doing so described above, this risk is no greater than moderate.

⁸¹ Annex 1 to the SPO Pre-Trial Brief, para. 47; Transcript of SPO Suspect Interview of Witness 1 ([REDACTED]), dated 18 November 2023, Part 1, 117044-TR-ET Part 1, pp. 9-10.

⁸² See International Residual Mechanism for Criminal Tribunals ("IRMCT"), *Prosecutor v. Maximilien Turinabo et al.*, MICT-18-116-PT, Single Judge, [Decision on Maximilien Turinabo's Motion for Provisional Release](#), 29 March 2019, para. 13 ("I find these submissions compelling, particularly given the risk of substantially increased punishment if it were demonstrated that he interfered with victims, witnesses, or potential witnesses in violation of the terms of his provisional release or relevant protective measures").

⁸³ *Fazliu* Submissions, para. 11.

3. Risk of Committing Further Offences

36. The Single Trial Judge recalls that the reasons to believe that there is a risk of obstruction of proceedings likewise entail a risk, albeit moderate, that offences would be committed in order to do so.⁸⁴

37. In light of the above,⁸⁵ the Single Trial Judge concludes that there remains a moderate risk that Mr Fazliu would commit further offences, pursuant to Article 41(6)(b)(iii), if provisionally released.

4. Conclusion

38. The Single Trial Judge finds that there continues to be a real, albeit moderate, risk under Article 41(6)(b)(ii) and (iii) that Mr Fazliu may obstruct the progress of the SC proceedings and commit further offences, respectively. The Single Trial Judge will assess below whether these risks can be adequately mitigated by any conditions of release.

C. POTENTIAL CONDITIONS OF RELEASE

39. An accused “can only be detained if lesser measures would *be insufficient to mitigate the risks of flight, obstruction or the commission of further crimes*”.⁸⁶ This standard reflects the presumption in favour of pre-trial release, which is itself a reflection of the bedrock principle of the presumption of innocence.⁸⁷

⁸⁴ See similarly Sixth Review Decision, para. 25; [Fifth Review Decision](#), para. 40; [Fourth Review Decision](#), para. 19; [Third Review Decision](#), paras 28, 32, with references cited therein.

⁸⁵ See *supra* paras 31-35.

⁸⁶ [Second Kilaj Detention Appeal Decision](#), para. 32. See KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, [Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19\(5\) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office](#), 26 April 2017, public, para. 114. See also ECtHR, [Buzadji v. the Republic of Moldova](#), no. 23755/07, Judgment (Merits and Just Satisfaction), 5 July 2016, para. 87; [Idalov v. Russia](#), no. 5826/03, Judgment (Merits and Just Satisfaction), 22 May 2012, para. 140.

⁸⁷ KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release](#) (“Selimi Appeal Decision”), 30 April 2021, public, paras 85-86, stating that “in the assessment of the Proposed Conditions, the [relevant Panel]

40. As previously found, the Single Trial Judge accepts that the payment of the proposed security does sufficiently mitigate the risk of flight.⁸⁸

41. As to the risk of obstructing proceedings or committing further offences, the Single Trial Judge is unable to identify conditions of release that would adequately mitigate these risks. The Fazliu Defence has previously proposed that the security should be subject to forfeiture in case of any violation of the conditions of release, including communications about the case.⁸⁹ The conditions of release proposed by Mr Fazliu include refraining from discussion of the case even in a private context.⁹⁰ While this offer is taken into consideration, it is accorded little weight given the potential difficulty of detection and proof of such breaches to any legal standard.⁹¹

42. Moreover, the SPO also proposes as a condition of release “ensur[ing] the effective monitoring of FAZLIU’s communications, particularly with Fahri FAZLIU”.⁹² The Fazliu Defence does not oppose this condition but also submits that it “would arguably be an overbroad measure that seriously infringes on the right to private and family of Mr. Fazliu and his family members at large”.⁹³ Neither Party has proposed any practical mechanism for implementing such

is required, *proprio motu*, to inquire and evaluate all reasonable conditions that could be imposed on an accused and not just those raised by the Defence. The [Court of Appeals] Panel comes to this conclusion in light of the fundamental right of liberty at stake with regard to a suspect or an accused in pre-trial detention and the presumption of innocence governing this part of the proceedings”.

⁸⁸ See *supra* paras 22-23.

⁸⁹ KSC-BC-2023-12, F00428/RED, Fazliu Defence, [Public Redacted Version of Fazliu Defence Submissions on the Fifth Detention Review](#) (“Fazliu Fifth Review Decision Submissions”), 4 September 2025, public, with Annexes 1-3, confidential, paras 27-28 (“Again, both Mr. Fadil Fazliu and Mr. Fahri Fazliu understand [that] financial security will be forfeited in case of violation of the condition of release. The scope of the undertakings of Messrs Fazliu and Fazliu goes beyond what is commonly seen. It reflects their determination to reassure the SC of their willingness to abstain not only from conduct that carries a risk of obstruction, but also those that might be perceived as carrying such a risk”); Annex 1 to *Fazliu* Fifth Review Decision Submissions, para. 4(8) (“[REDACTED”); Annex 2 to *Fazliu* Fifth Review Decision Submissions, para. 4 (“[REDACTED”).

⁹⁰ *Fazliu* Submissions, para. 12; [Fazliu Fifth Review Decision Submissions](#), para. 25; Annex 1 to *Fazliu* Fifth Review Decision Submissions, para. 3(7) (“[REDACTED”).

⁹¹ [Kilaj Sixth Review Decision](#), para. 33.

⁹² SPO Submissions, para. 12.

⁹³ *Fazliu* Reply, paras 4-5.

monitoring. In the absence of any concrete proposal or any apparent method of comprehensively monitoring these communications, this suggested condition is rejected as not feasible, except as further discussed in the section on conditions of release below.

43. Several voluntary undertakings were also previously proposed by Mr Fazliu and the Fazliu Defence.⁹⁴ These undertakings do little more than express a willingness to abide by conditions of release while providing no independent or objective assurances of compliance.⁹⁵ These conditions therefore do not significantly reduce the possibility of direct or indirect contacts with potential witnesses or other sources of information relevant to this case.

44. Based on the above, the Single Trial Judge finds that there are no proposed or apparently available conditions of release that would adequately mitigate the identified risks under Articles 41(6)(b)(ii) and (iii).

D. PROPORTIONALITY OF DETENTION

1. The Reasonableness and Proportionality of Detention Must Be Assessed Even When the Rule 41(6)(b) Risk Factors Exist

45. The SPO argues that once a finding has been made that there continues to be an Article 41(6)(b) risk that cannot be mitigated, detention must be ordered and that there is no scope for a separate analysis of whether continued detention has become “unreasonable”.⁹⁶

46. The Single Trial Judge observes that the lone jurisprudential statement in support of the SPO proposition was not addressing the scope of Rule 56(2)

⁹⁴ *Fazliu* Submissions, para. 12; Annex 1 to [*Fazliu Fifth Review Decision Submissions*](#), para 4; Annex 3 to [*Fazliu Fifth Review Decision Submissions*](#), paras 3(1) and 5.

⁹⁵ [*Appeal Decision on Fazliu Fifth Review Decision*](#), para. 45 (“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”).

⁹⁶ SPO Submissions, para. 9 (“When these risks are established, and no lesser measures of detention are available, the accused shall continue to be detained”).

relative to Article 41(6)(b), but rather the extent to which determinations under Article 41(6)(b) are themselves “discretionary”.⁹⁷ Indeed, later in the same decision, the Court of Appeals Panel underscores the independent scope of the requirement of proportionality:

The Court of Appeals Panel takes the present opportunity to stress that the nature of the offence as well as the severity of the penalty are important factors to consider when deciding whether detention is necessary in the circumstances of a specific case. In that regard, the ECtHR confirmed that detention pursuant to Article 5(1)(c) of the ECHR embodies a proportionality requirement. As a consequence, the ECtHR applies a proportionality test when considering whether an applicant’s detention was strictly necessary to ensure his presence at the trial or whether other, less stringent, measures could have been sufficient for that purpose [...]. The Court of Appeals Panel is fully aware of the severe restriction of fundamental rights of a person caused by a deprivation of liberty. It is also aware of the importance of a proportionality requirement in this regard. Indeed, it notes that the longer a person remains in pre-trial detention the higher the burden on the Specialist Chambers to justify continued detention. However, in the case at hand, the Panel considers, noting that Gucati has been detained since 25 September 2020 and that more than two months after his arrest an indictment against him has yet to be confirmed, that detention is still proportional at this early stage of proceedings.⁹⁸

47. Subsequent Court of Appeals Panel decisions have applied the proportionality principle through Rule 56(2), notwithstanding a finding of Article 41(6) risks that could not be mitigated:

The Panel notes that the Pre-Trial Judge correctly recalled the importance of the proportionality principle in the determination of

⁹⁷ KSC-BC-2020-07, IA001-F00005, Court of Appeals Panel, [Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention](#) (“Gucati Appeal Decision”), 9 December 2020, public, para. 51 (“In comparison, while provisional release is envisioned at the Specialist Chambers, there is no specific provision on the standard to be applied by a Judge when considering a request for provisional release. The Law, however, implicitly empowers the Judge to assess whether the Proposed Conditions ‘eliminate all the Article 41(6)(b) risks’ as correctly stated by the Single Judge. The Court of Appeals Panel therefore considers that, similarly to the procedure applied at the ICC, if a Specialist Chambers Judge addressing a request for provisional release is ‘satisfied’ that the conditions set forth in Article 41(6)(b) of the Law are met, the person shall continue to be detained. In that sense, provisional release decisions are discretionary”).

⁹⁸ [Gucati Appeal Decision](#), paras 72-73.

the reasonableness of pre-trial detention. The Panel recalls that according to Rule 56(2) of the Rules, the Pre-Trial Judge shall ensure that a person “is not detained for an unreasonable period prior to the opening of the case”. The reasonableness of an accused person’s continued detention must be assessed on the facts of each case and according to its special features. The length of time spent in detention pending trial is a factor that needs to be considered along with the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.⁹⁹

48. The Court of Appeals Panel plainly states that the duration of detention as of the date of review must be assessed “along with” any risks identified under Article 41(6)(b) in order to come to a proper view as to whether the detention is no longer reasonable and the person must be released. For example, Mr Kilaj was twice released despite the existence of Article 41(6)(b) risk factors that could not be mitigated.¹⁰⁰ In the first such decision, the Single Judge found that “whether the length of time spent in pre-trial detention is reasonable cannot be assessed in the abstract, but must be assessed based on the facts of each case and according to its specific features. The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks” under Article 41(6)(b).¹⁰¹ The Single Judge also mentioned the severity of the penalty in the event of a conviction, and the progress of the case.¹⁰² The Court of Appeals Panel noted favourably that the Single Judge had found the

⁹⁹ KSC-BC-2020-06, IA010-F0008/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaci's Appeal Against Decision on Review of Detention](#), 27 October 2021, public, para. 49.

¹⁰⁰ KSC-BC-2023-12, INV/F00129/COR, Single Judge, *Corrected Version of Decision on Review of Detention of Isni Kilaj* (“Kilaj Release Decision”), 3 May 2024 (corrected version issued on 15 May 2024), confidential; a public redacted version was issued on the same day, [INV/F00129/COR/RED; Kilaj Sixth Review Decision](#).

¹⁰¹ [Kilaj Release Decision](#), para. 60.

¹⁰² [Kilaj Release Decision](#), para. 60.

Article 41(6)(b) risks to be “serious” while still ordering release on the basis of his assessment of the proportionality of detention.¹⁰³

49. The Court of Appeals Panel has recently re-affirmed that “a panel has a general obligation to ensure that the time spent in detention is reasonable, in accordance with Article 29(2) of the Constitution and Article 5(3) of the ECHR”.¹⁰⁴ A decision not to release an accused was upheld on the basis “that the Pre-Trial Judge weighed the proportionality of Kilaj’s detention against a number of factors”, which satisfied the Court of Appeals Panel “that the Pre-Trial Judge properly took into account the length of time spent in detention pending trial when considering that Kilaj’s continued detention remained proportionate at this stage”.¹⁰⁵

50. Accordingly, even if Article 41(6)(b) risk factors are found to exist, the Single Trial Judge must still consider whether Mr Fazliu’s continued detention is no longer reasonable or proportionate. This determination “must be assessed on the facts of each case and according to its special features”.¹⁰⁶ In particular, previous jurisprudence establishes that reasonableness is to be assessed by weighing various considerations, including: (i) the duration of detention at the time of review;¹⁰⁷ (ii) “the nature of the offence as well as the severity of the

¹⁰³ KSC-BC-2023-12, INV/F00273, Court of Appeals Panel, *Decision on the Specialist Prosecutor’s Office’s Appeal against Decision on Isni Kilaj’s Review of Detention*, 13 May 2024, confidential, paras 21-22; a public redacted version was issued on 15 May 2024, [INV/F00273/RED](#).

¹⁰⁴ [Second Kilaj Detention Appeal Decision](#), para. 46.

¹⁰⁵ [Second Kilaj Detention Appeal Decision](#), para. 56.

¹⁰⁶ KSC-BC-2020-06, IA017-F00011/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaci’s Appeal Against Decision on Review of Detention](#), 5 April 2022, public, para. 65.

¹⁰⁷ See [Selimi Appeal Decision](#), paras 79-81; KSC-BC-2020-06, F03587, Trial Panel II, [Decision on Periodic Review of Detention of Jakup Krasniqi](#) (“Krasniqi Review Decision”), 18 November 2025, public, para. 32 (“The Panel is cognisant that the duration of time in detention is a factor that needs to be considered, along with the degree of risks described in Article 41(6)(b), in order to determine whether, all factors being considered, the continued detention ‘stops being reasonable’ and the individual needs to be released”).

penalty”;¹⁰⁸ (iii) the gravity of the offences and the nature of the accused’s role;¹⁰⁹ (iv) “the degree of risks that are described in Article 41(6)(b) of the Law”;¹¹⁰ (v) the speed with which proceedings are progressing towards trial (or a final judgment), and whether the length of proceedings is justified by its complexity;¹¹¹ and (vi) the frequent review of detention which, pursuant to the Rules, occurs every two months.¹¹²

2. Parties’ Submissions and Analysis

51. Rule 56(2) requires “that a person is not detained for an unreasonable period prior to the opening of the case”. This standard likewise applies after the opening of the case and throughout trial proceedings.¹¹³ The SPO “carries the burden of establishing that detention is necessary and that its length remains reasonable”,¹¹⁴ and any analysis of pre-trial detention must take the presumption of innocence as its starting point”.¹¹⁵ As the Court of Appeals Panel

¹⁰⁸ See [Gucati Appeal Decision](#), para. 72 (“The Court of Appeals Panel takes the present opportunity to stress that the nature of the offence as well as the severity of the penalty are important factors to consider when deciding whether detention is necessary in the circumstances of a specific case”).

¹⁰⁹ [Krasniqi Review Decision](#), para. 33 (“Mr Krasniqi is charged with ten counts of serious international crimes in which he is alleged to play a significant role”); KSC-BC-2020-06, F01721, Trial Panel II, [Decision on Periodic Review of Detention of Kadri Veseli](#), 16 August 2023, para. 38 (“Mr Veseli is charged with ten counts of serious international crimes in which he is alleged to play a significant role”).

¹¹⁰ See [Kilaj Release Decision](#), para. 60. See KSC-BC-2020-06, IA010-F00008, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaci’s Appeal Against Decision on Review of Detention](#) (“Thaci 2021 Appeal Decision”), 27 October 2021, public, para. 49.

¹¹¹ See [Thaci 2021 Appeal Decision](#), para. 52 (“[T]he Pre-Trial Chamber correctly assessed the circumstances of the case as a whole, taking into consideration the factors listed above in paragraph 50 of this decision”); [Kilaj Release Decision](#), para. 60 (“[T]he investigative and procedural steps taken towards moving the case forward since the last review of detention”).

¹¹² See [Selimi Appeal Decision](#), para. 81.

¹¹³ See [Second Kilaj Detention Appeal Decision](#), para. 46 (“At the outset, the Appeals Panel recalls that a panel has a general obligation to ensure that the time spent in detention is reasonable, in accordance with Article 29(2) of the Constitution and Article 5(3) of the ECHR”); KSC-BC-2020-06, [Krasniqi Review Decision](#), paras 31-35 (applying Rule 56(2) and finding that continued detention remains “necessary and reasonable in the specific circumstances of this case”).

¹¹⁴ [Second Kilaj Detention Appeal Decision](#), para. 47.

¹¹⁵ [Selimi Appeal Decision](#), para. 37.

has remarked, “the longer a person remains in pre-trial detention, the higher the burden on the Specialist Chambers to justify continued detention”.¹¹⁶

52. The SPO argues that Mr Fazliu’s detention continues to be “proportionate and reasonable” on the basis of the limited time since the Sixth Review Decision, when such a finding was made by the Single Trial Judge; the advancement of the case towards trial, whose start is “imminent”; and the intensity of the “real risk” that Mr Fazliu will seek to influence potential witnesses “including not just his son but also other uncharged co-perpetrators”, as enhanced by the pervasive climate of witness intimidation in Kosovo.¹¹⁷ The gravity of the Article 41(6)(b) risks is said to outweigh Mr Fazliu’s right to liberty “independent of whether [Mr Fazliu] has served more than the statutory minimum sentence on the charges he faces”.¹¹⁸

53. The Fazliu Defence argues that the proportionality assessment is not static; the period of detention has now surpassed the minimum statutory sentence; any risks under Article 41(6)(b)(ii) and (iii) “is far below serious”; and the consideration that trial preparations to date have “been marked by delays that are neither through Mr. Fazliu’s fault nor justified by the complexity of the case against Mr. Fazliu himself”.¹¹⁹

54. The Single Trial Judge finds that the SPO has not met its burden of showing that Mr Fazliu’s further detention is reasonable or proportionate. On the

¹¹⁶ *Gucati* Appeal Decision, para. 73. See also ECtHR, *Vaccaro v. Italy*, no. 41852/98, Judgment (Merits and Just Satisfaction), 16 November 2000, para. 44; *Ederm v. Germany*, no. 3832/97, Judgment (Merits and Just Satisfaction), 5 July 2001, para. 47.

¹¹⁷ SPO Submissions, para. 10; see *supra* footnote 69.

¹¹⁸ SPO Submissions, para. 11 (“Ultimately, FAZLIU’s conditional right to liberty is outweighed – even if the consideration is finely balanced – by the clear existence of Article 41(6)(b) risks, their associated gravity, and the inability to reasonably mitigate such risks outside of the KSC Detention Centre (i.e. independent of whether he has served more than the statutory minimum sentence on the charges he faces”.)

¹¹⁹ *Fazliu* Submissions, para. 17.

contrary, the duration of detention, given Mr Fazliu's circumstances, has become unreasonable and his immediate release is required.

55. First, as of the date of this decision, Mr Fazliu has been in detention for 13 months and 29 days. The statutory sentencing range for the more serious of the two offences with which he is charged, under Article 401(5) of the KCC, is one to five years. No speculation as to the eventual sentence is required to appreciate that Mr Fazliu has served more than the statutory minimum sentence if he were to be convicted.¹²⁰ He has also served a significant portion of the maximum statutory sentence. The duration of detention, relative to the gravity of the offences as reflected by the statutory sentencing framework, has now reached the point of being very substantial indeed.¹²¹

56. Second, this substantial period of detention impacts on the degree of the Article 41(6)(b) risks. As previously discussed, the additional period of detention relative to previous detention reviews, together with the proposed security, means that Mr Fazliu is no longer a flight risk, and reduces the risk that he would repeat the alleged previous obstructive conduct.¹²²

¹²⁰ No minimum statutory custodial sentence is prescribed for the crime of contempt, for which a fine may also be imposed. *See Article 393(1) of the KCC: "Whoever fails to obey any final order, ruling, decision or judgment of any Court in the Republic of Kosovo or who refuses or obstructs the publication of any final decision or, judgment of such court shall be punished by a fine or imprisonment up to six (6) months".*

¹²¹ By way of comparison, and although arising in a different statutory, jurisprudential and factual context, a Single Judge of the IRMCT observed, that the "liberty interests" of the detainee had become "considerable" after pre-trial detention of less than 11 months in respect of contempt charges carrying a statutory maximum custodial sentence of seven years (*see* IRMCT, *The Prosecutor v. Maximilien Turinabo et al.*, MICT-18-16-PT, Single Judge, [Decision on Marie Rose Fatuma's Second Motion for Provisional Release to Rwanda](#), 29 July 2019, pp. 3-4 ("CONSIDERING that, given the length of pre-trial detention, Fatuma's liberty interests are considerable, and while the contempt charges relating to witness interference are serious, a conviction carries the prospect of a much more limited term of imprisonment, if any, or a fine when compared with sentences that may be imposed for other offences within the Mechanism's jurisdiction").

¹²² *See supra* paras 21, 34.

57. Third, the opportunities for obstruction are reduced relative to previous detention reviews. The evidential phase of Case 06 has now closed,¹²³ and the scope for obstruction in the present proceedings is limited to a relatively narrow category of potential Defence witnesses, thus increasing the likelihood that any obstruction would be detected and reducing the potential impact that such efforts might have. Furthermore, these potential Defence witnesses can, in any event, be contacted by the Defence in accordance with the applicable witness contact protocol.¹²⁴ While the risk of obstruction has been found to be no greater than moderate, the Single Trial Judge is also mindful of the “context of a pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC”.¹²⁵ On balance, however, the potential risks are outweighed by the substantial period that Mr Fazliu has now been detained relative to the statutory sentencing range, whether maximum or minimum.

58. Fourth, justifying detention until the opportunity to call Defence witnesses is over, despite trial being set to start on 27 February 2026,¹²⁶ implies that the continued detention of Mr Fazliu for a period that will likely reach some months. The Single Trial Judge considers this to be an unacceptably lengthy prolongation of his detention.

59. The Single Trial Judge finds, on the basis of these considerations, that the risk of future obstruction of proceedings by Mr Fazliu, along with any ancillary additional offences that might be committed, is now, after almost 14 months of pre-trial detention, outweighed by his fundamental right to liberty.

¹²³ See *supra*, footnote 70.

¹²⁴ See Contact Protocol, para. 21; KSC-BC-2023-12, F00491, Pre-Trial Judge, *Decision on Fazliu Defence Request for Clarification*, 8 October 2025, confidential and *ex parte*, paras 9-11; a public redacted version was issued on 10 November 2025, [F00491/RED](#); see also *supra*, footnote 78.

¹²⁵ [Sixth Review Decision](#), para. 22. See also [Fifth Review Decision](#), para. 38; [Fourth Review Decision](#), para. 17; [Third Review Decision](#), para. 30; [Second Review Decision](#), para. 40; [First Review Decision](#), para. 26; [Decision on Arrest](#), para. 88, with references cited therein.

¹²⁶ KSC-BC-2023-12, F00705, Single Trial Judge, *Decision on Request for Adjournment of the Start of Trial Proceedings*, 28 January 2026, public, paras 8, 9(b).

E.CONDITIONS OF RELEASE

60. The SPO submits that the conditions of release imposed on Mr Kilaj should be likewise ordered in respect of Mr Fazliu, “which should be further enhanced to: (i) prohibit FAZLIU from employing communication devices belonging to other persons or request others to use their devices for this purpose; (ii) ensure the effective monitoring of FAZLIU’s communications, particularly with Fahri Fazliu; and (iii) provide for house arrest”.¹²⁷

61. The Fazliu Defence accepts the first proposed condition (and asserts that it is already accepted as part of Mr Fazliu’s undertakings).¹²⁸ It does not oppose the second request, nor does it oppose “an additional strict no contact ban, preventing any further physical contact with his son Fahri Fazliu while these trial proceedings are ongoing” and the monitoring of any communications between Mr Fazliu and Fahri Fazliu”.¹²⁹ The Fazliu Defence moreover indicates that it has no present intention to call Fahri Fazliu as a defence witness at trial.¹³⁰ House arrest is opposed.¹³¹

62. The Single Trial Judge is concerned that, given the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC,¹³² that the conditions of release provide to the greatest extent possible guard-rails that minimise the potential of either intentional or inadvertent influencing of potential witnesses in this case. This is complicated by the close family relations¹³³ between Mr Fazliu and an uncharged alleged co-perpetrator, his son, Fahri Fazliu. The specific allegation is that Fahri Fazliu is the person

¹²⁷ SPO Submissions, para. 12.

¹²⁸ *Fazliu* Reply, para. 3.

¹²⁹ *Fazliu* Reply, para. 5.

¹³⁰ *Fazliu* Reply, para. 2.

¹³¹ *Fazliu* Reply, paras 6-7.

¹³² See *supra* footnote 69.

¹³³ Annex 3 to *Fazliu* Fifth Review Decision Submissions, para. 2.

who acted on his father's behalf to make improper contact with SC witnesses.¹³⁴ In these circumstances, Mr Fazliu could easily, inadvertently or intentionally, influence his son who might, in turn, contact other potential Defence witnesses. In these circumstances, a strict no physical contact order between Mr Fazliu and Fahri Fazliu is justified and necessary for the duration of hearing of evidence.¹³⁵ The burden of such a prohibition is mitigated by its anticipated brevity. Mr Fazliu and Fahri Fazliu will be permitted to communicate following similar modalities as currently applicable in the SC Detention Facilities, as specified in paragraph 63(f) below.

63. The Single Trial Judge orders the following conditions for Mr Fazliu's release:¹³⁶

- (a) Mr Fazliu shall not leave the territory of Kosovo unless so authorized by a competent panel of the SC;
- (b) Mr Fazliu 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 decision; if Mr Fazliu'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) Mr Fazliu shall provide an address at which he will reside in Kosovo for the duration of the judicial proceedings in the present case and shall request permission from the SC prior to any change of residence;

¹³⁴ KSC-BC-2023-12, F00264, Specialist Prosecutor, [Submission of Amended Confirmed Indictment](#) ("Amended Confirmed Indictment"), 16 April 2025, public, with Annex 1, confidential (containing the confidential version of the Amended Confirmed Indictment), and [Annex 2](#), public (containing the public redacted version of the Amended Confirmed Indictment), para. 10.

¹³⁵ SPO Submissions, para. 12; *Fazliu* Reply, para. 5.

¹³⁶ See [Kilaj Sixth Review Decision](#), para. 50.

(d) Mr Fazliu shall provide a financial security to the Registrar as a precondition for his release in the form of a monetary transfer in the amount of €40,000 to the Registry, [REDACTED];

(e) Mr Fazliu 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, Bashkim Smakaj, Mr Kilaj 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) Mr Fazliu shall refrain from any contact, direct or indirect, with Fahri Fazliu, except [REDACTED]; any physical contacts or in-person communication between Mr Fazliu and Fahri Fazliu whatsoever are prohibited for the duration of trial proceedings;

(g) Mr Fazliu shall refrain from any contact or communication, direct or indirect (through any other person),¹³⁷ of any kind and through any means, with any person whom he knows or reasonably suspects to have been or is likely to be a witness in this or any other case before the SC, including in particular Witness 1;

(h) Mr Fazliu shall refrain, except as set out in sub-paragraph (f) in relation to Fahri Fazliu, from any contact or communication, direct or indirect (through any other person), with any person alleged in the Amended Confirmed Indictment as having participated in or assisted the obstructive conduct in this case, [REDACTED];

(i) Mr Fazliu 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 his son Fahri Fazliu and other close

¹³⁷ Lawful contacts through counsel in accordance with the applicable orders and statutory provisions of the SC are evidently not encompassed by this prohibition.

family members, and shall advise anyone who makes inquiries about his case that he is subject to such a prohibition by the SC;

- (j) Mr Fazliu 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;
- (k) Mr Fazliu shall make himself available for a weekly verification check by the Kosovo Police, in accordance with the procedures designated by the Registrar;
- (l) Mr Fazliu shall surrender himself to the custody of the SC, if so ordered, and shall attend any hearing as required by the SC, which shall include being physically present for trial proceedings that commence on 27 February 2026; 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;
- (m) Mr Fazliu 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 therein;
- (n) Mr Fazliu 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 and designated members of his Defence team until the present decision has been made public upon order of the Single Trial Judge; and
- (o) Mr Fazliu shall abide by any other decision, order or instruction of the Single Trial Judge and the Registrar.

64. The Single Trial Judge emphasises that, should any of the above conditions be violated, provisional release shall be subject to immediate termination and Mr Fazliu will be subject to the issuance of an arrest warrant against him.

65. Mr Fazliu and his Defence team are ordered not to reveal the content of this decision, which remains confidential, to any other person, including other accused in the SC Detention Facilities and family members, until all practical arrangements have been put in place and Mr Fazliu's secure release in Kosovo is ensured. [REDACTED].

V. REQUEST FOR REMOTE ATTENDANCE

66. The Fazliu Defence also requests that Mr Fazliu be permitted to attend the trial proceedings set to commence on 27 February 2026 remotely¹³⁸ – that is, to participate in proceedings by video-conference¹³⁹ – which the SPO opposes.¹⁴⁰ The Single Trial Judge considers that the physical attendance of all accused during opening statements and the SPO's case, especially given its relatively short duration, is necessary for their full participation in these proceedings. Accordingly, the Single Trial Judge denies this request, without prejudice to any future application that may be brought in respect of subsequent stages of the case.

VI. CLASSIFICATION

67. The present decision is temporarily classified as confidential for security reasons. If and when the process of release is complete, a public redacted version of this decision will be issued.

¹³⁸ Fazliu Submissions, paras 22-23.

¹³⁹ See Rule 68(2) ("When the Accused is at liberty and attends the initial appearance hearing, he or she may, upon authorisation by the Panel, attend subsequent proceedings via video-conference, provided that Specialist Counsel attends the hearing in person"); [Decision on the Conduct of Proceedings](#), para. 43.

¹⁴⁰ SPO Submissions, para. 11.

VII. DISPOSITION

68. For the above reasons, the Single Trial Judge hereby:
 - a. **ORDERS** Mr Fazliu's release from detention in accordance with the Host State Agreement, subject to strict conditions, as outlined in paragraph 63 of the present decision, pending the implementation of all necessary practical arrangements by the Registrar;
 - b. **ORDERS** the Registrar to [REDACTED], and to make all other necessary arrangements for the implementation of the present decision;
 - c. **DETERMINES** that Mr Fazliu's release, as ordered in sub-paragraph a. above, shall take effect upon full payment of the financial security for his release, in accordance with paragraph 63(d) of the present decision, and **DECIDES** to extent Mr Fazliu's detention until such time;
 - d. **ORDERS** the Registrar to put on record when Mr Fazliu's financial security has been received [REDACTED];
 - e. **ORDERS** the Registrar to make all practical arrangements as expeditiously as possible, and **AUTHORISES** the Registrar to liaise with the competent authorities of the Host State and any other competent authorities, as necessary;
 - f. **ORDERS** Mr Fazliu and his Defence team not to reveal the content of this decision, which remains confidential, to any other person, including other accused in the SC Detention Facilities and family members, until all practical arrangements have been put in place and Mr Fazliu's secure release in Kosovo is ensured, as outlined in paragraph 65 of the present decision;
 - g. **REJECTS** Mr Fazliu's request for remote attendance at trial; and

h. **ORDERS** Mr Fazliu be physically present to attend trial proceedings commencing on 27 February 2026 and scheduled to continue through 6 March 2026, and to liaise with the Registrar to ensure that travel documents required for travel to the Host State are temporarily returned to him, exclusively for that purpose.



Judge Christopher Gosnell
Single Trial Judge

Dated this Tuesday, 3 February 2026

At The Hague, the Netherlands.