



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
Bashkim Smakaj**

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I.	PROCEDURAL BACKGROUND.....	2
II.	SUBMISSIONS.....	4
A.	Defence Submissions	4
B.	SPO Submissions.....	4
III.	APPLICABLE LAW	5
IV.	DISCUSSION	7
A.	Grounded Suspicion	7
B.	Presence of Article 41(6)(b) Risks	7
1.	Risk of Flight.....	7
2.	Risk of Obstructing the Progress of SC Proceedings	12
3.	Risk of Committing Further Offences	17
4.	Conclusion	17
C.	Potential Conditions of Release	17
D.	Proportionality of Detention	18
1.	The Reasonableness and Proportionality of Detention Must Be Assessed Even When the Rule 41(6)(b) Risk Factors Exist	18
2.	Parties' Submission and Analysis.....	22
E.	Conditions of Release	26
V.	CLASSIFICATION.....	29
VI.	DISPOSITION.....	30

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, Bashkim Smakaj ("Mr Smakaj") 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 in the present case on 29 November 2024.²
2. On 8 December 2024, Mr Smakaj made his initial appearance, at which time his continued detention was ordered.³ He remains in custody to this day,

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

² KSC-BC-2023-12, F00042, Registrar, [Notification of Arrest of Bashkim Smakaj 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 Appearance of Bashkim Smakaj*, 8 December 2024, public, p. 40, line 23, to p. 43, line 25.

following six bi-monthly detention reviews as required by Article 41(10),⁴ and one interim review, on 22 December 2025, pursuant to Rule 57(2).⁵

3. In the Interim Review Decision of 22 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, *inter alia*: (i) the specific conditions proposed by the Defence for Mr Smakaj (“Smakaj Defence”) to mitigate the risk of flight, including house arrest and the proposed security, as well as the risks of obstruction and repetition of offences; (ii) “the relevance of Mr Smakaj having now served more than the statutory minimum sentence on the charges he faces”; and (iii) the conditions that should be imposed on Mr Smakaj if he were to be released.⁷

4. On 6 January 2026, the Smakaj Defence made submissions in respect of the seventh periodic review of Mr Smakaj’s detention.⁸

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

⁴ KSC-BC-2023-12, F00164, Pre-Trial Judge, *Decision on Review of Detention of Bashkim Smakaj* (“First Review Decision”), 7 February 2025, public; F00249, Pre-Trial Judge, *Second Decision on Review of Detention of Bashkim Smakaj* (“Second Review Decision”), 7 April 2025, public; F00326, Pre-Trial Judge, *Third Decision on Review of Detention of Bashkim Smakaj* (“Third Review Decision”), 5 June 2025, public; F00406, Pre-Trial Judge, *Fourth Decision on Review of Detention of Bashkim Smakaj* (“Fourth Review Decision”), 5 August 2025, public; F00477, Pre-Trial Judge, *Fifth Decision on Review of Detention of Bashkim Smakaj* (“Fifth Review Decision”), 3 October 2025, public; F00596, Single Trial Judge, *Sixth Decision on Review of Detention of Bashkim Smakaj* (“Sixth Review Decision”), 3 December 2025, public.

⁵ KSC-BC-2023-12, F00643, Single Trial Judge, *Decision on Smakaj Defence’s Request for Interim Review of Detention on Remand and Order for Further Submissions* (“Interim Review Decision”), 22 December 2025, public.

⁶ *Interim Review Decision*, para. 18.

⁷ *Interim Review Decision*, para. 18.

⁸ KSC-BC-2023-12, F00654, Smakaj Defence, *Smakaj Submissions on Seventh Review of Detention of Bashkim Smakaj* (“Defence Submissions”), 6 January 2026, public, with Annexes 1-9, confidential.

⁹ KSC-BC-2023-12, F00665, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Bashkim Smakaj* (“SPO Submissions”), 14 January 2026, public.

¹⁰ KSC-BC-2023-12, F00672, Smakaj Defence, *Reply to Prosecution Submissions on Review of Detention of Bashkim Smakaj F00665* (“Defence Reply”), 16 January 2026, public.

II. SUBMISSIONS

A. DEFENCE SUBMISSIONS

6. The Smakaj Defence submits that minimal or no risks under Article 41(6)(b) exist¹¹ and any such risks can be managed with the imposition of conditions;¹² and that, in any event, the period of detention already served by Mr Smakaj now makes continued detention “neither reasonable nor proportionate”.¹³ The Smakaj Defence proposes a total security of €50,000 as a guarantee that Mr Smakaj will attend court proceedings when required, of which €20,000 will be provided by his family, and €30,000 by [REDACTED].¹⁴ The Smakaj Defence also provides information on the immediate availability of the funds.¹⁵ The Smakaj Defence argues in reply that the SPO’s proposed condition of house arrest is unsupported.¹⁶

B. SPO SUBMISSIONS

7. The SPO argues that previous judicial findings on the existence of the risk of flight and the articulable grounds to believe that Mr Smakaj will obstruct proceedings and commit further offences “remain undisturbed”¹⁷ and that there have been “no consequential changes of circumstance”.¹⁸ The SPO also makes submissions on conditions that should be imposed on Mr Smakaj should he be provisionally released.¹⁹

¹¹ Defence Submissions, paras 11-12.

¹² Defence Submissions, paras 11, 21.

¹³ Defence Submissions, paras 9-10.

¹⁴ Defence Submissions, paras 19-20.

¹⁵ Annexes 4, 7, and 9 to Defence Submissions.

¹⁶ Defence Reply, para. 6.

¹⁷ SPO Submissions, paras 2-3.

¹⁸ SPO Submissions, para. 4.

¹⁹ SPO Submissions, para. 12.

III. APPLICABLE LAW

8. 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:
 - 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.

9. 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.

10. 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”).²⁰ The Single Trial Judge will apply these same standards to the present decision.

²⁰ See, for example, [Second Review Decision](#), paras 20-21 (general requirements), 22 (grounded suspicion), 26-29 (necessity of detention), 40 (conditional release) and 43 (proportionality), with references cited therein; and [First Review Decision](#), paras 18-19 (general requirements), 20 (grounded suspicion), 24-27 (necessity of detention), 41 (conditional release) and 46 (proportionality), with references cited therein.

11. 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”.²¹ Each bi-monthly review of detention is a *de novo* assessment²² and the “duty to determine whether the circumstances underpinning detention ‘still exist’ is not a light one”.²³ 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 that, at the time of the review decision, grounds for continued detention still exist.²⁴

12. 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*”.²⁵ The Single Trial Judge understands that although he is not required to revisit findings made in previous detention

²¹ KSC-BC-2023-12, IA008-F00006, [Decision on Fadil Fazliu's Appeal Against Fifth Decision on Review of Detention](#) (“Fazliu Fifth Detention Review Appeal Decision”), 5 December 2025, public, para. 42.

²² KSC-BC-2020-06, F003484, Trial Panel II, [Decision on Periodic Review of Detention of Jakup Krasniqi](#), 18 September 2025, public, para. 49 (“[T]he Panel observes that detention is governed by strict 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.

²³ 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.

²⁴ 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.

²⁵ [Second Kilaj Detention Appeal Decision](#), para. 31.

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.

IV. DISCUSSION

A. GROUNDED SUSPICION

13. On the basis of the findings in the Confirmation Decision,²⁶ and in the absence of any submissions to the contrary by the Smakaj 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

14. The SPO argues that the factors substantiating a risk of flight in respect of Mr Smakaj remain unchanged, including: (i) his “awareness of the gravity of the charged offences, and the potential sentence”; (ii) his “demonstrated blatant disregard for the laws and the rules of the KSC”; (iii) his “possession of an active Albanian passport”; and (iv) his means to flee to jurisdictions beyond the reach of the SC, “considering his former positions in Kosovo” and his connections with the Kosovo Liberation Army (“KLA”).²⁷

15. The Smakaj Defence submits that minimal or no risk of flight exists, given the lengthy period Mr Smakaj has already spent in detention, which has now exceeded the statutory minimum sentence for the charges he faces.²⁸ The Smakaj Defence indicates that the proposed conditions for Mr Smakaj’s release are in any event

²⁶ [Confirmation Decision](#), paras 42-43, 211, 260, 287-288, 299, 313(c).

²⁷ SPO Submissions, para. 5.

²⁸ Defence Submissions, paras 10-11.

ample to address any residual risk of flight,²⁹ in particular the security of €50,000, provided partially by his wife and son.³⁰ The Smakaj Defence denies that Mr Smakaj possesses an Albanian passport, as it has been confiscated by the SPO.³¹ Additionally, the Smakaj Defence avers that the Accused is a professional academic of positive reputation and character, with rooted family, community and professional ties in Kosovo.³²

16. 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.³³

17. The Sixth Review Decision did not determine whether Mr Smakaj presents a risk of flight under Article 41(6)(b)(i).³⁴ Previous bi-monthly reviews did make that finding on the basis of Mr Smakaj’s: (i) awareness of the gravity of the offences with which he is charged, and the potential sentence that might be imposed; (ii) “demonstrated blatant disregard” for the laws and rules of the SC; (iii) possession of an “active Albanian passport” that would allow him to travel freely to jurisdictions beyond the reach of the SC; and (iv) means to evade justice, in

²⁹ Defence Submissions, para. 11.

³⁰ Defence Submissions, para. 20; Defence Reply, para. 4(c).

³¹ Defence Reply, para. 4(a).

³² Defence Submissions, paras 17-18.

³³ 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.

³⁴ [Sixth Review Decision](#), paras 12-13.

particular in light of his past (high-level) positions in Kosovo's institutions and his links to former KLA commanders.³⁵ The Pre-Trial Judge also indicated that she was "attentive" to Mr Smakaj's "increased insight" into the evidence against him as a result of ongoing disclosure.³⁶

18. The factors relevant to Mr Smakaj's risk of flight have changed in at least two respects since it was last assessed on 3 October 2025.³⁷

19. First, Mr Smakaj has now spent four additional months in detention, thus reducing by that same period the potential duration of any term of imprisonment that might be imposed upon him in these proceedings ("Case 12").³⁸ This concomitantly reduces the "potential sentence" that the SPO relies upon³⁹ as a factor enhancing his incentive to flee. Concretely, the prospective additional period of detention to which Mr Smakaj could be subject in case of conviction in these proceedings 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.⁴⁰

20. Second, the security that would be forfeited in case Mr Smakaj were to flee has increased from €30,000 to €50,000. The additional €20,000 is to be provided by his

³⁵ See, among others, [Fifth Review Decision](#), para. 17; [Fourth Review Decision](#), para. 28; [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28.

³⁶ See [Fifth Review Decision](#), para. 17; [Fourth Review Decision](#), para. 28; [Third Review Decision](#), para. 24.

³⁷ [Fifth Review Decision](#), paras 17-19.

³⁸ 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").

³⁹ SPO Submissions, para. 5.

⁴⁰ 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 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").

wife and son.⁴¹ The Single Trial Judge finds unpersuasive the SPO's argument that this security "has no meaningful impact" as "it is principally sourced from a 3rd party".⁴² On the contrary, a substantial share of the security now comes from close family members. The remaining €30,000 comes from a person who at least, based on the additional submissions made and an accompanying statement by the source of the security,⁴³ appears to [REDACTED]. In these circumstances, the proposed security does constitute an objective disincentive to flee which, given its size and sources, is entitled to substantial weight.

21. The Single Trial Judge considers, as in previous review decisions,⁴⁴ that Mr Smakaj likely does have the capacity, in light of his past positions and stature, to become a fugitive. However, the Single Trial Judge considers that the SPO, as the party bearing the burden to establish the Rule 41(6)(b) risks, has not substantiated its factual claim that Mr Smakaj continues to possess a valid Albanian passport, including any details concerning: (i) the date it was issued; (ii) the date it expires; or (iii) its basis for believing that this passport is still possessed or retrievable by Mr Smakaj. Indeed, Mr Smakaj denies that he is in possession of "an active Albanian passport" and avers that the SPO is now in possession of his passports.⁴⁵ In the absence of more detailed submissions from the SPO, and in light of the contradictory submissions of the Parties, the Single Trial Judge cannot rely on the assertion that Mr Smakaj possesses an "active Albanian passport". In any event, very little weight is attached to this factor one way or the other, since the absence of such a passport does not mean that flight could not be undertaken across borders,

⁴¹ Defence Submissions, para. 20; Defence Reply, para. 4(c).

⁴² SPO Submissions, para. 5.

⁴³ KSC-BC-2023-12, F00654/A02, Smakaj Defence, *Annex 2 to Smakaj Submissions for Seventh Review on Detention of Bashkim Smakaj*, 6 January 2026, confidential.

⁴⁴ [Fifth Review Decision](#), para. 17; [Fourth Review Decision](#), para. 28; [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 71.

⁴⁵ Defence Reply, para. 4(a), referring to SPO Submissions, para. 5 ("[T]he Prosecution erroneously refers to the Accused's possession of an 'active Albanian passport', when in fact the Prosecution is in possession of the Accused's passports").

including to jurisdictions that might be beyond the SC's reach. At most, the absence of such a passport would make flight, and the ability to remain in any country of arrival, more difficult.

22. The Pre-Trial Judge was "attentive" to Mr Smakaj's "increased insight into the evidence underpinning the charges through the ongoing disclosure process" in assessing the risk of flight in the Fifth Review Decision,⁴⁶ however, the SPO does not rely on this factor in this detention review as enhancing Mr Smakaj's risk of flight.⁴⁷ In any event, progressive awareness of the strength or weakness of evidence or sentencing practice from other cases, should not be accorded undue weight; in fact, some Trial Panels have rejected these considerations as "speculative".⁴⁸ The Single Trial Judge therefore accords very limited weight to any incremental added incentive to flee purportedly arising from progressive disclosure of evidence.

23. Another factor that has weighed in favour of Mr Smakaj's continued detention in previous decisions, and that is again relied upon by the SPO, is his "demonstrated blatant disregard for the laws and rules of the SC" reflected in the charges themselves.⁴⁹ 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

⁴⁶ [Fifth Review Decision](#), para. 17. *See also supra* footnote 36.

⁴⁷ SPO Submissions, para. 10 (arguing that "disclosure steps" may enhance the risk of targeting potential witnesses, but not relying on this factor as enhancing the risk of flight).

⁴⁸ 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 Thaçi'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](#) ("Veseli Periodic Review Decision"), 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").

⁴⁹ SPO Submissions, para. 5; *see also* [Fifth Review Decision](#), para. 17; [Fourth Review Decision](#), para. 28; [Third Review Decision](#), para. 24; [Second Review Decision](#), para. 30; [First Review Decision](#), para. 28; [Decision on Arrest](#), para. 69.

charges”⁵⁰ – 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 Smakaj’s flight risk, especially in the absence of any wider pattern of unlawful conduct having been proffered by the SPO, let alone any prior criminal convictions.⁵¹

24. Additionally, Mr Smakaj’s apparent settled family and professional life in Prishtinë/Priština is a factor that diminishes the risk of flight.⁵² The SPO has not contested Mr Smakaj’s submission that he is married, has two young children, and retains his professorship at a university in Prishtinë/Priština.⁵³ Becoming a fugitive in these circumstances would entail substantial personal and professional costs which weigh against such an endeavour.

25. The Single Trial Judge finds, based on a holistic assessment of the foregoing considerations, that Mr Smakaj does not present a risk of flight to continue to be detained on the basis of Article 41(6)(b)(i), provided that he is released on the conditions set out below, in particular the provision of a security of €50,000 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

26. The SPO relies on the Single Trial Judge’s finding in the Sixth Review Decision that “a ‘real’ risk remains that Mr Smakaj may, if released, obstruct the progress of

⁵⁰ [Fazliu Fifth Detention Review Appeal Decision](#), 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”).

⁵¹ 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).

⁵² See ECtHR, [Becciev v. Moldova](#), no. 9190/03, Judgment (Merits and Just Satisfaction), 4 October 2005, para. 58 (citing “family ties and all kinds of links with the country in which he is prosecuted” as a consideration relevant to assessing flight risk).

⁵³ Defence Submissions, paras 17-18.

SC proceedings" on the basis of the following factors: "(i) the nature of the charges against Mr Smakaj in this case, which involve allegations of unlawfully influencing witnesses; (ii) including by coordinating with other persons to do so; and (iii) Mr Smakaj's increased awareness of the incriminating evidence against him".⁵⁴ According to the SPO, an "untenable risk" of obstruction would be posed by Mr Smakaj's "unmonitored access to Case 6 witnesses and uncharged co-perpetrators and/or potential witnesses in this case".⁵⁵ The SPO seems to imply that Mr Smakaj has a strong incentive to attempt to improperly influence Witness 2 in the case of *The Specialist Prosecutor v. Hashim Thaci et al.* ("Case 06") for the purpose of the present proceedings, noting that the Smakaj Defence demands that he be called as a witness.⁵⁶

27. The Smakaj Defence submits that Mr Smakaj has no incentive to improperly influence Witness 2, as he has already given a recorded interview to the SPO in which he "refuted the SPO's claims that there had been any attempt to obstruct his testimony".⁵⁷ Mr Smakaj's alleged uncharged co-perpetrators "have already been identified and accounts obtained from them"⁵⁸ (and indeed, they have already been listed as Defence witnesses in the Smakaj Defence Pre-Trial Brief).⁵⁹ The Smakaj Defence also asserts that the continued liberty of alleged co-perpetrators weighs in

⁵⁴ SPO Submissions, para. 6, quoting [Sixth Review Decision](#), para. 15.

⁵⁵ SPO Submissions, para. 6.

⁵⁶ SPO Submissions, para. 6. See also KSC-BC-2023-12, F00513, Smakaj Defence, *Smakaj Pre-Trial Brief in accordance with Rule 95(5)* ("Smakaj Pre-Trial Brief"), 19 October 2025, confidential, para. 17; a public redacted version was submitted on 27 January 2026, F00513/RED.

⁵⁷ Defence Reply, para. 5(a). See also KSC-BC-2023-12, F00459/COR/A01, Specialist Prosecutor, *Annex 1 to Corrected Version of "Prosecution Submission of Pre-Trial Brief, Witness and Exhibit List"* ("SPO Pre-Trial Brief"), 6 October 2025, confidential, para. 114; a public redacted version was submitted on 7 October 2025, F00489/A01 ("Witness 2 claimed that during this October 2023 meeting at Gizioni restaurant, as well as during their other meeting prior to this, he never discussed his testimony with SMAKJ").

⁵⁸ Defence Submissions, para. 14.

⁵⁹ Smakaj Pre-Trial Brief, para. 16.

favour of Mr Smakaj's provisional release, since he "ought not to be unfairly singled out for detention".⁶⁰

28. The Single Trial Judge considers that the factors pointing towards the risk that Mr Smakaj 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;⁶¹ (ii) including by allegedly coordinating with other persons to do so;⁶² and (iii) Mr Smakaj's increased awareness of the incriminating evidence against him, as a result of the ongoing disclosure in this case,⁶³ which may enhance a misguided belief that he could effectively influence the evidence to be heard.⁶⁴ In respect of the second consideration, some of the alleged uncharged co-perpetrators presumably remain at liberty, and could be encouraged to influence witnesses, especially given the context of a pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC.⁶⁵ The weight to be accorded to this factor, contrary to the Smakaj Defence's submissions, is not lessened by the alleged disparate treatment of Mr Smakaj and his alleged co-perpetrators, which is a matter of prosecutorial charging discretion.

29. However, the potential for influence which could impact the integrity of the SPO case is very limited. First, none of the SPO's witnesses in Case 12, given their

⁶⁰ Defence Submissions, para. 16.

⁶¹ See [Sixth Review Decision](#), para. 15; [Fifth Review Decision](#), para. 20; [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74, with further explanations.

⁶² [Sixth Review Decision](#), para. 15; [Fifth Review Decision](#), para. 20; [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 33; [First Review Decision](#), para. 32; [Decision on Arrest](#), para. 74.

⁶³ 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.

⁶⁴ [Sixth Review Decision](#), para. 15; [Fifth Review Decision](#), para. 20; [Fourth Review Decision](#), para. 31; [Third Review Decision](#), para. 27; [Second Review Decision](#), para. 34; [First Review Decision](#), para. 33; [Decision on Arrest](#), para. 75.

⁶⁵ 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.

circumstances,⁶⁶ are likely to be subject to the influence of Mr Smakaj or his likely associates. Second, most of the SPO's evidence in Case 12 is documentary and digital in nature, and beyond the influence of Mr Smakaj or anyone else.⁶⁷ Third, Case 06 Witness 2 – [REDACTED] – has already given a statement to the SPO that shows that Mr Smakaj would have little to gain by seeking to improperly influence him, since he had already denied that their conversations concerned his testimony in Case 06.⁶⁸ Fourth, Mr Smakaj's Defence team is permitted, subject to the applicable witness contact protocol,⁶⁹ to contact potential Defence witnesses, thus reducing the possibility of Mr Smakaj believing that he needs to do so surreptitiously. Indeed, all three of Mr Smakaj's alleged uncharged co-perpetrators are already listed as Defence witnesses, although no summary of their expected testimony or statements has been disclosed.⁷⁰ Accordingly, while there remains some opportunity for Mr Smakaj to surreptitiously influence the testimony of these witnesses, various factors also limit his incentive and ability to do so.

⁶⁶ KSC-BC-2023-12, F00459/COR/A03, Specialist Prosecutor, *Annex 3 to Corrected Version of "Prosecution Submission of Pre-Trial Brief, Witness and Exhibit List"*, 6 October 2025, confidential. [REDACTED].

⁶⁷ 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.

⁶⁸ SPO Pre-Trial Brief, para. 114.

⁶⁹ 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 submitted 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 submitted on the same day, F00295/CONF/RED, while a public redacted version was submitted 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.

⁷⁰ Smakaj Pre-Trial Brief, para. 16.

30. Furthermore, the presentation of evidence in Case 06 is now closed,⁷¹ which substantially reduces (albeit does not eliminate)⁷² the practical opportunity or incentive for interference.⁷³

31. Finally, Mr Smakaj's incentive to engage in such behaviour is also viewed by the Single Trial Judge as diminished in light of the previous detection of his alleged conduct, and the consequences that have ensued. Mr Smakaj 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.⁷⁴ Mr Smakaj would accordingly now be aware of the possibility of detection of such conduct, and the consequences that could arise from such conduct being discovered.

32. Based on a holistic assessment of the circumstances above, the Single Trial Judge finds that there remains a risk that Mr Smakaj 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

⁷¹ 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.

⁷² KSC-BC-2023-12, F00599, Single Trial Judge, *Sixth Decision on Review of Detention of Isni Kilaj* ("Kilaj Sixth Review Decision"), 3 December 2025, confidential and *ex parte*, para. 26; a public redacted version was issued on 10 December 2025, [F00599/RED](#) ("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").

⁷³ 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 74-75) and was still specifically relied upon in the Fifth Review Decision (see [Fifth Review Decision](#), para. 21). 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.

⁷⁴ 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").

the Defence case in these proceedings, and the incentives against doing so described above, this risk is no greater than moderate.

3. Risk of Committing Further Offences

33. 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.⁷⁵

34. In light of the above,⁷⁶ the Single Trial Judge concludes that there remains a moderate risk that Mr Smakaj would commit further offences, pursuant to Article 41(6)(b)(iii), if provisionally released.

4. Conclusion

35. 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 Smakaj 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

36. 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*”.⁷⁷ This

⁷⁵ [Sixth Review Decision](#), para. 18; [Fifth Review Decision](#), para. 24; [Fourth Review Decision](#), para. 34; [Third Review Decision](#), paras 28, 32, with references cited therein.

⁷⁶ See *supra* paras 28-32.

⁷⁷ [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.

standard reflects the presumption in favour of pre-trial release, which is itself a reflection of the bedrock principle of the presumption of innocence.⁷⁸

37. As previously found, the Single Trial Judge accepts that the payment of the proposed security does sufficiently mitigate the risk of flight.⁷⁹

38. 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.⁸⁰ In particular, those conditions provide no means of ensuring that Mr Smakaj could not engage in surreptitious electronic communications with alleged uncharged co-perpetrators.⁸¹

39. In light of the above, the Single Trial Judge concludes that the available conditions for Mr Smakaj's release, including as proposed by the Smakaj Defence, and any other available conditions that could be realistically imposed by the Single Trial Judge, remain insufficient to adequately mitigate the risks under Article 41(6)(b)(ii)-(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

40. 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

⁷⁸ 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] 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".

⁷⁹ See *supra* para. 20.

⁸⁰ Referring to Defence Submissions, para. 21.

⁸¹ [Fifth Review Decision](#), para. 28; [Fourth Review Decision](#), para. 38; [Third Review Decision](#), para. 36; [Second Review Decision](#), para. 41; [First Review Decision](#), para. 43.

“unreasonable”.⁸² The argumentation of the SPO is untenable for the following reasons.

41. The Single Trial Judge observes that the lone jurisprudential statement in support of the SPO’s proposition was not addressing the scope of Rule 56(2) relative to Article 41(6)(b), but rather the extent to which determinations under Article 41(6)(b) are themselves “discretionary”.⁸³ 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

⁸² SPO Submissions, para. 9 (“When these risks are established, and no lesser measures of detention are available, the accused shall continue to be detained”).

⁸³ 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”).

him has yet to be confirmed, that detention is still proportional at this early stage of proceedings.⁸⁴

42. Subsequent Court of Appeals Panel decisions have applied the proportionality principle through Rule 56(2), and have applied this principle 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 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.⁸⁵

43. 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, Isni Kilaj (“Mr Kilaj”) was twice released despite the existence of Article 41(6)(b) risk factors that could not be mitigated.⁸⁶ 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

⁸⁴ [Gucati Appeal Decision](#), paras 72-73.

⁸⁵ 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](#) (“Thaci 2021 Appeal Decision”), 27 October 2021, public, para. 49.

⁸⁶ [Kilaj Sixth Review Decision](#); 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](#).

a factor that needs to be considered along with the degree of the risks" under Article 41(6)(b).⁸⁷ The Single Judge also mentioned the severity of the penalty in the event of a conviction, and the progress of the case.⁸⁸ The Court of Appeals Panel noted that the Single Judge had found the Article 41(6)(b) risks to be "serious" while still ordering release on the basis of his assessment of the proportionality of detention.⁸⁹

44. 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".⁹⁰ 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".⁹¹

45. Accordingly, even if Article 41(6)(b) risk factors are found to exist, the Single Trial Judge must still consider whether Mr Smakaj'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".⁹² 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,⁹³

⁸⁷ [Kilaj Release Decision](#), para. 60.

⁸⁸ [Kilaj Release Decision](#), para. 60.

⁸⁹ 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](#).

⁹⁰ [Second Kilaj Detention Appeal Decision](#), para. 46.

⁹¹ [Second Kilaj Detention Appeal Decision](#), para. 56.

⁹² See 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.

⁹³ 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").

(ii) “the nature of the offence as well as the severity of the penalty”;⁹⁴ (iii) the gravity of the offences and the nature of the accused’s role;⁹⁵ (iv) “the degree of risks that are described in Article 41(6)(b) of the Law”;⁹⁶ (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;⁹⁷ and (vi) the frequent review of detention which, pursuant to the Rules, occurs every two months.⁹⁸

2. Parties’ Submission and Analysis

46. 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.⁹⁹ The SPO “carries the burden of establishing that detention is necessary and that its length remains reasonable”,¹⁰⁰ and “any analysis of pre-trial detention must take the presumption of innocence as its starting point”.¹⁰¹ As the Court of Appeals Panel has remarked, “the longer a

⁹⁴ 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”).

⁹⁵ [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”); [Veseli Periodic Review Decision](#), para. 38 (“Mr Veseli is charged with ten counts of serious international crimes in which he is alleged to play a significant role”).

⁹⁶ See [Kilaj Release Decision](#), para. 60; [Thaci 2021 Appeal Decision](#), para. 49.

⁹⁷ 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”).

⁹⁸ See [Selimi Appeal Decision](#), para. 81.

⁹⁹ 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”); [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”).

¹⁰⁰ See [Second Kilaj Detention Appeal Decision](#), para. 47.

¹⁰¹ [Selimi Appeal Decision](#), para. 37.

person remains in pre-trial detention the higher the burden on the Specialist Chambers to justify continued detention".¹⁰²

47. The SPO argues that Mr Smakaj's detention continues to be "proportionate and reasonable" on the basis of: (i) the limited time since the Sixth Review Decision, when such a finding was made by the Single Trial Judge; (ii) the advancement of the case towards trial, whose start is "imminent"; and (iii) the intensity of the "real risk" that Mr Smakaj will seek to influence potential witnesses, including Witness 2 and other Case 06 witnesses, as well as other uncharged co-perpetrators, as enhanced by the pervasive climate of witness intimidation in Kosovo.¹⁰³ The gravity of the Article 41(6)(b) risks is said to outweigh Mr Smakaj's right to liberty "independent of whether [Mr Smakaj] has served more than the statutory minimum sentence on the charges he faces".¹⁰⁴

48. The Smakaj Defence argues that the Accused's continued detention is neither reasonable nor proportionate, submitting that: (i) there is a very real danger that the period of pre-trial detention "will exceed any sentence of imprisonment if convicted on Counts 12 and 13" unless provisionally released;¹⁰⁵ (ii) the period spent in custody has already surpassed the statutory minimum sentence for the charges the Accused faces;¹⁰⁶ and (iii) risks under Article 41(6)(b), if any, are "minimal" and "proportionately addressed by the conditions proposed".¹⁰⁷

¹⁰² See [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.

¹⁰³ SPO Submissions, para. 10. See also footnote 64.

¹⁰⁴ SPO Submissions, para. 11 ("Ultimately, SMAKAJ'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").

¹⁰⁵ Defence Submissions, para. 9.

¹⁰⁶ Defence Submissions, para. 10.

¹⁰⁷ Defence Submissions, paras 11-12, 15.

49. The Single Trial Judge finds that the SPO has not met its burden of showing that Mr Smakaj's further detention is reasonable or proportionate. On the contrary, the duration of detention, given Mr Smakaj's circumstances, has become unreasonable and his immediate release is required.

50. First, as of the date of this decision, Mr Smakaj 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 Smakaj has served more than the statutory minimum sentence if he were to be convicted.¹⁰⁸ He has also served a significant portion of the maximum statutory sentence. The duration of the period 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.¹⁰⁹

51. 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 Smakaj is no longer a flight risk, and reduces the risk that he would repeat the alleged previous obstructive conduct.¹¹⁰

¹⁰⁸ 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".*

¹⁰⁹ 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").

¹¹⁰ *See supra* paras 19, 31.

52. Third, the opportunities for obstruction are reduced relative to previous detention reviews. The evidential phase of Case 06 is now closed,¹¹¹ 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 Contact Protocol.¹¹² 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”.¹¹³ On balance, however, the potential risks are outweighed by the substantial period that Mr Smakaj has now been detained relative to the statutory sentencing range, whether maximum or minimum.

53. Fourth, justifying detention until the opportunity to call Defence witnesses is over, despite trial being set to start on 27 February 2026,¹¹⁴ implies the continued detention of Mr Smakaj for a period that will likely reach some months. The Single Trial Judge considers this to be an unacceptably lengthy prolongation of his detention.

54. The Single Trial Judge finds, on the basis of these considerations, that the risk of future obstruction of proceedings by Mr Smakaj, 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.

¹¹¹ See *supra* footnote 71.

¹¹² See *supra* footnote 69.

¹¹³ See *supra* footnote 65.

¹¹⁴ 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

55. The SPO submits that the conditions of release imposed on Mr Kilaj should be likewise ordered in respect of Mr Smakaj, “which should be further enhanced to: (i) prohibit SMAKAJ from employing communication devices belonging to other persons or requesting others to use their devices for this purpose; (ii) ensure the effective monitoring of SMAKAJ’s communications, particularly with uncharged co-perpetrators in the Smakaj Group; and (iii) provide for house arrest”.¹¹⁵

56. The Smakaj Defence submits that it has already proposed conditions comparable to those imposed upon Mr Kilaj (referring to the first two points requested by the SPO).¹¹⁶ However, it considers that the SPO has not provided justification for suggesting that house arrest should be additionally imposed on Mr Smakaj.¹¹⁷

57. The Single Trial Judge considers that: (i) the conditions of release imposed on Mr Kilaj are a proven and appropriate framework for provisional release in the context of Mr Smakaj’s conditional release; and (ii) imposing house arrest as a condition of Mr Smakaj’s release is neither necessary nor justified.

58. The Single Trial Judge thus orders the following conditions for Mr Smakaj’s release:¹¹⁸

- (a) Mr Smakaj shall not leave the territory of Kosovo unless so authorized by a competent panel of the SC;
- (b) Mr Smakaj 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

¹¹⁵ SPO Submissions, para. 12.

¹¹⁶ Defence Reply, para. 6.

¹¹⁷ Defence Reply, para. 6.

¹¹⁸ See [Kilaj Sixth Review Decision](#), para. 50.

of this decision; if Mr Smakaj'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 Smakaj shall provide an address at which he will reside in Kosovo for the duration of the judicial proceedings and shall request permission from the SC prior to any change of residence;
- (d) Mr Smakaj 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 €50,000 to the Registry, [REDACTED];
- (e) Mr Smakaj 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) Mr Smakaj shall refrain from any contact or communication, direct or indirect (through any other person),¹¹⁹ 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 2;
- (g) Mr Smakaj shall refrain 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];
- (h) Mr Smakaj shall not discuss, except with the designated members of his Defence team, the substance of his case, whether public or confidential

¹¹⁹ Lawful contacts through counsel in accordance with the applicable orders and statutory provisions of the SC are evidently not encompassed by this prohibition.

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) Mr Smakaj 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) Mr Smakaj shall make himself available for a weekly verification check by the Kosovo Police, in accordance with the procedures designated by the Registrar;
- (k) Mr Smakaj 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;
- (l) Mr Smakaj 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) Mr Smakaj 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

(n) Mr Smakaj shall abide by any other decision, order or instruction of the Single Trial Judge and the Registrar.

59. The Single Trial Judge emphasises that, should any of the above conditions be violated, provisional release shall be immediately terminated, and Mr Smakaj will be subject to the issuance of an arrest warrant against him.

60. Mr Smakaj 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 Smakaj's secure release in Kosovo is ensured.
[REDACTED].

V. CLASSIFICATION

61. 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.

VI. DISPOSITION

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

- a. **ORDERS** Mr Smakaj's release from detention in accordance with the Host State Agreement, subject to strict conditions, as outlined in paragraph 58 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 Smakaj's release, as ordered in subparagraph a above, shall take effect upon full payment of the financial security for his release, in accordance with paragraph 58(d) of the present decision, and **DECIDES** to extend Mr Smakaj's detention until such time;
- d. **ORDERS** the Registrar to put on record when Mr Smakaj'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 Smakaj 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 Smakaj's secure release in Kosovo is ensured, as outlined in paragraph 60 of the present decision; and

g. **ORDERS** Mr Smakaj to 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.