



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

Date: 19 March 2026

Language: English

Classification: Public

**Reasons for the Oral Order on Variation of Conditions of Provisional Release
and Additional Variation in Respect of Participation in Proceedings by Video-
Conference**

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THE SINGLE TRIAL JUDGE, pursuant to Article 41(6) and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 56 and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers,¹ hereby issues these reasons for an oral order given in court on 3 March 2026, and an additional decision related thereto.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 2 March 2026, Mr Kilaj, Mr Smakaj, Mr Fazliu and Mr Kuçi (the "Accused" or "Defence") jointly requested, by email and in court, the lifting of two conditions of their provisional release,² namely that they:

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 ([...]), or with any person whom he knows to be a visitor to any of his co-accused in the SC Detention Facilities;

[...]

shall not discuss, except with the designated members of his Defence team, the substance of his case, whether public or confidential information, with anyone, including close family members, and shall advise anyone who makes inquiries about his case that he is subject to such a prohibition by the SC.³

2. The Defence noted that these conditions prohibit the Accused from exchanging even the briefest of greetings while present in the courtroom during their trial and that these conditions were no longer necessary or proportionate;

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, CRSPD 245, Defence, *Defence Request for Variation of Two Bail Conditions*, 2 March 2026, confidential ("Request"); KSC-BC-2023-12, Transcript of Hearing, 2 March 2026, confidential, p. 489, lines 1-11. The conditions applicable to Mr Kuçi, which are different than those applicable to Mr Kilaj, Mr Smakaj and Mr Kuçi, are discussed separately.

³ See KSC-BC-2023-12, F00599/RED, Single Trial Judge, *Public Redacted Version of Sixth Decision on Review of Detention of Isni Kilaj* ("Kilaj Provisional Release Decision"), 10 December 2025, public, para. 50(e) and (h); F00719/RED, Single Trial Judge, [Public Redacted Version of Seventh Decision on Review of Detention of Bashkim Smakaj](#) ("Smakaj Provisional Release Decision"), 10 February 2026, public, para. 58(e) and (h); F00720/RED, Single Trial Judge, [Public Redacted Version of Seventh Decision on Review of Detention of Fadil Fazliu](#) ("Fazliu Provisional Release Decision"), 10 February 2026, public, para. 63(e) and (i).

do not prevent any “clear mischief” especially given the short duration of the Prosecution case; and are anomalous in that they prevent contacts between the Accused while on provisional release that would be, and had been, permitted amongst the three Accused while detained.

3. The SPO opposed the Request, arguing that the Defence has provided little to no justification for modifying the current measures and has not demonstrated that the restrictions are disproportionate under Article 41; the risks of obstruction of proceedings and commission of further offences remain unchanged since that risk was recognised in the decisions on provisional release for each of the Accused, in particular the risk of attempted influence of Defence witnesses; and the Request effectively amounts to a reconsideration of the earlier release decisions under Rule 79, while failing to meet the test for reconsideration.⁴

4. On 3 March 2026, the Single Trial Judge issued an Oral Order granting the Request in part, indicating that written reasons would follow.⁵

II. APPLICABLE LAW

5. Article 41(12) and Rule 56(2),(5) and (6) authorise the imposition of conditions upon a person provisionally released pending the determination of charges against them.⁶ The Single Trial Judge possesses “broad discretion” in the selection of these conditions, which may be justified by the need to secure

⁴ KSC-BC-2023-12, CRSPD 245, Specialist Prosecutor, *SPO Response to Defence Request for Variation of Two Bail Conditions*, 3 March 2026, confidential (“Response”).

⁵ KSC-BC-2023-12, Transcript of Hearing, 3 March 2026, public (“Oral Order”).

⁶ KSC-BC-2018-01/IA007/F00007/RED, Court of Appeals Panel, *Public Redacted Version of Decision on the Specialist Prosecutor’s Office Appeal Against Decision on Isni Kilaj’s Review of Detention* (“Kilaj Appeal Decision”), 13 May 2024, public, para. 41 (“[t]he Panel recalls that under Rule 56(2) of the Rules, a panel may release the person under conditions deemed appropriate”); KSC-BC-2018-01, F00760/RED, Single Judge, [Public Redacted Version of Decision on Application for Temporary Variation of Conditions for Release](#), 18 September 2024, public, para. 28.

the accused's presence, prevent re-offending, and ensure the proper conduct of criminal proceedings.⁷

III. DISCUSSION

A. CONDITIONS IMPOSED ON MR SMAKAJ, MR KILAJ AND MR FAZLIU

6. The decisions on provisional release of Mr Kilaj, Mr Fazliu and Mr Smakaj (decided on 3 December 2025 for Mr Kilaj and on 3 February 2026 for Mr Fazliu and Mr Smakaj) found that there was a "moderate" risk that they would improperly influence potential Defence witnesses if released.⁸ Their provisional release was nevertheless ordered on the basis that the period of detention had become disproportionate.⁹ Several conditions were imposed to reduce the moderate risk of improperly influencing potential Defence witnesses, three of which are relevant to the Defence request:

[the Accused] shall refrain from any contact, or communication, direct or indirect (through any other person), of any kind and through any means, with his co-accused;¹⁰

[the Accused] shall refrain from any contact or communication, direct or indirect (through any other person), with any person alleged in the

⁷ Article 41(12); *see also* Kilaj Appeal Decision, para. 41 ("[t]he Single Judge has broad discretion to select the conditions he deems necessary to impose").

⁸ Kilaj Provisional Release Decision, para. 29 ("[i]n light of the above, the Single Trial Judge concludes that there remains a moderate risk that Mr Kilaj would commit further offences, pursuant to Article 41(6)(b)(iii), if provisionally released"); Smakaj Provisional Release Decision, para. 32 ("there remains a risk that Mr Smakaj would obstruct the course of proceedings under Article 41(6)(b)(ii) if released"); Fazliu Provisional Release Decision, para. 35 ("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").

⁹ Kilaj Provisional Release Decision para. 47; Smakaj Provisional Release Decision, para. 54 ("[t]he 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 pretrial detention, outweighed by his fundamental right to liberty"); Fazliu Provisional Release Decision, para. 59.

¹⁰ Kilaj Provisional Release Decision, para. 50(e); Smakaj Provisional Release Decision, para. 58(e); Fazliu Provisional Release Decision, para. 63(e).

Confirmed Indictment as having participated in or assisted in the obstructive conduct in this case [...];¹¹

[the Accused] shall not discuss, except with the designated members of his Defence team, the substance of his case, whether public or confidential information, with anyone [...].¹²

7. The Single Trial Judge considers that the justification for these conditions continues to exist. The core allegation in the Confirmed Indictment against Mr Kilaj, Mr Fazliu and Mr Smakaj is that they sought to improperly influence witnesses in concert with other persons, albeit not with one another.¹³ Prohibiting contact with others alleged to have committed the same offences, and discussion of confidential matters with anyone else, does mitigate the risk that they might improperly influence prospective Defence witnesses – including even inadvertent influence in the context of a “prevalent climate of witness intimidation in Kosovo”.¹⁴

8. The Single Trial Judge does, however, accept the Defence submission that these conditions are disproportionate in the specific context of contacts amongst Mr Kilaj, Mr Fazliu and Mr Smakaj while they are present on the premises of the KSC for the purpose of participating in the trial proceedings against them. In this context, they have legitimate and compelling reasons to discuss with one another the ongoing trial. Furthermore, they cannot realistically be expected,

¹¹ Kilaj Provisional Release Decision, para. 50(g); Smakaj Provisional Release Decision, para. 58(g); Fazliu Provisional Release Decision, para. 63(h).

¹² Kilaj Provisional Release Decision, para. 50(h); Smakaj Provisional Release Decision, para. 58(h); Fazliu Provisional Release Decision, para. 63(i).

¹³ KSC-BC-2023-12, F00264/A02, Specialist Prosecutor, [Public Redacted Amended Confirmed Indictment](#), 16 April 2025, public.

¹⁴ Kilaj Provisional Release Decision, para. 45; Smakaj Provisional Release Decision, para. 52; Fazliu Provisional Release Decision, para. 57; *see also*, 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(b) (“[t]here is a prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations/prosecutions of crimes attributed to ex KLA members”); Fazliu Provisional Release Decision, para 62 (“[t]he Single Trial Judge is concerned that, given the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC, 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”).

given their mutual proximity arising from their presence at trial, and the fact that they are at liberty even while in or around the courtroom, to refrain from communicating with one another.

9. Accordingly, the three conditions of provisional release above are subject to the following exception: Mr Kilaj, Mr Fazliu and Mr Smakaj may communicate with one another (and, as discussed below, with Mr Kuçi), including referring to confidential information, while they are physically present on the premises of the KSC for the purpose of participating in trial proceedings, but may not discuss any confidential information while in the public areas of the KSC.

B. CONDITIONS IMPOSED ON MR KUÇI

10. Mr Kuçi, having never been detained but only summoned to appear before the KSC, is subject to different conditions than Mr Kilaj, Mr Fazliu and Mr Smakaj. He is required by his summons to:

[R]efrain from discussing with any person, with the exception of his Counsel, issues related to the charges which form the basis of the present summons, or the evidence and information presented by the SPO and considered by the SC in the proceedings against him.¹⁵

11. A subsequent condition was imposed, namely that he is prohibited:

[U]ntil otherwise ordered, from any contact, or communication, direct or indirect (through any other person), of any kind and through any means, with Messrs Thaçi, Smakaj, Fazliu, Kilaj, [...].¹⁶

¹⁵ KSC-BC-2023-12, F00037/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Request for Arrest Warrants and Related Matters](#) (“Kuçi Summons to Appear”), 19 December 2024, public, para. 100(c).

¹⁶ KSC-BC-2023-12, F00094/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Prosecution Request for Variation of Conditions on Hajredin Kuçi](#), 17 March 2025, public, para. 14.

12. The Single Trial Judge considers that these restrictions are justified for the same reasons as in respect of Mr Kilaj, Mr Fazliu and Mr Smakaj, and that they should be subject to the same exception for Mr Kuçi as set out in paragraph 9 above.

C. ADDITIONAL VARIATION IN RESPECT OF PARTICIPATION IN PROCEEDINGS BY VIDEO-CONFERENCE

13. The Single Trial Judge notes that while the Oral Order is specifically limited to the KSC premises in the Hague, these reasons apply equally to communications amongst Mr Kuçi, Mr Kilaj, Mr Fazliu and Mr Smakaj while they are present on premises used by the KSC for the purpose of their participation in proceedings via video-conference pursuant to Rule 96(2). Accordingly, the exception shall include, but be strictly limited to, the period during which Mr Kuçi, Mr Kilaj, Mr Fazliu and Mr Smakaj are present in the room(s) from which they participate in the proceedings via video-conference. The conditions shall continue to apply as soon as they leave the specific room(s) from which they will have participated in the proceedings via video-conference.

IV. DISPOSITION

For the above-mentioned reasons, the Single Trial Judge:

- a. **GRANTED** the Request, in part, as set out in the Oral Order; and

- b. **DECIDES** that the exception defined in the Oral Order likewise applies, but is strictly limited to, periods during which the Accused are present in the room(s) from which they will have participated in the proceedings via video-conference.



Judge Christopher Gosnell
Single Trial Judge

Dated this Thursday, 19 March 2026

At The Hague, the Netherlands.