

**In:** KSC-BC-2023-12

**Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi**

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 6 July 2026

**Language:** English

**Classification:** Public

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**Public Redacted Version of Thaçi Defence Submissions on Detention Review with Confidential and *Ex Parte* Annexes 1, 3, 5 and Confidential Annexes 2, 4, 6**

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## I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby makes the following submissions on review of detention pursuant to Article 41(6) and (10) of the Law,<sup>1</sup> Rules 56 and 57 of the Rules,<sup>2</sup> and the Single Trial Judge’s (“STJ”) order.<sup>3</sup> The Defence requests that the STJ order Mr Thaçi’s interim release on the grounds, *inter alia*, that he is not at flight risk, especially in light of the financial guarantee of €50,000 offered to secure his release,<sup>4</sup> and that his continued detention is no longer reasonable or proportionate.

## II. PROCEDURAL HISTORY

2. On 5 December 2024, Mr Thaçi, already detained in the context of *Case 06* (KSC-BC-2020-06), was notified an arrest warrant in *Case 12* (KSC-BC-2023-12).<sup>5</sup> His continued detention has been ordered since then following bi-monthly reviews.<sup>6</sup>

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<sup>1</sup> Law No. 05/L-053 on [Specialist Chambers and Specialist Prosecutor’s Office](#) (“Law”).

<sup>2</sup> KSC-BD-03/Rev3/2020, [Rules of Procedure and Evidence Before the Kosovo Specialist Chambers](#), 2 June 2020, (“Rules”).

<sup>3</sup> KSC-BC-2023-12/F00928, [Ninth Decision on Review of Detention of Hashim Thaçi](#), 2 June 2026, public (“Ninth Review Decision”), paras 33, 35(b).

<sup>4</sup> Annexes 1-6.

<sup>5</sup> KSC-BC-2023-12/F00048, [Notification of Service of Arrest Warrant on Hashim Thaçi Pursuant to Rule 55\(4\)](#), 5 December 2024, public.

<sup>6</sup> KSC-BC-2023-12, [Transcript of Hearing, Initial Appearance of Hashim Thaçi, 8 December 2024](#), public, p. 18, lines 10-20; KSC-BC-2023-12/F00165, [Decision on Review of Detention of Hashim Thaçi](#), 7 February 2025, public (“First Review Decision”); KSC-BC-2023-12/F00250, [Second Decision on Review of Detention of Hashim Thaçi](#), 7 April 2025, public; KSC-BC-2023-12/F00325, [Third Decision on Review of Detention of Hashim Thaçi](#), 5 June 2025, public; KSC-BC-2023-12/F00405, [Fourth Decision on Review of Detention of Hashim Thaçi](#), 5 August 2025, public; KSC-BC-2023-12/F00476, [Fifth Decision on Review of Detention of Hashim Thaçi](#), 3 October 2025, public (“Fifth Review Decision”); KSC-BC-2023-12/F00597, [Sixth Decision on Review of Detention of Hashim Thaçi](#), 3 December 2025, public; KSC-BC-2023-12/F00718, [Seventh Decision on Review of Detention of Hashim Thaçi](#), 3 February 2026, public; KSC-BC-2023-12/F00838, [Eighth Decision on Review of Detention of Hashim Thaçi](#), 2 April 2026, public; [Ninth Review Decision](#).

3. On 3 December 2025 and 3 February 2026, the STJ ordered the interim release of Messrs Isni Kilaj,<sup>7</sup> Bashkim Smakaj,<sup>8</sup> and Fadil Fazliu,<sup>9</sup> having considered, *inter alia*, that the duration of their detention had become unreasonable and disproportionate,<sup>10</sup> and on the condition that they provide a financial security to the Registrar.<sup>11</sup>

### III. APPLICABLE LAW

4. The KSC statutory regime establishes a presumption in favour of an accused being at liberty. Arrest and detention are justified only when established criteria, set out in Article 41(6) of the Law, are satisfied. Pursuant to Article 41(6)(a) and (b), detention requires a grounded suspicion that an accused committed a crime within the KSC's jurisdiction; and articulable grounds to believe that the person (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime or commit a crime which they have threatened to commit.

5. As noted by the Court of Appeals Panel ("Appeals Panel"), detention cannot be justified on the basis of *any* possibility of a risk materialising; rather, the risk must

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<sup>7</sup> KSC-BC-2023-12/F00599/RED, [Public Redacted Version of Sixth Decision on Review of Detention of Isni Kilaj](#), 3 December 2025 ("**Kilaj Release Decision**").

<sup>8</sup> KSC-BC-2023-12/F00719/RED, [Public Redacted Version of Seventh Decision on Review of Detention of Bashkim Smakaj](#), 3 February 2026 ("**Smakaj Release Decision**").

<sup>9</sup> KSC-BC-2023-12/F00720/RED, [Public Redacted Version of Seventh Decision on Review of Detention of Fadil Fazliu](#), 3 February 2026 ("**Fazliu Release Decision**").

<sup>10</sup> In light of Mr Kilaj's detention for **18 months and 10 days** ([Kilaj Release Decision](#), paras 40, 47), Mr Smakaj's detention for **13 months and 29 days** ([Smakaj Release Decision](#), paras 49-50), and Mr Fazliu's detention for **13 months and 29 days** ([Fazliu Release Decision](#), paras 54-55).

<sup>11</sup> In the form of a monetary transfer in the amount of €40,000 for Mr Kilaj ([Kilaj Release Decision](#), para. 50(d)), €50,000 for Mr Smakaj ([Smakaj Release Decision](#), para. 58(d)), and €40,000 for Mr Fazliu ([Fazliu Release Decision](#), para. 63(d)).

be ‘real’, with the standard requiring less than certainty, but more than mere possibility of a risk materialising.<sup>12</sup>

6. The STJ’s duty to determine whether the circumstances underpinning detention still exist requires assessing whether he is 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 person remains warranted.”<sup>13</sup> Thus, each bi-monthly review of detention is a *de novo* assessment.<sup>14</sup>

#### IV. SUBMISSIONS

##### A- ABSENCE OF ARTICLE 41(6)(B) RISKS

7. The SPO’s asserted in its latest submissions on review of detention of Hashim Thaçi that the Panel’s duty concerns assessing “what, *if anything*, has changed since the prior ruling”.<sup>15</sup> That is not correct. The requirement is that the Panel examine, every two months, “whether the reasons for detention on remand still exist.”<sup>16</sup> As the Appeals Panel has explained, while a change of circumstances can be determinative, the review “is not strictly limited to whether or not a change of circumstances occurred in the case.”<sup>17</sup>

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<sup>12</sup> KSC-BC-2020-06/IA004/F00005, [Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release](#), 30 April 2021 (“**Case 06 Interim Release Appeal Decision**”), paras 21-22; KSC-BC-2023-12/IA004/F00005, [Decision on Isni Kilaj’s Appeal Against Third Decision on Review of Detention](#), 1 September 2025, public (“**Kilaj Appeal Decision**”), para. 66.

<sup>13</sup> [First Review Decision](#), para. 12.

<sup>14</sup> [Ninth Review Decision](#), para. 6.

<sup>15</sup> KSC-BC-2023-12/F00907, *Prosecution submissions on review of detention of Hashim Thaçi*, 11 May 2026, confidential ([PRV](#) 12 May 2026), para. 4.

<sup>16</sup> [Article 41\(10\) of the Law](#).

<sup>17</sup> [Kilaj Appeal Decision](#), para. 31. See also [Ninth Review Decision](#), para. 7.

### i. Risk of flight

8. The Appeals Panel has explained the nature of the “risks” to be determined under Article 41(6)(b) as follow:

[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.<sup>18</sup>

9. The Defence observes that the STJ has not made any finding yet as to whether Mr Thaçi is a flight risk, considering that only one of the Article 41(6)(b) conditions need be satisfied.<sup>19</sup>

10. In contrast, the Pre-Trial Judge in *Case 12*<sup>20</sup> and the Trial Panel II<sup>21</sup> in *Case 06* both made findings on the first Article 46(6)(b) criteria – flight risk – and indeed reached opposing findings on it, despite addressing materially identical factual circumstances. As the Defence has previously submitted,<sup>22</sup> this contradiction is problematic. While these proceedings are independent of each other,<sup>23</sup> there is an inherent link between them,<sup>24</sup> including as regards witnesses and evidence.<sup>25</sup> For the

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<sup>18</sup> [Case 06 Interim Release Appeal Decision](#), paras 21-22.

<sup>19</sup> [Ninth Review Decision](#), para. 10.

<sup>20</sup> [Fifth Review Decision](#), paras 16-17.

<sup>21</sup> KSC-BC-2020-06/F03747, [Decision on Periodic Review of Detention of Hashim Thaçi](#), 10 June 2026, paras. 14-16 (“**Decision F03747**”).

<sup>22</sup> KSC-BC-2023-12/F00575, *Thaçi Defence Response to Prosecution submissions on review of detention (F00552)*, 25 November 2025, confidential and *ex parte* ([PRV](#) 26 November 2025), para. 9.

<sup>23</sup> [First Review Decision](#), para. 21.

<sup>24</sup> KSC-BC-2023-12-F00172/RED, [Decision on Prosecution Request for Protective Measures](#), 12 February 2025, public (“**Decision on Protective Measures**”), para. 32.

<sup>25</sup> A significant amount of *Case 12* SPO material has been submitted to Trial Panel II, since it concerns the alleged attempted obstruction of a number of witnesses from *Case 06*, and was used by the SPO, *inter alia*, to ask Trial Panel II to restrict Mr Thaçi’s conditions of detention: [Decision on Protective Measures](#), para. 32; KSC-BC-2020-06/F01977, [Further Decision on the Prosecution’s Urgent Request for](#)

purpose of this review the most important overlap between the two cases is Mr Thaçi himself.

11. The Pre-Trial Judge found that a risk of flight exists on the basis of the following considerations: (i) the gravity of the charged offences, and the potential sentence if convicted; (ii) Mr Thaçi's alleged *mala fide* intentions towards the laws and rules of the KSC; and (iii) his means and opportunity to flee.<sup>26</sup> The Pre-Trial Judge further attached weight to the fact that Mr Thaçi continues to gain increased insight into the evidence underpinning the charges against him through the ongoing disclosure process.<sup>27</sup>

12. The Defence submits that Mr Thaçi does not represent a flight risk, be it in *Case 12* or *Case 06*, and that the specificity of *Case 12*<sup>28</sup> does not justify a finding different from that adopted in *Case 06*. The Pre-Trial Judge adopted an incorrect approach in her assessment of the flight risk. Having stated that this risk must be assessed independently in the context of each case, she erroneously identified a *higher* flight risk in this case than in *Case 06*, despite this case involving far less serious allegations, and a much lower possible sentence.<sup>29</sup> Contrary to the Pre-Trial Judge's findings, as demonstrated below, Mr Thaçi is even less at risk of flight in *Case 12* than in *Case 06*.

13. Indeed, the charges are significantly more serious and the potential sentence far higher in *Case 06* than in *Case 12*,<sup>30</sup> and Trial Panel II has consistently found that Mr Thaçi was not at flight risk. The Defence recalls Trial Panel II's findings in *Case 06* on 13 December 2024 (thus after his initial appearance in *Case 12*) that:

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[Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi](#), 1 December 2025, public, para. 35.

<sup>26</sup> [Fifth Review Decision](#), para. 16.

<sup>27</sup> [Fifth Review Decision](#), para. 16.

<sup>28</sup> [First Review Decision](#), para. 21.

<sup>29</sup> [First Review Decision](#), para. 21.

<sup>30</sup> The maximum sentence incurred for the charges against Mr Thaçi in *Case 12* is five years pursuant to Article 401 of the 2019 Kosovo Criminal Code ("KCC"), while the maximum sentence incurred for the charges against Mr Thaçi in *Case 06* is life-long imprisonment pursuant to Article 44 of the KSC Law.

Regarding the SPO's argument that the risk of flight is heightened given that Mr Thaçi is now aware that the SPO has gathered evidence against him of obstruction, the Panel notes that Mr Thaçi already faces charges relating to core international crimes, and the new evidence which allegedly relates to obstruction does not constitute a significant change in circumstances justifying a different finding on risk of flight. The Panel notes that the SPO has previously made this argument in respect of Mr Thaçi, and the Panel has already rejected it.<sup>31</sup>

14. During its last detention review in *Case 06*, Trial Panel II took into account similar arguments raised by the SPO, namely (i) Mr Thaçi's awareness of the seriousness of the confirmed charges against him in *Case 06*; (ii) the potential of a long sentence should he be convicted in *Case 06*; and (iii) Mr Thaçi's awareness that charges of criminal offences against the administration of justice have been confirmed against him; Trial Panel II concluded that the SPO has failed to establish its claim of a "sufficiently real possibility" that Mr Thaçi will abscond if released and that his detention was not justified at this time based on the risk of flight.<sup>32</sup>

15. The Defence submits that the Panel in *Case 06* was correct and that Mr Thaçi already faces charges in respect of core international crimes that, if convicted, could attract a far greater custodial sentence than the charges in the instant case. Therefore, the Defence refutes the SPO submission that the gravity of the offences in the instant case and their potential sentence establish a real risk of flight, in circumstances where the Trial Panel in *Case 06* has already considered that they do not.

16. The Defence notes that the President herself decided to appoint a STJ, instead of a Trial Panel, in the present case, because she observed that "the charges against all Accused in this case are not classified as serious crimes under Article 22 of the Kosovo Criminal Procedure Code".<sup>33</sup> Similarly, in the context of a previous case involving offences against the administration of justice, the Court of Appeals Chamber noted

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<sup>31</sup> KSC-BC-2020-06/F02781, [Decision on Periodic Review of Detention of Hashim Thaçi](#), 13 December 2024 ("Decision F02781"), para. 15.

<sup>32</sup> Decision F03747, paras 15-16.

<sup>33</sup> KSC-BC-2023-12/F00543, [Decision Assigning a Single Trial Judge](#), 12 November 2025, public, para. 4.

that, although the public interest in protecting the integrity of proceedings through effective prosecution of offences against the administration of justice should not be underestimated, such offences are not as grave as the core crimes under Articles 13 and 14 of the Law.<sup>34</sup> This further corroborates the fact that *Case 12* charges are less severe than the *Case 06* charges and that any risk of flight is less important in *Case 12* than in *Case 06*.

17. In any event, the factors relevant to Mr Thaçi's risk of flight have changed in several respects since it was last assessed by the Pre-Trial Judge on 3 October 2025.

18. First, Mr Thaçi has now spent nine additional months in detention, *i.e.* a total of **578 days (1 year and 7 months)** since the service of his arrest warrant in *Case 12*, thus reducing by that same period the potential duration of any term of imprisonment that might be imposed upon him in the present proceedings.<sup>35</sup> This concomitantly reduces the potential sentence relied upon as a factor enhancing his incentive to flee. By way of comparison, in *Case 07* (KSC-BC-2020-07) – which involved some of the same offences charged in this case, and some additional offences, but with the difference that those offences were actually *committed* and involved threats of violence – sentences of four years and three months of imprisonment, with credit for time served, and a fine of €100, were eventually imposed.<sup>36</sup> This suggests that even in the event of a conviction, the potential sentence in the present case would be less than four years, meaning that once time served is accounted for, any additional custodial period would be very limited.

19. Second, Mr Thaçi has now offered a financial security of **€50,000**. Half of this guarantee comes from one of his brothers, the other half comes from two close friends

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<sup>34</sup> KSC-BC-2020-07/IA001/F00005, [Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention](#), 9 December 2020, para. 71.

<sup>35</sup> See [Kilaj Release Decision](#), para. 20; [Smakaj Release Decision](#), para. 19; [Fazliu Release Decision](#), para. 21.

<sup>36</sup> KSC-CA-2022-01/F00114, [Appeal Judgement](#), 2 February 2023, para. 442.

eager to support his reunion with his family. The Defence annexes their statements confirming the nature of their relationship with Mr Thaçi and their readiness to provide such a security; copies of their identity documents and extracts of their bank statements demonstrating that the sums proposed as security are available.<sup>37</sup> The Defence submits that the proposed security constitutes an objective disincentive for Mr Thaçi to flee, given that its sources are persons very close to Mr Thaçi and the amounts are significant for them. These factors indicate that the proposed security should be given substantial weight.<sup>38</sup>

20. Third, while the Pre-Trial Judge attached weight to the fact that Mr Thaçi continued to gain increased insight into the evidence underpinning the charges against him through the ongoing disclosure process,<sup>39</sup> this factor is not relevant anymore since both the SPO and the Defence have now closed their cases,<sup>40</sup> the parties have not requested leave to present rebuttal evidence and the STJ has indicated that he did not intend to call evidence pursuant to Rule 132.<sup>41</sup> While the Appeals Panel has remanded one specific matter on the admissibility of Witness 8's evidence to the STJ,<sup>42</sup> the scope of that evidence is limited,<sup>43</sup> and thus any additional litigation or evidence

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<sup>37</sup> Annexes 1-6.

<sup>38</sup> See [Kilaj Release Decision](#), para. 20; [Smakaj Release Decision](#), para. 20; [Fazliu Release Decision](#), paras 22-23.

<sup>39</sup> [Fifth Review Decision](#), para. 16.

<sup>40</sup> KSC-BC-2023-12/F00916, [Thaçi Defence Notice pursuant to Rule 131](#), 14 May 2026 public; KSC-BC-2023-12/F00914, [Kilaj Defence Notice Pursuant to Rule 131](#), 14 May 2026, public; KSC-BC-2023-12/F00917, [Kuçi Defence Notice Pursuant to Rule 131](#), 14 May 2026, public; KSC-BC-2023-12/F00918, [Bashkim Smakaj Defence Notice Pursuant to Rule 131](#), 15 May 2026, public; KSC-BC-2023-12/F00919, [Fazliu Defence Notice Pursuant to Rule 131](#), 18 May 2026, public.

<sup>41</sup> KSC-BC-2023-12/F00857, [Order for Submissions on the Further Conduct of Proceedings](#), 16 April 2026, public, para. 6.

<sup>42</sup> KSC-BC-2023-12/IA009/F00005/RED, [Public Redacted Version of Decision on Specialist Prosecutor's Appeal Against Decision on Admission of Expert Evidence of Witness 8](#), 30 June 2026 ("Witness 8 Appeal Decision"), para. 100.

<sup>43</sup> KSC-BC-2023-12/F00890/RED, [Public Redacted Version of Order on the Further Conduct of Proceedings](#), 29 April 2026, para. 14.

related to his expertise would not impact<sup>44</sup> Mr Thaçi's alleged incentive to flee. In any event, as observed by the STJ, 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 outright these considerations as "speculative".<sup>45</sup> Therefore, only very limited weight might be accorded to any incremental added incentive to flee purportedly arising from progressive disclosure of evidence in this case.<sup>46</sup>

21. Fourth, while the Pre-Trial Judge relied on Mr Thaçi's purported *mala fide* intentions towards the laws and rules of the KSC,<sup>47</sup> the STJ rightly observed that potentially engaging in surreptitious obstruction of proceedings cannot be taken as strongly predictive of a willingness to become a fugitive from justice.<sup>48</sup>

22. In any case, while the Pre-Trial Judge relied on Mr Thaçi's purported means and opportunity to flee,<sup>49</sup> it should be stressed that when he was informed of his arrest warrant in *Case 06*, for the charges of war crimes and crimes against humanity, Mr Thaçi immediately resigned from the position of President of Kosovo and subjected himself voluntarily to the jurisdiction of the KSC. Trial Panel II itself noted that:

the Panel has credited Mr Thaçi with cooperation because when he was informed of his arrest warrant, he resigned from the position of President of Kosovo and subjected himself voluntarily to the jurisdiction of the SC.<sup>50</sup>

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<sup>44</sup> [Ninth Review Decision](#), para. 14: "While there remains a possibility, depending on the outcome of a pending interlocutory appeal, of evidence being presented in response to that of prosecution Witness 8, it would likely be limited in scope."

<sup>45</sup> [Smakaj Release Decision](#), para. 22; and [Fazliu Release Decision](#), para. 25, referring to KSC-BC-2020-06/F01720, [Decision on Periodic Review of Detention of Hashim Thaçi](#), 16 August 2023, public, para. 15; and to KSC-BC-2020-06/F01721, [Decision on Periodic Review of Detention of Kadri Veseli](#), 16 August 2023, public, para. 17.

<sup>46</sup> [Smakaj Release Decision](#), para. 22; [Fazliu Release Decision](#), para. 25.

<sup>47</sup> [Fifth Review Decision](#), para. 16.

<sup>48</sup> [Smakaj Release Decision](#), para. 23; [Fazliu Release Decision](#), para.26.

<sup>49</sup> [Fifth Review Decision](#), para. 16.

<sup>50</sup> Decision F02781, para. 16; KSC-BC-2020-06/F02926, [Decision on Periodic Review of Detention of Hashim Thaçi](#), 13 February 2025, para. 16

23. In addition, Mr Thaçi's behaviour during his temporary releases – under escort - on humanitarian grounds demonstrates that he is not at flight risk.<sup>51</sup> He returned to the Detention Unit in The Hague without incident. At no time Mr Thaçi has shown any intent to escape,<sup>52</sup> while being aware of the charges of criminal offences against the administration of justice and public order against him in *Case 12*, and of the evidence submitted by the SPO in support of such charges.

24. Accordingly, Mr Thaçi's cooperation with the KSC should be taken into account; there is even less risk that he would flee for less serious charges related to attempted obstruction and contempt.

25. Last, Mr Thaçi, who is 58 years-old, has profound family and community ties to Kosovo. Mr Thaçi's family, in particular his wife, son and mother, but also his brothers and a sister, live in Kosovo, and he was actively involved in Kosovo politics until his surrender in *Case 06* in 2021. He has previously served his country as Prime Minister of Kosovo from 2008 to 2014 and was elected President of Kosovo in 2016.<sup>53</sup> If released, Mr Thaçi intends to reside at his house with his wife and son in [REDACTED]. Therefore, becoming a fugitive in these circumstances would entail substantial personal and professional costs which weigh heavily against the likelihood of such flight.<sup>54</sup>

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<sup>51</sup> KSC-BC-2023-12/F00213, *Decision on Third Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 12 March 2025, confidential and *ex parte* ([PRV 14 April 2025](#)); KSC-BC-2023-12/F00230/COR, *Corrected Version of Decision on Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 19 March 2025, confidential and *ex parte* ([PRV 14 April 2025](#)); KSC-BC-2023-12/F00239/RED, [Public Redacted Version of "Report of the Registrar Pursuant to Decision on Third Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds" \(F00239\)](#), 24 March 2025, public, para. 14.

<sup>52</sup> The Defence observes that Mr Thaçi's custodial visits occurred in public surroundings, with the potential presence of crowd in the vicinity.

<sup>53</sup> KSC-BC-2023-12/F00523/A01, [Public redacted version of 'ANNEX 1 to Notification of agreed facts'](#), 23 October 2025, public, Agreed Facts n° 4 and 5.

<sup>54</sup> [Smakaj Release Decision](#), para. 24; [Fazliu Release Decision](#), para. 27.

26. In consequence, the Defence requests the STJ to find that Mr Thaçi does not present a risk of flight under Article 41(6)(b)(i), provided that he is released on the condition, *inter alia*, to provide a security of 50 000 Euros bail that would be forfeited if he were to fail to attend court proceedings.

27. Mr Thaçi is willing to abide to conditions similar to those imposed to his co-accused, qualified as “a proven and appropriate framework for provisional release”,<sup>55</sup> or any other conditions deemed appropriate by the STJ, namely:<sup>56</sup>

- a) Mr Thaçi shall not leave the territory of Kosovo unless so authorized by a competent panel of the KSC;
- b) Mr Thaçi 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 Thaçi’s presence is required at the seat of the KSC, 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 Thaçi shall provide an address at which he will reside in Kosovo for the duration of the judicial proceedings and shall request permission from the KSC prior to any change of residence;
- d) Mr Thaçi 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;

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<sup>55</sup> [Smakaj Release Decision](#), para. 57.

<sup>56</sup> [Kilaj Release Decision](#), para. 50; [Smakaj Release Decision](#), para. 58; [Fazliu Release Decision](#), para. 63.

- e) Mr Thaçi 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 (Bashkim Smakaj, Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi);
- f) Mr Thaçi shall refrain from any contact or communication, direct or indirect (through any other person), of any kind and through any means, with any person whom he knows to be a witness in this or any other case before the KSC;
- g) Mr Thaçi 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;
- h) Mr Thaçi shall not discuss, except with the designated members of his Defence team, the substance of his case, 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 KSC;
- i) Mr Thaçi 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 KSC, the SPO and/or any KSC proceedings;
- j) Mr Thaçi shall make himself available for a weekly verification check by the Kosovo Police, in accordance with the procedures designated by the Registrar;
- k) Mr Thaçi shall surrender himself to the custody of the KSC, if so ordered, and shall attend any hearing as required by the KSC; any failure to appear before the KSC, as ordered, will lead to the forfeiture of the financial security in subparagraph (d) and the immediate issuance of a warrant of arrest;
- l) Mr Thaçi 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 Thaçi shall respect the classification of the decision on his release 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 decision has been made public upon order of the STJ; and
- n) Mr Thaçi shall abide by any other decision, order or instruction of the STJ and the Registrar.

**ii. Risk of obstructing the progress of KSC proceedings and risk of committing further crimes**

28. The STJ concluded in his Ninth Review Decision that a real risk remains that Mr Thaçi may, if released, obstruct the progress of the *Case 06* proceedings under Article 41(6)(b)(ii) or commit further offences under Article 41(6)(b)(iii), on the basis of the following factors:

(i) the grounded suspicion of extensive efforts by Mr Thaçi to obstruct the Case 6 proceedings, which are the basis for the charges in the present case; (ii) the alleged leadership role of Mr Thaçi in those efforts; (iii) the allegation that these efforts included seeking the cooperation of, and giving instructions to, individuals who are at liberty in Kosovo; (iv) the fact that these efforts extended to highly sensitive protected witnesses; and (v) that there remains a risk, notwithstanding the imminent closure of evidence in the present case, of retaliation against or efforts to influence those highly sensitive witnesses.<sup>57</sup>

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<sup>57</sup> [Ninth Review Decision](#), paras 17, 20.

29. Since this ruling, the Trial Panel II has announced that it will pronounce its trial judgement in *Case 06* on 16 September 2026<sup>58</sup> and the Appeals Panel has remanded the matter related of the admissibility of Witness 8's evidence to the STJ in *Case 12*, in order that he re-evaluate it.<sup>59</sup> Nevertheless, as observed by the STJ, "[w]hile there remains a possibility, depending on the outcome of a pending interlocutory appeal, of evidence being presented in response to that of prosecution Witness 8, it would likely be limited in scope".<sup>60</sup>

30. Accordingly, given the imminent issuance of a judgement in *Case 06* and the forthcoming resolution of the litigation related to Witness 8 and closure of the evidentiary phase in *Case 12*, the risk of obstruction in this case is considerably reduced relative to previous detention reviews.

31. In particular, since the presentation of evidence in *Case 06* is closed, this substantially reduces any practical opportunity or incentive for interference.<sup>61</sup> The Defence submits that Mr Thaçi has neither incentive nor will to retaliate against *Case 06* witnesses and there is no reason for him to incentivise any witness to recant at the final stage of *Case 06* proceedings<sup>62</sup> as this would now have no evidentiary value.

32. In addition, the potential for influence which could impact the integrity of the SPO case or proceedings in *Case 12* is very limited, noting that the likelihood of

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<sup>58</sup> KSC-BC-2020-06/F03757, [Order Extending the Deadline for the Pronouncement of the Trial Judgment and Scheduling the Pronouncement of the Trial Judgment](#), 1 July 2026, para. 15.

<sup>59</sup> [Witness 8 Appeal Decision](#), para. 100.

<sup>60</sup> [Ninth Review Decision](#), para. 14.

<sup>61</sup> [Smakaj Release Decision](#), para. 30, noting, in footnote 73, that "[t]he 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"; [Fazliu Release Decision](#), para. 32.

<sup>62</sup> The SPO has not presented any information or evidence capable of supporting the conclusion that Mr Thaçi will attempt to interfere with a witness to induce them to recant or try to seek revenge against a witness who has testified.

additional factual evidence being heard in this case has diminished further since the Ninth Review Decision.

33. First, the SPO has already had enough time to interview and take statements from any relevant *Case 06* witnesses regarding alleged interferences, including any 'highly sensitive witnesses', and the parties have decided not to call any fact witness. The three SPO witnesses who testified in person in *Case 12* are professionals and/or experts unlikely to be subject to influence or retaliation from Mr Thaçi or his associates.<sup>63</sup> Even if Witness 8's evidence was admitted, any additional evidence would be related to his field of purported expertise and thus be of a technical nature, beyond the influence of any Accused. The Pre-Trial Judge and STJ both acknowledged that in light of their profile, the risk of interference concerning the said witnesses is extremely low.<sup>64</sup> Moreover, none of them are, to the Defence's knowledge, based in Kosovo or nationals thereof; the purported persistent climate of intimidation of witnesses and victims in Kosovo cannot be considered relevant to any of them. Second, most of the SPO's evidence in *Case 12* is documentary and digital in nature and beyond the influence of Mr Thaçi or anyone else.<sup>65</sup> Accordingly, such factors limit Mr Thaçi's incentive and ability to influence or retaliate against witnesses.

34. Last, even if the STJ considers that Mr Thaçi's alleged past conduct indicates a risk, his incentive to engage in such behaviour should also be viewed as diminished in light of its detection and the consequences that have ensued.<sup>66</sup>

35. Accordingly, the Defence disputes the existence of any risk of obstruction or commission of further crimes under Article 41(6)(b)(ii) and (iii) if Mr Thaçi is released. Even if the STJ were to find that there remains such a risk, in light of the limited

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<sup>63</sup> [Smakaj Release Decision](#), para. 29; [Fazliu Release Decision](#), para. 32.

<sup>64</sup> [Fifth Review Decision](#), para. 19; [Kilaj Release Decision](#), para. 45; [Smakaj Release Decision](#), para. 29; [Fazliu Release Decision](#), para. 32.

<sup>65</sup> [Kilaj Release Decision](#), para. 45; [Smakaj Release Decision](#), para. 29; [Fazliu Release Decision](#), para. 32.

<sup>66</sup> [Smakaj Release Decision](#), para. 31; [Fazliu Release Decision](#), para. 34.

opportunities for negatively influencing the SPO evidence, and the incentives against doing so, it could at most be a mere possibility rather than a “real” risk.

### **B- ABSENCE OF PROPORTIONALITY OF DETENTION**

36. As observed by the STJ, the reasonableness and proportionality of detention must be assessed even when Article 41(6)(b) factors exist.<sup>67</sup> Thus, “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.”<sup>68</sup> The SPO “carries the burden of establishing that detention is necessary and that its length remains reasonable”.<sup>69</sup> Reasonableness is to be assessed by weighting various considerations, including:

(i) the duration of detention at the time of review; (ii) “the nature of the offence as well as the severity of the penalty”; (iii) the gravity of the offences and the nature of the accused’s role; (iv) “the degree of risks that are described in Article 41(6)(b) of the Law”; (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; and (vi) the frequent review of detention which, pursuant to the Rules, occurs every two months.<sup>70</sup>

37. The Defence maintains that Mr Thaçi’s further detention is neither reasonable nor proportionate. On the contrary, the duration of his detention, given Mr Thaçi’s circumstances, has become unreasonable and his immediate release is required.

38. First, as of the date of the present submissions, Mr Thaçi has been in detention for 19 months and 1 day. The statutory sentencing range for the more serious of the three offences with which he is charged, under Article 401(3) and (5) of the KCC, is

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<sup>67</sup> [Smakaj Release Decision](#), para. 45; [Fazliu Release Decision](#), para. 50.

<sup>68</sup> KSC-BC-2020-06/IA010-F0008/RED, [Public Redacted Version of Decision on Hashim Thaci’s Appeal Against Decision on Review of Detention](#), 27 October 2021, para. 49.

<sup>69</sup> KSC-BC-2023-12/IA004-F00005, [Decision on Isni Kilaj’s Appeal Against Third Decision on Review of Detention](#), 1 September 2025, public, para. 30; [Smakaj Release Decision](#), para. 46; [Fazliu Release Decision](#), para. 51.

<sup>70</sup> [Smakaj Release Decision](#), para. 45; [Fazliu Release Decision](#), para. 50.

one to five years. Mr Thaçi has served more than the statutory minimum sentence if he were to be convicted, and a significant portion of the maximum statutory sentence for the most serious charged offence. 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, being stressed that Mr Thaçi is charged not for actual obstruction but attempted obstruction.<sup>71</sup>

39. Second, this substantial period of detention impacts on the degree of the Article 41(6)(b) risks, and diminishes them.<sup>72</sup> Indeed, the additional period of detention, relative to previous detention reviews, together with the proposed security, imply that Mr Thaçi does not present any risk of flight, and reduces any risk that he would reiterate the alleged previous obstructive conduct.

40. Third, the opportunities for obstruction are reduced relative to previous detention reviews, in light of the imminent issuance of a trial judgement in *Case 06* and forthcoming closure of the evidentiary phase in *Case 12*. Any potential risks under Article 41(6)(b) are outweighed by the substantial period that Mr Thaçi has now been detained relative to the statutory sentencing range, whether maximum or minimum.

41. Fourth, the need for the STJ to decide anew on the admissibility of Witness 8's evidence has further postponed the anticipated schedule for the filing of final briefs and closing arguments, and, consequently, for the issuance of a trial judgement. This uncertainty renders further unjustified any prolongation of Mr Thaçi's detention.

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<sup>71</sup> [Kilaj Release Decision](#), paras 40-41; [Smakaj Release Decision](#), para. 50; [Fazliu Release Decision](#), para. 55. Cf. *R v Robson*, Court of Appeal of England and Wales, Judgment of 6 May 1954 (unreported) (“[it would be] at least unusual that an attempt should be visited with punishment to the maximum extent that the law permits in respect of a completed offence”); *R v Joseph* [2001] 2 Cr App R (S) 88, para. 14 (“attempted offences usually carry a lesser sentence than that imposed for the commission of the full offence”); *R v Johnstone* [2021] EWCA Crim 1683, para. 32.

<sup>72</sup> [Kilaj Release Decision](#), para. 42; [Smakaj Release Decision](#), para. 51; [Fazliu Release Decision](#), para. 56.

42. In consequence, any risk of obstruction of proceedings by Mr Thaçi, along with any ancillary additional offences that might be committed, is now, after more than 19 months of pre-trial detention, outweighed by his fundamental right to liberty.

43. The STJ should order Mr Thaçi's release under conditions similar to those imposed to his co-accused.<sup>73</sup>

## V. CLASSIFICATION

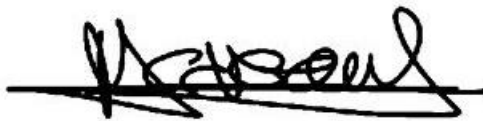
44. The present submissions are filed as confidential since they contain personal information of Mr Thaçi. A public redacted version will be filed in due course.

## VI. CONCLUSIONS

45. For the above reasons, the Defence requests the STJ to order Mr Thaçi's release from detention under the conditions he deems appropriate.

**[Word count: 6000 words]**

Respectfully submitted,



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Paris, France

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<sup>73</sup> See paras 26-27 above.