

1 Sunday, 8 December 2024

2 [Open session]

3 [Initial Appearance]

4 [The Accused Smakaj entered the courtroom]

5 --- Upon commencing at 10.45 a.m.

6 JUDGE MASSELOT: Good morning and welcome, everyone, to this  
7 Initial Appearance hearing.

8 Madam Court Officer, could you please call the case.

9 THE COURT OFFICER: Good morning, Your Honour. This is file  
10 KSC-BC-2023-12, The Specialist Prosecutor versus Hashim Thaci,  
11 Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuci.

12 JUDGE MASSELOT: Thank you, Madam Court Officer.

13 Before we start, I would like to give the photographer the  
14 opportunity to take some pictures.

15 You may proceed, Madam Photographer. It is my understanding  
16 that Mr. Smakaj does not want to be in a picture next to any security  
17 guard, and I therefore instruct you, when you take your picture, to  
18 take only close-up pictures of the accused.

19 You may proceed.

20 Thank you, Madam Photographer.

21 Before asking those present in the courtroom to introduce  
22 themselves, I would like to remind everyone of the rules that must be  
23 observed at all times in order to facilitate the smooth conduct of  
24 the proceedings.

25 Please ensure that you activate your microphone before speaking

1 and that you switch it off as soon as you are finished. Talk slowly  
2 and clearly as we have interpretation from and to Albanian and  
3 Serbian. Wait five seconds before responding to me or a party in  
4 order to allow the interpreters to finish the interpretation.

5 I would also like to remind you that certain information in this  
6 case is subject to confidentiality. Confidential information shall  
7 not be disclosed in open session. If any party wishes to refer to or  
8 discuss any confidential information, please request to go into  
9 private session.

10 Now I would kindly ask the parties to introduce themselves,  
11 starting with the Specialist Prosecutor's Office.

12 MR. HAFETZ: Thank you, Your Honour. Good morning. Josh Hafetz  
13 on behalf of the Specialist Prosecutor's Office. And I'm joined by  
14 Kim West, the Specialist Prosecutor, who is seated behind me, and to  
15 my left, Gaia Pergolo, and behind her, Earl Sullivan from the SPO.

16 JUDGE MASSELOT: Now the Defence, please.

17 MR. MARTENS: Good morning. My name is Bas Martens,  
18 Specialist Counsel for Mr. Smakaj. Thank you.

19 JUDGE MASSELOT: Thank you, counsel. For the record, I note  
20 that your client, Mr. Smakaj, is also present in the courtroom.

21 And I now turn to the Registry, please.

22 MR. NILSSON: Good morning, Your Honour. Good morning,  
23 colleagues. My name is Jonas Nilsson, I am the Deputy Registrar. I  
24 am here together with Whitney Price, legal counsel. Thank you.

25 JUDGE MASSELOT: Thank you.

1           And, last, for the record, I am Marjorie Masselot,  
2 Pre-Trial Judge for this case.

3           The accused is appearing today for the first time before the  
4 Specialist Chambers following confirmation of the indictment against  
5 him on 29 November 2024.

6           Mr. Smakaj, will you please stand. Could you please turn on  
7 your microphone and state your full name.

8           THE ACCUSED SMAKAJ: [Interpretation] Bashkim Smakaj.

9           JUDGE MASSELOT: What is your date and place of birth?

10          THE ACCUSED SMAKAJ: [Interpretation] Village of Kepuz, Kline, is  
11 my birthplace, and I was born on 1 July 1976.

12          JUDGE MASSELOT: What is your citizenship or what are your  
13 citizenships?

14          THE ACCUSED SMAKAJ: [Interpretation] I have a Kosovo citizenship  
15 and also Albanian citizenship.

16          JUDGE MASSELOT: And what is, please, your current profession?

17          THE ACCUSED SMAKAJ: [Interpretation] Working as a professor  
18 part-time in a university in Prishtine.

19          JUDGE MASSELOT: All right.

20          Mr. Smakaj, before we proceed any further, I have to make sure  
21 that you can follow the proceedings in a language that you understand  
22 and speak. Can you please confirm that you understand and speak  
23 Albanian?

24          THE ACCUSED SMAKAJ: [Interpretation] Yes, I do.

25          JUDGE MASSELOT: Thank you, Mr. Smakaj. By this, I am satisfied

1 that you can follow the proceedings in Albanian, a language that you  
2 understand and speak, in accordance with Rule 92 of the Rules of  
3 Procedure and Evidence.

4 If at any moment in the course of the proceedings you are not  
5 receiving interpretation, please draw my attention to it immediately.

6 Mr. Smakaj, you may be seated. And turn off your microphone.  
7 Yes, thank you.

8 I will now give a short procedural history to introduce today's  
9 initial hearing.

10 On 29 November 2024, in my capacity as Pre-Trial Judge, I  
11 partially confirmed the indictment submitted by the  
12 Specialist Prosecutor against Messrs Hashim Thaci, Bashkim Smakaj,  
13 Isni Kilaj, Fadil Fazliu, and Hajredin Kuci, charging Mr. Smakaj with  
14 one count of attempt to obstruct official persons in performing  
15 official duties by participating in the common action of a group, and  
16 one count of contempt of court.

17 I also issued an arrest warrant for Mr. Smakaj on the same day.

18 On 5 December 2024, the Specialist Office of the Prosecutor  
19 arrested Mr. Smakaj in Kosovo, and he was served with the arrest  
20 warrant, the Confirmed Indictment, and the decision on his arrest  
21 warrant translated into Albanian.

22 On 6 December 2024, Mr. Smakaj was transferred to the detention  
23 facilities of the Kosovo Specialist Chambers in The Hague. That same  
24 day, I issued the decision setting today's date for the Initial  
25 Appearance.

1           Now allow me to recall the specific purpose of this Initial  
2 Appearance hearing for the benefit of Mr. Smakaj.

3           Today's hearing, Mr. Smakaj, is not a trial. No evidence will  
4 be presented or debated nor will the guilt or innocence of the  
5 accused be discussed or decided.

6           The very purpose of this Initial Appearance hearing is regulated  
7 by Article 93(5) of the Law and Rule 92 of the rules. According to  
8 these provisions, as the Pre-Trial Judge, I shall:

9           Have the charges in the Confirmed Indictment read to the  
10 accused;

11          Confirm that the accused understands the indictment;

12          Satisfy myself that the rights of the accused, in particular his  
13 right to counsel, are respected; and

14          Inform the accused that within 30 days of today's hearing he  
15 will be called upon to admit guilt or plead not guilty on each charge  
16 set out in the indictment. If the accused wishes to do so, he may  
17 also immediately admit guilt or plead not guilty.

18          And, finally, I shall set other dates, as appropriate, in  
19 performing my functions as Pre-Trial Judge.

20          These are the matters which will be addressed in turn today  
21 during today's Initial Appearance. Should either party wish to  
22 discuss any other matter not expressly foreseen in the context of  
23 this Initial Appearance, I invite you to do so through a filing in  
24 written form.

25          First, Mr. Smakaj, may I invite you to please stand up and turn

1 on your microphone.

2 May I please ask you to confirm that you have received the  
3 Confirmed Indictment in a language that you understand and speak?

4 THE ACCUSED SMAKAJ: [Interpretation] Yes, I do confirm that.

5 JUDGE MASSELOT: Thank you, Mr. Smakaj.

6 Before Madam Court Officer reads the confirmed charges against  
7 you, I wish to remind you that this is not the time to contest them  
8 but simply to acknowledge your understanding thereof. You will have  
9 the opportunity to challenge the charges with the assistance of your  
10 counsel.

11 I will now ask Madam Court Officer to read out the charges in  
12 the Confirmed Indictment as foreseen in Article 39(5) of the Law and  
13 Rule 92(2)(b) of the rules.

14 THE COURT OFFICER: Thank you, Your Honour.

15 1. In the Confirmed Indictment, the Specialist Prosecutor  
16 charges Mr. Bashkim Smakaj with:

17 Count 12: Attempting to obstruct official persons, in  
18 particular SPO prosecutors and investigators, in performing official  
19 duties by participating in the common action of a group, punishable  
20 under Article 401(2) and (5) of the 2019 Kosovo Criminal Code and  
21 Article 15(2) of the Law; and

22 Count 13: Contempt of court, punishable under Article 393 of  
23 the 2019 Kosovo Criminal Code and Article 15(2) of the Law.

24 2. These offences were committed between at least 9 September  
25 and 30 October 2023.

1           3. In relation to these offences, there is a well-grounded  
2 suspicion that Mr. Bashkim Smakaj is criminally responsible, pursuant  
3 to Article 16(3) of the Law, for:

4           a. Committing the offence of attempted obstruction of official  
5 persons performing official duties under Count 12, pursuant to  
6 Article 17 of the 2019 Kosovo Criminal Code;

7           b. Assisting Mr. Hashim Thaci, in the context of the group, in  
8 the commission of the offence of attempted obstruction of official  
9 persons performing official duties under Count 12, pursuant to  
10 Article 33 of the 2019 Kosovo Criminal Code;

11           c. Assisting Mr. Hashim Thaci in the commission of the offence  
12 of contempt of court under Count 13, pursuant to Article 33 of the  
13 2019 Kosovo Criminal Code; and

14           d. Agreeing to commit with Mr. Hashim Thaci, in the context of  
15 the group, in the commission of the offence of attempted obstruction  
16 of official persons performing official duties under Count 12,  
17 pursuant to Article 35 of the 2019 Kosovo Criminal Code.

18           Thank you, Your Honours.

19           JUDGE MASSELOT: Thank you, Madam Court Officer.

20           Mr. Smakaj, did you understand the charges contained in the  
21 Confirmed Indictment as read out to you by Madam Court Officer?

22           THE ACCUSED SMAKAJ: [Interpretation] Yes, I did.

23           JUDGE MASSELOT: Thank you, Mr. Smakaj. You may be seated.

24           The Law on the Specialist Chambers and the Rules of Procedure  
25 and Evidence guarantee you a number of rights, and I will read out

1 the most the important ones, especially those relevant at this  
2 specific stage of the proceedings.

3 You shall be presumed innocent until proven guilty beyond a  
4 reasonable doubt.

5 In the determination of the charges against you, you are  
6 entitled to a fair and public hearing, subject to any measure ordered  
7 for the protection of witnesses and victims.

8 You have the right to be informed promptly and in detail, in a  
9 language which you understand, of the nature and cause of the charges  
10 against you.

11 You have the right to have adequate time and facilities for the  
12 preparation of your defence, and to communicate with a counsel of  
13 your own choosing.

14 You have the right to be tried within a reasonable time.

15 You have the right to be tried in your presence and to defend  
16 yourself through your counsel.

17 You have the right to have counsel assigned to you, and without  
18 payment, if you do not have sufficient means to pay for it.

19 You have the right to receive the free assistance of an  
20 interpreter if you cannot understand or speak the language used in  
21 the Court.

22 You have the right not to be compelled to testify against  
23 yourself or to admit guilt.

24 You have the right to remain silent, and no adverse inference  
25 shall be drawn from your silence.



1           And you have the right not to be detained for an unreasonable  
2           period of time prior to the opening of the case, to request review of  
3           decisions on your detention, and to appeal such decisions directly  
4           before the Court of Appeals.

5           Mr. Smakaj, I have read to you the most important rights that  
6           you enjoy in accordance with the applicable legal framework of the  
7           Specialist Chambers. Do you understand these rights?

8           THE ACCUSED SMAKAJ: [Interpretation] Yes, I do.

9           JUDGE MASSELOT: Thank you, Mr. Smakaj.

10          I also wish to inform you that, according to Article 21(5) of  
11          the Law, you may not represent yourself because you are currently in  
12          detention. Representation by Specialist Counsel is therefore  
13          mandatory.

14          I take note that you are represented by Counsel Martens, and I  
15          am therefore satisfied that the accused is presently represented by  
16          counsel.

17          I will now turn to the right of the accused to enter an  
18          immediate plea, if any, in accordance with Rule 92 of the rules.

19          Mr. Smakaj, as already mentioned, within 30 days from today you  
20          will be called upon to admit guilt or plead not guilty on the charges  
21          in the indictment. If you wish to do so, you may choose to  
22          immediately admit guilt or plead not guilty.

23          I would therefore like to ask you, Mr. Smakaj, if you have had  
24          the opportunity to discuss the charges in the Confirmed Indictment  
25          with your counsel and if you are prepared to enter a plea at this

1 time?

2 THE ACCUSED SMAKAJ: [Interpretation] May I consult my counsel,  
3 please?

4 JUDGE MASSELOT: Absolutely.

5 Counsel, do you wish a break?

6 So we will break for ten minutes?

7 MR. MARTENS: Thank you very much.

8 JUDGE MASSELOT: Will that be sufficient? It is 11.00. We  
9 shall reconvene at 11.10.

10 --- Break taken at 11.02 a.m.

11 --- On resuming at 11.10 a.m.

12 JUDGE MASSELOT: So we are now back in session. I note for the  
13 record that all the parties and the Registry's representatives are  
14 back in the courtroom.

15 Mr. Smakaj, before the break which you requested in order to  
16 consult with your counsel, my question was whether you had the  
17 opportunity to discuss the charges in the Confirmed Indictment with  
18 your counsel, and if you are prepared to enter a plea at this time in  
19 court today. What is your response to that question, please?

20 THE ACCUSED SMAKAJ: [Interpretation] During our meeting  
21 yesterday, we went through the materials that were handed over to me.  
22 However, upon the consultations we had today, I decided to use my  
23 right to enter a plea within 30 days, as envisaged in the legal  
24 framework, to have more time to go through all the materials  
25 necessary.

1 JUDGE MASSELOT: All right. Thank you.

2 So considering that Mr. Smakaj has not entered a plea at this  
3 time, I would like to ask the parties to provide their preliminary  
4 views, if any, on the scheduling of a further hearing for the entry  
5 of a plea.

6 I want to make it clear that this hearing should take place  
7 within 30 days from today, meaning by 7 January 2025, and I note that  
8 this falls within Court Recess.

9 Do you have any submissions to make in this regard?

10 Starting with the Defence for Mr. Smakaj. You have the floor,  
11 counsel.

12 MR. MARTENS: Thank you, Your Honour. Is this also the time  
13 that I could say something about the detention of my client, because  
14 I wish to do so today.

15 JUDGE MASSELOT: On this second issue, you will have an  
16 opportunity, of course, to make your submission a bit later.

17 MR. MARTENS: Okay.

18 Talking about the status hearing, it will be next week. And the  
19 hearing that you referred to just now, I would like, if possible,  
20 that the Court considers at least my agenda to be considered, telling  
21 you also that 7 January will fall also within a recess, a holiday  
22 period of mine, so if possible to have it taking place before  
23 Christmas.

24 JUDGE MASSELOT: This is on the record, counsel.

25 MR. MARTENS: Thank you.

1 JUDGE MASSELOT: For the Specialist Prosecutor.

2 MR. HAFETZ: Your Honour, we're available to be here any time to  
3 participate in the proceedings.

4 JUDGE MASSELOT: Well noted, too. Thank you.

5 A further hearing for the entry of a plea will be scheduled in  
6 due course, then.

7 Now let us move to the working language of the proceedings.

8 In the decision setting the date for today's Initial Appearance,  
9 I invited the parties to make oral submissions at today's hearing on  
10 the working language to be used in the present case, according to  
11 Rule 8 of the rules.

12 Could the parties please indicate their preference for the  
13 record, starting with the Specialist Prosecutor.

14 MR. HAFETZ: English, Your Honour. Thank you.

15 JUDGE MASSELOT: This is well noted.

16 For the Defence.

17 MR. MARTENS: I've discussed this with my client, and English  
18 also. Thank you.

19 JUDGE MASSELOT: Well noted. Thank you. I will issue a  
20 decision on this matter in due course as well.

21 In the decision setting the date for today's Initial Appearance,  
22 I also indicated that I intend to schedule the first Status  
23 Conference in this case, pursuant to Rule 96 of the rules, on  
24 Tuesday, 17 December 2024, at 2.00. I have also invited you to  
25 provide oral submissions at today's Initial Appearance on whether

1 counsel and/or the accused intend to participate in the Status  
2 Conference in person or via video-conference.

3 You have the floor, Defence counsel.

4 MR. MARTENS: Thank you, Your Honour. I intend to be present in  
5 person.

6 JUDGE MASSELOT: And in relation to your client, have you  
7 discussed this matter?

8 MR. MARTENS: He will also be present in person.

9 JUDGE MASSELOT: Well noted. Thank you.

10 [Microphone not activated].

11 I turn now to the Specialist Prosecutor's Office. Are you  
12 available?

13 MR. HAFETZ: We'll be here, Judge.

14 JUDGE MASSELOT: Thank you.

15 You will receive a Scheduling Order in due course that will also  
16 include the agenda. In that Scheduling Order, I will also provide  
17 guidelines on the requirements for attending the Status Conference  
18 via video-conference in case for any reason this would have to be  
19 considered.

20 I will now move to the next point of this agenda, which is,  
21 counsel, detention. In relation to Mr. Smakaj's detention, I wish to  
22 recall that based on the finding of a well-grounded suspicion that  
23 you committed the offences that were just read to you, an arrest  
24 warrant was issued against you on 29 November 2024. Pursuant to  
25 Article 41(6)(b) of the Law, your arrest was found necessary on the

1 based on the existence of articulable grounds to believe that you are  
2 a flight risk, you may obstruct the progress of the criminal  
3 proceedings, and you may repeat said offences.

4 I also recall that you were served, upon your arrest, with my  
5 reasoned Decision on Request for Arrest Warrant and Related Matters,  
6 translated into Albanian, together with the Confirmed Indictment.

7 Now I would like to know whether the Defence wishes to make  
8 submissions on this issue of detention, and I think you've already  
9 mentioned, Counsel Martens, that you so wish. So I leave you the  
10 floor.

11 MR. MARTENS: Thank you, Your Honour. I would like to do so.

12 Yes. My client is deprived of his liberty, and as noted in the  
13 Law in Article 41, no one shall be deprived of liberty, save in  
14 circumstances that make that necessary.

15 We challenge today the -- we will be challenging the lawfulness  
16 of the arrest and the detention, but today we'll be talking about the  
17 grounds for the detention.

18 First of all, our remark is, as we understand, but we don't know  
19 exactly information, maybe the SPO could elaborate, that in the same  
20 case there is also a person who's been indicted who is not in  
21 detention and will be invited later to be coming on free will, and I  
22 would say why couldn't have done the same for my client?

23 Talking about the grounds. First of all, the risk of flight.  
24 It is known publicly in the public files, and also you could see it  
25 back in the media, that my client was confronted by a search on

1 30 September one year ago, more than one year ago. At that time,  
2 certain items were seized, his house was searched, his car was  
3 searched, but he was not arrested at that time himself. Apparently,  
4 it wasn't deemed necessary to arrest him at that point.

5 From that point on, as I understood from my client, this matter  
6 has not been closed because a lot of the items searched and seized  
7 were not returned to him. So he knew positively and he knew  
8 expressively what was happening at the time and that the case was  
9 still pending with SPO. We also knew that it was a matter of the  
10 Kosovo Specialist Chambers because the SPO searched his house at that  
11 time.

12 This is relevant for the grounds of the risk of flight. He was  
13 searched more than a year ago. He did not flee his country, and he  
14 stayed living his life as he did.

15 Talking about the grounds of obstruction of justice. As we can  
16 see in the indictment, we are -- it seems we are talking about  
17 isolated incidents also dating back to the summer of 2023 and the  
18 fall of 2023. I haven't noted in the documents that any other acts  
19 were committed in the period thereafter. So there is, in fact, not a  
20 reason to indicate or suspect that he would continue committing the  
21 crimes he is suspected of at this time.

22 That is relevant for the fact if he would obstruct justice. He  
23 hasn't done so, so why would he be doing that?

24 Also from the documents that have been provided to us, there is  
25 no indication that my client has committed an act of destroying of

1 evidence, and, as I said, no danger of repeating the offence that he  
2 has been accused of.

3 The long periods between the accused facts being committed and  
4 now seems that the crimes were not repeated again, and there is no  
5 reason to suspect he will do so.

6 As I told you, the SPO saw no pressing need to arrest him  
7 immediately, or at least earlier, and should indicate, in the view of  
8 the Defence, in a more material way if my client would destroy  
9 evidence, if that is a realistic fear, which we cannot go through  
10 the -- if we go through the file, we cannot see any indication of  
11 that.

12 The seriousness of the crime and the past conducts, the  
13 environment and conditions in which he lives would indicate that he  
14 would commit a crime again. The Defence states that there is no  
15 reason to -- that's no reason to conclude that.

16 First of all, we're not talking about a fundamental crime for  
17 which the Court has been established. The manner of the  
18 circumstances under which the crimes were allegedly committed, we  
19 don't have comments on that because we don't have an extensive file  
20 on the facts yet. But I would like to make some comments about the  
21 proportionality and the personal circumstances.

22 The SPO is completely familiar with the personal circumstances  
23 because there was a search of the car and the house more than a year  
24 ago. As my client said, he's a professor on the University of  
25 Prishtine, a part-time professor. He has a known address. He has



1     been living there for a long time. He has -- since the search more  
2     than a year ago, he has stayed there. He hasn't travelled. He  
3     hasn't -- other than the usual travels, he hasn't changed his fixed  
4     address since then. He is a father of four, of which three children  
5     are still living at home in the ages of 17, 11, and 8. So also young  
6     children is in the family. His wife has a working position, she's  
7     working full-time, and that's why my client has the care over the  
8     younger children. This care is important because there is no network  
9     that can step in at this moment. He was arrested suddenly, without  
10    knowingly -- without -- again, unjustified, that he wasn't invited to  
11    come to be tried in a case like this, in the opinion of the Defence.  
12    And the children are now left without a father to care for them while  
13    his wife has to work to provide for finances of the family.

14           There is no network that can step in. The grandparents have  
15    deceased, except of the father of my client, as he told me, who is  
16    approximately 80 years of age. And because of this age and the  
17    distance of where he lives, about one hour away from the family home,  
18    he cannot takeover the role of caretaker of the children.

19           There is also the financial interest that my client works to  
20    take care of the family and take care of the costs of the family.

21           So that's also a reason, those personal circumstances and  
22    proportionality, that the Defence requests the release of my client.  
23    It's not necessary to keep him in detention.

24           There is also a request for release under conditions under the  
25    Article 41 under 12 of the Law. My client is willing and able to

1 post a bail. We're suggesting a bail of €5.000 to release his  
2 passport in Kosovo, report to EULEX in a certain -- every -- in every  
3 term that would be -- the Court would deem necessary, and to meet  
4 with other conditions that the Court would direct him to follow. So  
5 a release under conditions is a request the Defence makes at this  
6 point.

7 Thank you, Your Honour.

8 JUDGE MASSELOT: Thank you, Counsel Martens.

9 For the Specialist Prosecutor's Office.

10 MR. HAFETZ: Thank you, Your Honour.

11 Just a few brief points. Nothing counsel has said changes or  
12 calls for any change from Your Honour's decision that's already been  
13 made regarding arrest and your finding on detention, but I do want to  
14 address just a couple of points that counsel raised for purposes of  
15 the record.

16 One, we are in a materially different situation now that there  
17 are charges confirmed against Mr. Smakaj than we were when the search  
18 and seizure operation that counsel referred to took place. We are at  
19 an entirely different stage. And Mr. Smakaj now knows, unlike then,  
20 that he faces serious charges with multiple years of imprisonment at  
21 stake if he is convicted, which changes the calculation on the risk  
22 of flight significantly, as Your Honour has pointed out.

23 Second, I do want to respond to the issue of this being -- the  
24 charges against Mr. Smakaj, in particular the attempted obstruction,  
25 being a core crime in relation to this Tribunal and the severity of

1 the charge, which relates to the other -- to, actually, all three of  
2 the factors.

3 What Mr. Smakaj is charged with is a persistent, as Your Honour  
4 pointed out, a persistent campaign to engage in obstruction of this  
5 Tribunal. And in terms of the core element of that, part of the  
6 reason we're all sitting here today, here, is because of the climate  
7 of witness intimidation and interference that exists in Kosovo.  
8 That's a core reason why we're here. So the attempted obstruction of  
9 the Case 06 and multiple witnesses in Case 06, and the multiple  
10 visits Mr. Smakaj engaged with Mr. Thaci for the express purpose of  
11 interfering with one or more witnesses is, I would argue, a  
12 fundamental -- is fundamental to the existence of this Tribunal and  
13 to the law and to what we're here for today.

14 In terms of his ability to and likelihood of obstructing both  
15 these proceedings and the other proceedings, I submit that Mr. Smakaj  
16 has already demonstrated his willingness, ability -- willingness and  
17 ability to do so. And the likelihood that he will now interfere with  
18 this now that he's now charged is actually quite high, as Your Honour  
19 pointed out.

20 So for all of these reasons, and the reasons Your Honour has  
21 already put and found, and we've argued previously, Mr. Smakaj's  
22 detention is, in fact, necessary in this case under 41(6).

23 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

24 For the Defence, would you like to respond?

25 MR. MARTENS: Yes. Response only on the fact that the

1 Specialist Prosecutor did not address my remarks about the risk of  
2 flight. He addressed especially the seriousness of the crime and the  
3 possibility of him to obstruct justice and maybe tamper with evidence  
4 or witnesses, but the risk of flight was not addressed. So I remain  
5 with what I've said about that. Thank you.

6 JUDGE MASSELOT: Well noted, counsel. Thank you.

7 I will issue an oral decision after a short break before we  
8 conclude today's hearing.

9 And at this point, I would like to ask the parties if there is  
10 any other issue strictly related to today's hearing that they would  
11 like to raise?

12 Prosecutor's Office?

13 MR. HAFETZ: No, Your Honour. Thank you.

14 JUDGE MASSELOT: Counsel Martens?

15 MR. MARTENS: No, Your Honour. Thank you.

16 JUDGE MASSELOT: All right. If this is the case, it is 11.30.  
17 We will break for half an hour.

18 --- Recess taken at 11.29 a.m.

19 --- On resuming at 12.02 p.m.

20 JUDGE MASSELOT: We are now back in session. And I note for the  
21 record that the parties and the Registry representatives are back in  
22 the courtroom.

23 I will now issue my oral ruling on Mr. Smakaj's detention.

24 Counsel Martens, I have taken note of your request to release  
25 Mr. Smakaj on conditions. I've taken note of your submissions

1 regarding the absence of a risk of flight, as you submit that  
2 Mr. Smakaj had already been searched one year ago and did not flee.

3 You also submit that there is no risk of obstruction of the  
4 criminal proceedings as the incidents underpinning the charges are  
5 isolated, and there is no risk that Mr. Smakaj will continue with  
6 obstruction. Moreover, the time passed between the alleged facts and  
7 today does not justify the indication that he may obstruct the  
8 proceedings.

9 You also submit that there is no risk of commission of further  
10 crimes, considering the seriousness of the offences, the environment,  
11 and conditions in which Mr. Smakaj lives.

12 I've also taken note of your submissions on proportionality in  
13 light of the personal circumstances of Mr. Smakaj, in particular his  
14 family, professional, and financial situation.

15 I've taken note of the Specialist Prosecutor's position that  
16 Mr. Smakaj remain in detention as all of the requirements under  
17 Article 41(6) of the Law are met.

18 I note that the SPO underlines that the risk of flight has  
19 increased now that the charges have been confirmed as opposed to the  
20 time when Mr. Smakaj was searched one year ago.

21 I also note the Specialist Prosecutor's Office submission that  
22 the offences with which Mr. Smakaj is charged are serious in nature  
23 and reflect his demonstrated willingness to interfere.

24 Having considered all arguments, I find that none of your  
25 arguments, Defence counsel, are capable of changing my assessment

1 that the conditions provided in Article 41(6) of the Law are met as  
2 set out in the decision on arrest warrants and related matters,  
3 filing F0037, paragraphs 43 and 69 to 80. Specifically, I am not  
4 persuaded that Mr. Smakaj is not a flight risk; in particular, since  
5 the search in 2023, the charges against him have now been confirmed  
6 which together with the gravity of the offences and the potential  
7 sentence provide him with a motive to evade justice. I consider that  
8 the fact that Mr. Smakaj has rooted family ties in Kosovo only  
9 mitigates but does not diminish the risk that he may flee.

10 As to the risk of obstruction and commission of further  
11 offences, I find that the purported isolated nature of the offences  
12 and the passage of time are insufficient to disturb the findings I  
13 made in the decision on arrest warrants and related matters,  
14 paragraphs 74 to 79.

15 Therefore, having considered the parties' submissions, I  
16 determine that Mr. Smakaj shall remain in detention.

17 The reasons for your detention Mr. Smakaj, are the same as set  
18 out in the same decision, paragraph 43 and 69 to 80, which shall be  
19 read together with the present oral ruling.

20 Accordingly, based on the information and material underpinning  
21 said decision, and in the absence of any contrary intervening  
22 information or development, I find that, first, there is a  
23 well-grounded suspicion that you are criminally responsible for the  
24 offences of which you were informed today. And, second, there are  
25 articulable grounds to believe that you are a flight risk, you will

1 obstruct the progress of the criminal proceedings, and you will  
2 repeat the criminal offences.

3 Furthermore, neither the conditions you proposed, Defence  
4 counsel, nor any conditions I may impose on Mr. Smakaj are capable or  
5 adequate to mitigate these risks.

6 Mr. Smakaj, I will review the reasons for your detention within  
7 two months or at an earlier time, upon request or a change in  
8 circumstances, as provided in Article 41(10) of the Law and  
9 Rule 57(2) of the rules.

10 Counsel Martens, should you wish to file submissions on the next  
11 review of detention, please do so by no later than Wednesday,  
12 15 January 2025. Responses and replies will follow the timelines set  
13 out in Rule 76 of the rules.

14 Should the Defence decide not to file any submissions on the  
15 aforementioned time limit, I order the Specialist Prosecutor's Office  
16 to file submissions on the next review of Mr. Smakaj's detention by  
17 no later than Tuesday, 21 January 2025.

18 The Defence shall then respond, if it so wishes, by no later  
19 than Tuesday, 28 January 2025.

20 I will not entertain a reply.

21 Lastly, Mr. Smakaj, you have the right to appeal today's ruling  
22 on your detention directly before the Court of Appeals within ten  
23 days, as provided in Article 45(2) of the Law and Rules 58 and 170 of  
24 the rules.

25 This concludes my oral ruling.

1           And this also concludes Mr. Smakaj's Initial Appearance hearing.  
2           I wish to thank the parties and the Registry for their attendance,  
3           and the interpreters, stenographers, audio-visual technicians, and  
4           security personnel for their assistance.

5           The hearing is now adjourned.

6                                 --- Whereupon the Initial Appearance adjourned  
7                                 at 12.09 p.m.

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