

1 Sunday, 8 December 2024

2 [Open session]

3 [Initial Appearance]

4 [The Accused Fazliu entered the courtroom]

5 --- Upon commencing at 1.10 p.m.

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

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

9 THE COURT OFFICER: Good afternoon, 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 Mr. Fazliu, is it agreeable to you if the photographer takes a
16 picture of you today?

17 THE ACCUSED FAZLIU: [Microphone not activated].

18 JUDGE MASSELOT: Turn on -- yeah, turn on the microphone.

19 We haven't heard the response of Mr. Fazliu, I'm afraid.

20 THE ACCUSED FAZLIU: [Interpretation] Yes.

21 JUDGE MASSELOT: Thank you, Mr. Fazliu.

22 Madam Photographer, you may proceed. Thank you,
23 Madam Photographer.

24 Before asking those present in the courtroom to introduce
25 themselves, I would like to remind everyone of the rules that must be

1 observed at all times in order to facilitate the smooth conduct of
2 the proceedings.

3 Please ensure that you activate your microphone before speaking
4 and that you switch it off as soon as you are finished. Talk slowly
5 and clearly as we have interpretation from and to Albanian and
6 Serbian. Wait five seconds before responding to me or a party in
7 order to allow the interpreters to finish the interpretation.

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

13 Now I would kindly ask the parties to introduce themselves, with
14 the Specialist Prosecutor's Office to start.

15 MR. HAFETZ: Good afternoon, Your Honour. Josh Hafetz on behalf
16 of the Specialist Prosecutor's Office. And I'm joined today by my
17 colleagues Kim West, the Specialist Prosecutor, seated behind me;
18 Gaia Pergolo, seated to my left; and Fabian Unser-Nad in the
19 background. Thank you.

20 JUDGE MASSELOT: Thank you.

21 Now the Defence, please.

22 MR. PESTMAN: Thank you, Your Honour. My name is Michiel
23 Pestman, Michiel Pestman, and I am counsel for the accused.

24 JUDGE MASSELOT: Thank you, counsel.

25 And for the record, I note that your client, Mr. Fazliu, who

1 already spoke during this hearing, is also present in the courtroom.

2 I will now turn to the Registry, please.

3 MR. NILSSON: Good afternoon, Your Honour. For the record,
4 Jonas Nilsson, Deputy Registrar. I am here with Whitney Price, legal
5 counsel. Thank you.

6 JUDGE MASSELOT: Thank you.

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

9 The accused is appearing today for the first time before the
10 Specialist Chambers following confirmation of the indictment against
11 him on 29 November 2024.

12 Mr. Fazliu, will you please stand and turn on your microphone.
13 Could you please state your full name?

14 THE ACCUSED FAZLIU: [Interpretation] Yes, Fadil Fazliu.

15 JUDGE MASSELOT: What is your date and place of birth, please?

16 THE ACCUSED FAZLIU: [Interpretation] 15 July 1996 [as
17 interpreted] in Llaushe, Podujeve municipality. I live in Prishtine.

18 JUDGE MASSELOT: And what is your citizenship or what are your
19 citizenships in case you have several?

20 THE ACCUSED FAZLIU: [Interpretation] I am Albanian of Kosovo.

21 JUDGE MASSELOT: What is your current profession?

22 THE ACCUSED FAZLIU: [Interpretation] I am a magister of
23 emergency science protection at work.

24 JUDGE MASSELOT: All right. Thank you, Mr. Fazliu.

25 MR. PESTMAN: Your Honour --

1 JUDGE MASSELOT: Before we --

2 MR. PESTMAN: Sorry to interrupt you, Your Honour, I know he
3 looks very young, but he was not born in 1996 but in 1960.

4 THE ACCUSED FAZLIU: [Interpretation] Correction, 1960 I said. I
5 was I said born on 15 July 1960.

6 JUDGE MASSELOT: So this is now on the record accordingly.

7 Mr. Fazliu, before we proceed any further, I have to make sure
8 that you can follow the proceedings in a language that you understand
9 and speak. Can you confirm that you understand and speak Albanian?

10 THE ACCUSED FAZLIU: [Interpretation] Yes, I do.

11 JUDGE MASSELOT: Thank you, Mr. Fazliu. By this I am satisfied
12 that you can follow the proceedings in Albanian, a language that you
13 understand and speak, in accordance with 92 of the Rules of Procedure
14 and Evidence.

15 If at any moment, Mr. Fazliu, in the course of the proceedings
16 you are not receiving interpretation, please draw my attention to it
17 immediately.

18 You may now be seated.

19 I will give a short procedural history to introduce today's
20 initial hearing.

21 On 29 November 2024, in my capacity as Pre-Trial Judge, I
22 partially confirmed the indictment submitted by the
23 Specialist Prosecutor against Messrs Hashim Thaci, Bashkim Smakaj,
24 Isni Kilaj, Fadil Fazliu, and Hajredin Kuci, charging Mr. Fazliu with
25 one count of attempt to obstruct official persons in performing

1 official duties by participating in the common action of a group, and
2 one count of contempt of court.

3 I also issued an arrest warrant for Mr. Fazliu on the same day.

4 On 5 December 2024, the SPO arrested Mr. Fazliu in Kosovo, and
5 he was served with the arrest warrant, the Confirmed Indictment, and
6 the decision on his arrest warrant translated into Albanian.

7 On 6 December 2024, Mr. Fazliu was transferred to the detention
8 facilities of the Kosovo Specialist Chambers in The Hague. That same
9 day, I issued the decision setting today's date for the
10 Initial Appearance.

11 Now allow me to recall the specific purpose of this
12 Initial Appearance for the benefit of Mr. Fazliu.

13 Today's hearing is not a trial. No evidence will be presented
14 or debated, nor will the guilt or innocence of the accused be
15 discussed or decided.

16 The very purpose of this Initial Appearance hearing is regulated
17 by Article 39(5) of the Law and Rule 92 of the rules. According to
18 these provisions, as a Pre-Trial Judge, I shall:

19 Have the charges in the Confirmed Indictment read to the
20 accused;

21 Confirm that the accused understands the indictment;

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

24 Inform the accused that within 30 days of today's hearing he
25 will be called upon to admit guilt or plead not guilty on each charge

1 set out in the indictment. If the accused wishes to do so - I will
2 get back to that - he may also immediately admit guilt or plead not
3 guilty.

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

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

11 First, Mr. Fazliu, I invite you to please stand up. May I ask
12 you to confirm that you have received the Confirmed Indictment in a
13 language that you understand and speak?

14 THE ACCUSED FAZLIU: [Interpretation] Yes, I have.

15 JUDGE MASSELOT: Thank you.

16 Mr. Fazliu, before Madam Court Officer reads the confirmed
17 charges against you, I wish to remind you that this not the time to
18 contest them but simply to acknowledge your understanding thereof.
19 You will have the opportunity to challenge the charges with the
20 assistance of your counsel.

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

24 You may be seated, Mr. Fazliu.

25 THE COURT OFFICER: Thank you, Your Honour.

1 1. In the Confirmed Indictment, the Specialist Prosecutor
2 charges Mr. Fadil Fazliu with:

3 Count 16: Attempting to obstruct official persons, in
4 particular SPO Prosecutor and investigators, in performing official
5 duties by participating in the common action of a group punishable
6 under Article 401(2) and (5) of the 2019 Kosovo Criminal Code and
7 Article 15(2) of the Law; and

8 Count 17: Contempt of court, punishable under Article 393 of
9 the 2019 Kosovo Criminal Code and Article 15(2) of the Law.

10 2. These offences were committed between at least 26 June and
11 18 July 2023.

12 3. In relation to these offences, there is well-grounded
13 suspicion that Mr. Fadil Fazliu is criminally responsible, pursuant
14 to Article 16(3) of the Law, for:

15 a. Committing the offence of attempted obstruction of official
16 persons performing official duties under Count 16, pursuant to
17 Article 17 of the 2019 Kosovo Criminal Code;

18 b. Assisting Mr. Hashim Thaci, in the context of the group, in
19 the commission of the offence of attempted obstruction of official
20 persons performing official duties under Count 16, pursuant to
21 Article 33 of the 2019 Kosovo Criminal Code;

22 c. Assisting Mr. Hashim Thaci in the commission of the offence
23 contempt of court under Count 17, pursuant to Article 33 of the 2019
24 Kosovo Criminal Code; and

25 d. Agreeing to commit with Mr. Hashim Thaci, in the context of

1 the group, in the commission of the offence of attempted obstruction
2 of official persons performing official duties under Count 16,
3 pursuant to Article 35 of the 2019 Kosovo Criminal Code.

4 Thank you, Your Honour.

5 JUDGE MASSELOT: Thank you, Madam Court Officer.

6 Mr. Fazliu, did you understand the charges contained in the
7 Confirmed Indictment as read to you by Madam Court Officer?

8 THE ACCUSED FAZLIU: [Interpretation] Partially. Yes.

9 JUDGE MASSELOT: Is there something you did not understand? You
10 mentioned "partially," I think.

11 THE ACCUSED FAZLIU: [Interpretation] Yes, yes, I understood
12 them.

13 JUDGE MASSELOT: All right. This is thus on the record.

14 The Law on the Specialist Chambers and the Rules of Procedure
15 and Evidence guarantee you a number of rights, and I will read out
16 the most important ones, especially those relevant at this specific
17 stage of the proceedings.

18 So, Mr. Fazliu, you shall be presumed innocent until proven
19 guilty beyond a reasonable doubt.

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

23 You have the right to be informed promptly and in detail, in a
24 language which you understand, of the nature and cause of the charges
25 against you.

1 You have the right to have adequate time and facilities for the
2 preparation of your defence, and to communicate with the counsel of
3 your own choosing.

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

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

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

9 You have the right to receive the free assistance of an
10 interpreter if you cannot understand or speak the language used in
11 the Court.

12 You have the right not to be compelled to testify against
13 yourself or to admit guilt.

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

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

20 Mr. Fazliu, I have read to you the most important rights that
21 you enjoy in accordance with the applicable legal framework of the
22 Specialist Chambers. Do you understand these rights?

23 THE ACCUSED FAZLIU: [Interpretation] Yes.

24 JUDGE MASSELOT: Thank you, Mr. Fazliu.

25 I wish to inform you also that, according to Article 21(5) of

1 the Law, you may not represent yourself because you are currently in
2 detention. Representation by Specialist Counsel is therefore
3 mandatory.

4 I take note that you are represented by Counsel Pestman today.
5 I am therefore satisfied that the accused is presently represented by
6 counsel.

7 I see that there is an issue -- an issue with the ...

8 Is there anything you would like me to repeat, Mr. Fazliu?

9 THE ACCUSED FAZLIU: [Interpretation] Yes, yes.

10 JUDGE MASSELOT: All right. I will repeat that I inform you
11 that, according to Article 21(5) of the Law, you may not represent
12 yourself because you are currently in detention. Representation by
13 Specialist Counsel is therefore mandatory. And I had just taken note
14 that you are represented by Counsel Pestman, and that I was therefore
15 fully satisfied that you are presently represented by counsel.

16 I will now turn to your right to enter, as mentioned previously,
17 an immediate plea, if any, in accordance with Rule 92 of the rules.

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

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

25 THE ACCUSED FAZLIU: [Interpretation] Yes, I will declare myself

1 innocent. I discussed with my counsel, but I plead not guilty. I
2 declare myself innocent.

3 JUDGE MASSELOT: This is well noted, Mr. Fazliu. As you have
4 chosen to plead not guilty on all counts, the pre-trial proceedings
5 will continue with a view to preparing this case for trial pursuant
6 to Rule 95 of the rules.

7 Let us thus now 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, and I would now like to know the preference from
12 each party.

13 I will give the floor to the Prosecutor's Office for the third
14 time on this matter.

15 MR. HAFETZ: English again, Your Honour. Thank you.

16 JUDGE MASSELOT: And, of course, Counsel Pestman, you have the
17 floor.

18 MR. PESTMAN: Thank you. English as well.

19 JUDGE MASSELOT: This is well noted. And I will issue a
20 decision on this matter in due course.

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 Counsel Pestman, you have the floor.

4 MR. PESTMAN: My client and I will both attend in person.

5 JUDGE MASSELOT: All right. This is noted.

6 For the Prosecutor's Office as to the date?

7 MR. HAFETZ: We'll be here in person, Your Honour.

8 JUDGE MASSELOT: Okay. Thank you.

9 You will receive a Scheduling Order in due course as well that
10 will also include the agenda. And I will, in that Scheduling Order,
11 provide guidelines on the requirements for attending the Status
12 Conference via video-conference in case this becomes necessary.

13 We will now move to the next point which is the detention of
14 Mr. Fazliu.

15 Mr. Fazliu, I recall that, based on the finding of well-grounded
16 suspicion that you committed the offences that were just read to you,
17 an arrest warrant was issued against you on 29 November 2024.
18 Pursuant to Article 41(6)(b) of the Law, your arrest was found
19 necessary based on the existence of articulable grounds to believe
20 that you are a flight risk, you may obstruct the progress of the
21 criminal proceedings, and you may repeat said offences.

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

25 Now I would like to know whether the Defence wishes to make

1 submissions on the issue of detention.

2 MR. PESTMAN: I'm counting till 5. I think, yes, Your Honour.
3 I would like to request for my client's provisional release and to
4 set bail. I can provide you with my arguments now, or would you like
5 me to do so later?

6 JUDGE MASSELOT: Absolutely. I am expecting you to do so. Yes.

7 MR. PESTMAN: Okay. Thank you. I only met my client yesterday,
8 so I did not speak to him for very long, but I would like to
9 introduce him to you so that you can get to know him. And I would
10 like to tell you, and also the Prosecutor, something about his
11 personal circumstances, which I think are relevant for the decision
12 you will hopefully be able to take today about the detention, the
13 remand.

14 He was arrested, my client was arrested on his way to work on
15 Thursday. He always walks to work. He works, as he already
16 explained, as a coordinator for the central office of the energy
17 supply company in Prishtine. This is not a government institution.
18 This is a privatised energy company. And I am telling you this
19 because it is important because he expects, and he fears, that he
20 will lose his job if he's detained for too long.

21 He is currently still earning €850 a month, €650 after taxes,
22 and has savings of less than a thousand euros. I'm telling you this
23 because I will ask you to set bail at a certain amount afterwards or
24 later.

25 He lives in Prishtine with his wife, son, and daughter. His son

1 works, has an income of €500 a month. And his daughter is currently
2 studying. They're both in their early 20s.

3 He has serious medical issues. I will not go into detail, but
4 he has a heart condition for which he requires special medical
5 attention, and he also has diabetes. He has, of course, specialist
6 medical care in Kosovo.

7 As said, he is worried, and I think -- and I believe with
8 reason, that he will lose his job and this salary, and that will have
9 not only serious consequences for him but also for his direct family,
10 the one he's sharing his house with. He has a fixed address, by the
11 way. It's not going to be very difficult to find him if you wish to
12 reach him.

13 Considering those personal circumstances, I think -- I believe
14 it is unlikely that my client will flee. He's too important to look
15 after his family.

16 And just to be clear, he has no Albanian passport. It is
17 unlikely that he will go to Albania and become or end up out of reach
18 of this Court.

19 As you know, in international human rights law, the rule is that
20 an accused can wait -- shall not be detained awaiting trial. He has
21 the right to remain free unless there are special circumstances that
22 require his detention, special circumstances that require -- that are
23 necessary to assure that the accused will attend trial.

24 I was a bit surprised. This is my first appearance in this
25 Court. I was a bit surprised. I received lots of documents, legal

1 briefs, sometimes a little bit repetitive, which I studied at length,
2 but I didn't see -- I didn't find any evidence to support the
3 allegations, the charges in the indictment. I suppose there must be
4 supporting evidence, but I haven't seen them.

5 My client hasn't seen them either. And I am stressing this
6 point because it will be impossible for my client -- because he
7 doesn't know what the evidence is, he doesn't know whether there are
8 any witnesses that have testified in this case, it will be very
9 difficult for my client to obstruct justice in this particular case.
10 His house was searched, I understand. His telephone was seized. I
11 don't know what my client could do. I haven't got the imagination to
12 imagine what he could do to obstruct justice in this particular
13 moment.

14 I was also told this morning, to my surprise, that not all
15 accused in this particular case -- and I'm talking about the bigger
16 case, which will keep you busy today and also tomorrow. I was
17 surprised to hear that not all accused were actually arrested but
18 some of them, at least one of them, was simply summoned to come to
19 court, and he did show up. And I don't know, I'm quite keen to know,
20 why in the other case summons was deemed sufficient and my client had
21 to be arrested.

22 I don't want to be rude, I don't want to upset my client, but he
23 is a small fish in this investigation. There is contempt of court
24 which he allegedly assisted, and there is an attempt to influence a
25 witness. If I understand the charges correctly, he did not succeed,

1 according to the arrest warrant and the Confirmed Indictment, he did
2 not succeed in actually influencing a witness. A small fish. And I
3 think that should be taken into account when taking a decision about
4 the detention.

5 So I would like to request the release on bail to Kosovo of my
6 client, and I would like you to set the bail, Your Honour, at €2.550,
7 which is three times his monthly salary. And I would like you -- or
8 I would invite you, Your Honour, to order any other measure or
9 condition you may deem necessary to secure my client's attendance at
10 trial. I don't think house arrest is a feasible option because he
11 would need to go to work every day. But apart from that particular
12 condition, I think I would invite everyone involved, Your Honour as
13 well, to be as creative as possible.

14 I also understand and heard you explain to my client that he is
15 detained because there is fear that he might re-offend. I think it
16 is easy to come up with a solution to that problem. If he is ordered
17 or if the condition is set that he's not allowed to leave Kosovo, I
18 find it very hard to imagine that he will be able to re-offend as he
19 is alleged to have done in this case before.

20 Thank you very much.

21 JUDGE MASSELOT: Thank you, counsel.

22 Specialist Prosecutors, you have the floor.

23 MR. HAFETZ: Thank you, Your Honour.

24 Your Honour, I'll reply briefly to a few of the points that
25 counsel has made.

1 And in the main, I'll rely on Your Honour's findings, which are
2 detailed in particular at paragraphs 81 through 92 of F00037, which I
3 believe counsel has been notified and, I presume, has read. I'm not
4 sure if that's one of the filings he's referring to as repetitive,
5 but I do want to talk about some of the findings in there.

6 First, as Your Honour notes, and I think we're all clear on, the
7 applicable law here in this room today is Article 41(6), and the
8 standard for detention is whether it's necessary when the conditions
9 under that are met. So let's talk about those conditions and
10 factors.

11 41(6)(a), clearly met. I don't think there is a dispute about
12 that. There is a finding of a well-grounded suspicion for the two
13 counts that have been read out here today and confirmed against
14 Mr. Fazliu. So that one's met.

15 The next three are the 41(6)(b) factors, which are, in the
16 Statute, put forth in the alternative; meaning any one of them, if
17 met, could be sufficient to necessitate the accused's detention. And
18 I would submit that Your Honour's findings are entirely correct that
19 all three of them are met here and all three of them necessitate his
20 detention.

21 So on the score of risk of flight, we submit that Mr. Fazliu is
22 a significant risk of flight notwithstanding his family connections
23 in Kosovo now. And as Your Honour noted, that may partially address
24 and mitigate the risk of flight but does not diminish or remove it.

25 Mr. Fazliu is charged with serious offences, the top one of

1 which is an attempt to obstruct the proceedings of this Tribunal in
2 an ongoing trial for war crimes. He faces significant prison time if
3 convicted after trial. That is a significant incentive to flee.

4 Respectfully, the fact that Mr. Fazliu does not have an Albanian
5 passport does not make it impossible for him to go to Albania, which
6 is one of the many countries from which it would be very difficult,
7 if not impossible, to extradite Mr. Fazliu back if he chose to
8 abscond.

9 And to Your Honour's and to the main point on risk of flight,
10 sitting here today Mr. Fazliu has already demonstrated a blatant
11 disregard for the rules of this Court. He didn't not know what he
12 was doing when he attempted to obstruct the proceedings and directly
13 approached a central witness in the ongoing case here. He knew
14 exactly what he was doing and we know that.

15 And counsel referenced his lack of ability to know the evidence.
16 I will elucidate that point for a moment. Some of the evidence
17 against Mr. Fazliu -- and this relates to all three of the factors,
18 but I'm addressing the risk of flight in this moment. Some of the
19 evidence is in the form of audio recordings of him taking direct
20 instructions to interfere with a witness and agreeing to do so, and
21 then going and volunteering his son as a co-perpetrator to deliver
22 the message, which by itself demonstrates a knowledge and
23 understanding of how to try to evade justice. So that's where we're
24 starting from.

25 So I disagree that he is not a risk of flight, and again

1 emphasise that Your Honour's findings on that point have not changed
2 at all today with anything that's been presented.

3 On the other two factors, I'll collapse them into one. That's
4 the risk of committing further obstruction and criminal offences
5 related to these proceedings and his propensity or his likelihood of
6 -- risk of committing other further offences. And I submit that
7 Your Honour's findings on these are instructive and accurate.

8 His conduct has demonstrated, again, a blatant disregard for the
9 rules of this Court, and there is every reason to believe that
10 Mr. Fazliu poses a risk of obstructing this proceeding just like he
11 did one that he wasn't even an accused in.

12 Lastly, on the small fish point that counsel raised, I
13 respectfully again disagree. What I would submit to Your Honour, and
14 this is consistent with your findings, is that there are no small
15 fish in attempts to tell witnesses, including ones identified as
16 decisive by Mr. Thaci, there are no small fish in attempts to
17 interfere with those witnesses and tell them what to say when they
18 come to Court.

19 The fundamental principle of this institution, and any tribunal,
20 is for the ability of witnesses to come to court and testify
21 truthfully and let justice play out and everyone have a fair trial.
22 What Mr. Fazliu is accused of, and bringing his son into doing it,
23 strikes at the very heart of one's ability to have a fair and just
24 proceeding, and strikes at the heart at the integrity of this
25 institution, and actually goes to the reason why we're all here

1 having these proceedings here, because there exists, as found
2 repeatedly, a climate of intimidation in Kosovo and witness
3 interference in Kosovo.

4 So I submit that Mr. Fazliu's role in this is actually quite
5 significant.

6 And, lastly, I just want to address the point that's been
7 raised, and not for the first time, about musings or wondering about
8 why another accused in this case has been summonsed as opposed to
9 Mr. Fazliu being detained, and my answer to that is simply there is
10 nothing in the Statute that makes this a relativistic determination.
11 Your Honour's job, as you know, is to assess Mr. Fazliu's facts as
12 they apply to him and the Rule 41(6) factors as they apply to him.

13 Thank you.

14 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

15 Does the Defence wish to respond?

16 MR. PESTMAN: Yes, please. I notice that my last -- regarding
17 the last point, I notice that my question as to why one accused was
18 simply summoned and the other one was arrested has not been answered
19 by the Prosecutor. I'm still curious to know why a difference is
20 made in approach.

21 The other thing I would like to respond to is that apparently,
22 something that we didn't know, there is a recording of a
23 conversation, and I assume that is a conversation which happened in
24 the detention unit on 2 July 2023.

25 Your Honour, if you decide to reject my request for immediate

1 release, conditional release of my client, I would kindly request to
2 order disclosure, full disclosure, not only of this particular
3 recording, but also all the other evidence which is necessary to
4 challenge the evidence and to make a proper motion to release my
5 client conditionally. And if possible, to do it before 17 December
6 so that I can again ask for my client's release on the basis of the
7 evidence which is lacking now.

8 JUDGE MASSELOT: [Microphone not activated].

9 Does the Specialist Prosecutor want to respond to this last
10 point on disclosure?

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

12 JUDGE MASSELOT: Thank you.

13 I will issue an oral decision after a short break before we
14 conclude today's hearing on the detention of Mr. Fazliu. And at this
15 point, I would like to ask the parties if there is any other issues
16 strictly related to today's hearing that they would like to raise?

17 MR. HAFETZ: No, thank you, Your Honour.

18 JUDGE MASSELOT: All right. We will thus break for 40 minutes,
19 and we'll reconvene at 2.30 in the courtroom.

20 --- Recess taken at 1.52 p.m.

21 --- On resuming at 2.35 p.m.

22 JUDGE MASSELOT: We are back in session. And I note for the
23 record that all the parties and the Registry representatives are back
24 in the courtroom. And I will now issue my oral ruling on detention.

25 Defence counsel, I have taken note of your request to release

1 Mr. Fazliu on conditions. I've taken note of your submissions that
2 there is no evidence on the allegations raised against Mr. Fazliu. I
3 also observe your observations regarding the absence of a risk of
4 flight as you submit that Mr. Fazliu's residence is known, he
5 provides for his family and does not possess the means to flee to
6 Albania.

7 You also submit there is no risk of obstructing the proceedings
8 as there is no foundation that he would do so, and he doesn't know
9 the evidence in the case. Moreover, I note that you claim there is
10 no risk of commission of further crimes as he may be ordered not to
11 leave Kosovo.

12 I've also taken note of your submissions that Mr. Fazliu is, I
13 quote, "a small fish," and have paid heed to his family, health,
14 professional and financial situation.

15 I've taken note of the Specialist Prosecutor's position that all
16 requirements of Article 41(6) are met and that, therefore, Mr. Fazliu
17 should remain in detention. I note the SPO's position that
18 Mr. Fazliu remains a flight risk despite the fact that he does not
19 own an Albanian passport. His past behaviour, including by involving
20 his son, shows that Mr. Fazliu has knowledge and understanding of how
21 to evade justice.

22 Further, it is the SPO's position that Mr. Fazliu is charged
23 with serious offences attracting a significant punishment, and that
24 he demonstrated a blatant disregard for the rules of the Specialist
25 Chambers.

1 The SPO further rejects the notion of small fish given the
2 nature of the offences he is charged with.

3 Having considered all arguments, I found that none of your
4 arguments, Defence counsel, are capable of changing my assessment in
5 the conditions provided in Article 41(6) of the Law, that those
6 conditions are met as set out in the decision on arrest warrant and
7 related matters, filing F00037, paragraph 43, and 81 to 92.

8 Specifically, in the absence of concrete arguments, I am not
9 persuaded that there is no evidence supporting the finding of
10 grounded suspicion as envisaged in Article 41(6) (a) of the Law.

11 It suffices to note that the accused has received the
12 submissions related to the SPO's request for an arrest warrant and,
13 pursuant to Rule 102(1) (a) of the rules, he will also receive the
14 supporting material to the indictment within 30 days of today.

15 Further, I am not persuaded that Mr. Fazliu is not a flight
16 risk. The charges against him, the gravity of the offences, and the
17 potential sentence provide him with a motive to evade justice. I
18 also consider that Mr. Fazliu would have the means and opportunity to
19 flee by travelling to jurisdictions without extradition agreement
20 with Kosovo, including Albania, even if he does not possess an
21 Albanian passport.

22 The fact that Mr. Fazliu has rooted family ties in Kosovo only
23 partially mitigates and does not diminish the risk that he may flee,
24 particularly seeing the role of his son in the facts and the charges
25 alleged against Mr. Fazliu.

1 The fact that he has special medical care in Kosovo has no
2 bearing on the flight risk as he can also be treated elsewhere.

3 As regards the risk of obstructing the progress of criminal
4 proceedings and repeating offences, I find that none of the arguments
5 presented by the Defence put into question the findings made in
6 paragraphs 86 to 91 of the decision on arrest warrant and related
7 matters.

8 Therefore, having considered the parties' submissions, I
9 determine that Mr. Fazliu shall remain in detention.

10 The reasons for your detention, Mr. Fazliu, are the same as set
11 out in said decision paragraphs 43 and 81 to 92, which shall be read
12 together with the present ruling.

13 Accordingly, based on the information and material underpinning
14 decision F00037, and in the absence of any contrary intervening
15 information or development, I find that: First, there is
16 well-grounded suspicion that you are criminally responsible for the
17 offences of which you were informed today; and, second, there are
18 articulable grounds to believe that you are a flight risk, you will
19 obstruct the progress of the criminal proceedings, and you will
20 repeat the criminal offences.

21 Furthermore, neither the conditions you proposed, Defence
22 counsel, nor any conditions I may impose on Mr. Fazliu are capable or
23 adequate to mitigate these risks.

24 Mr. Fazliu, I will review the reasons of your detention within
25 two months or at an earlier time, upon request or a change in

1 circumstances, as provided in Article 41(10) of the Law and
2 Rule 57(2) of the rules.

3 Defence counsel, should you wish to file submissions on the next
4 review of detention, please do so by no later than Wednesday,
5 15 January 2025. Responses and replies will follow the timeline set
6 out in Rule 76 of the rules.

7 Should the Defence decide not to file any submissions by the
8 aforementioned time limit, I order the SPO to file submissions on the
9 next review of Mr. Fazliu's detention by no later than Tuesday,
10 21 January 2025.

11 The Defence shall respond, if it so wishes, by no later than
12 Tuesday, 28 January 2025.

13 I will not entertain a reply.

14 Lastly, Mr. Fazliu, you have the right to appeal today's ruling
15 on your detention directly before the Court of Appeals within ten
16 days, as provided in Article 45(2) of the Law and Rules 58 and 170 of
17 the rules.

18 This concludes my oral ruling.

19 This also concludes today's appearance hearing. And I wish to
20 thank the parties and the Registry for their attendance. I also wish
21 to thank the interpreters, stenographers, audio-visual technicians,
22 and security personnel for their assistance.

23 The hearing is now adjourned.

24 --- Whereupon the Initial Appearance adjourned
25 at 2.43 p.m.