



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Date: 3 May 2024
Language: English
Classification: Public

**Public Redacted Version of Corrected Version of Decision on Review of
Detention of Isni Kilaj**

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THE SINGLE JUDGE,¹ pursuant to Articles 33(2), 41(6), (10) and (12) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 9(5)(a), 9(6), 56(2), 57(1) and 76 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 2 November 2023, Isni Kilaj ("Mr Kilaj") was arrested pursuant to an order by the Specialist Prosecutor's Office ("SPO"),² and following the execution of a judicially authorised search and seizure of Mr Kilaj's residence(s), vehicle(s) and person aimed at seizing evidence of an offence within the meaning of Article 15(2) of the Law ("Search and Seizure Decision").³

2. On 3 November 2023, Mr Kilaj was transferred to the Specialist Chambers ("SC") Detention Facilities in The Hague, the Netherlands,⁴ pursuant to an order for transfer issued by the Single Judge,⁵ as requested by the SPO.⁶

¹ KSCPR-2018, F00004, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2018-01, F00489, Specialist Prosecutor, *Urgent Rule 52(1) Notification of Arrest of Isni Kilaj*, 2 November 2023, public; F00492/A01, Specialist Prosecutor, *Annex 1 to Prosecution Report on Arrest of Isni Kilaj*, 3 November 2023, confidential. A public redacted version was filed on 8 November 2023, F00492/RED/A01/RED.

³ KSC-BC-2018-01, F00484, Single Judge, *Decision Authorising Search and Seizure and Special Investigative Measures*, 20 October 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential. A confidential redacted version of the main filing was issued on 12 December 2023, F00484/CONF/RED.

⁴ KSC-BC-2018-01, F00493, Registrar, *Notification of Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers*, 3 November 2023, strictly confidential, with Annex 1, strictly confidential; F00495, Registrar, *Report on the Transfer of Isni Kilaj to the Detention Facilities*, 3 November 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. A public redacted version of the main filing and confidential redacted versions of Annexes 1-2 were filed on 8 November 2023, F00495/RED, F00495/RED/A01/CONF/RED and F00495/RED/A02/CONF/RED, respectively.

⁵ KSC-BC-2018-01, F00491/COR, Single Judge, *Corrected Version of Decision on Transfer Order Pursuant to Arrest by the Specialist Prosecutor*, 3 November 2023, confidential, with Annex 1, confidential. A public redacted version of the main filing was issued on 5 November 2023, F00491/COR/RED.

⁶ KSC-BC-2018-01, F00490, Specialist Prosecutor, *Urgent Request for Transfer Order*, 2 November 2023, confidential. A public redacted version was filed on 3 November 2023, F00490/RED.

3. On 6 November 2023, pursuant to a request by the SPO,⁷ the Single Judge ordered Mr Kilaj's continued detention,⁸ and issued reasons thereto on 9 November 2023 ("First Detention Decision"),⁹ which was upheld by the Court of Appeals Panel on 11 January 2024 ("First Detention Appeal Decision").¹⁰
4. On 15 December 2023, the SPO submitted an indictment against Mr Kilaj for confirmation before the Pre-Trial Judge.¹¹
5. On 5 January 2024, the Single Judge ordered Mr Kilaj's continued detention ("Second Detention Decision"),¹² which was upheld by the Court of Appeals Panel on 26 February 2024 ("Second Detention Appeal Decision").¹³
6. On 5 March 2024, the Single Judge ordered Mr Kilaj's continued detention ("Third Detention Decision").¹⁴

⁷ KSC-BC-2018-01, F00496, Specialist Prosecutor, *Prosecution Request for Continued Detention of Isni Kilaj*, 3 November 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. Confidential redacted versions of the SPO request and annexes were filed on the same day, F00496/CONF/RED, F00496/CONF/RED/A01, F00496/CONF/RED/A02, respectively. A public redacted version of the main filing was filed on 7 November 2023, F00496/RED2.

⁸ KSC-BC-2018-01, F00499, Single Judge, *Decision on Continued Detention*, 6 November 2023, public, para. 15.

⁹ KSC-BC-2018-01, F00503, Single Judge, *Reasons for Continued Detention*, 9 November 2023, confidential. A public redacted version was issued on 13 November 2023, F00503/RED.

¹⁰ KSC-BC-2018-01, IA004/F00006, Court of Appeals Panel, *Decision on Isni Kilaj's Appeal Against Decision on Continued Detention*, 11 January 2024, confidential. A public redacted version was filed on the same day, IA004/F00006/RED.

¹¹ KSC-BC-2018-01, F00549, Specialist Prosecutor, *Prosecution Response to Defence Request F00548*, 15 January 2024, public. *See also* F00654, Specialist Prosecutor, *Prosecution Supplemental Notice ("Supplemental SPO Notice")*, 2 May 2024, confidential, para. 4.

¹² KSC-BC-2018-01, F00547, Single Judge, *Decision on Review of Detention of Isni Kilaj*, 5 January 2024, confidential. A public redacted version was issued on 18 January 2024, F00547/RED.

¹³ KSC-BC-2018-01, IA005/F00005, Court of Appeals Panel, *Decision on Isni Kilaj's Appeal Against Decision on Review of Detention*, 26 February 2024, confidential. A public redacted version was filed on the same day, IA005/F00005/RED.

¹⁴ KSC-BC-2018-01, F00603, Single Judge, *Decision on Review of Detention of Isni Kilaj*, 5 March 2024, confidential. A public redacted version was issued on 11 March 2024, F00603/RED.

7. On 11 March 2024, pursuant to Rule 86(4) of the Rules, the SPO submitted a revised indictment against Mr Kilaj for confirmation before the Pre-Trial Judge (“Revised Indictment”).¹⁵
8. On 15 April 2024, the SPO filed its submissions on the review of Mr Kilaj’s detention (“SPO Submissions”).¹⁶
9. On 19 April 2024, the SPO filed a notice informing the Single Judge of its intent to file an amended indictment, in light of recently discovered additional evidence (“SPO Notice”).¹⁷
10. On 24 April 2024, the Defence responded to the SPO Submissions (“Response”).¹⁸ In its Response, the Defence requests an extension of the time limit for the filing of its Response (“Request for Extension”).¹⁹
11. On 2 May 2024, the SPO filed a supplemental notice, informing the Single Judge and the Defence that it has requested the suspension of the Revised Indictment, in light of its intent to submit an amended indictment [REDACTED] (“Supplemental SPO Notice”).²⁰

II. SUBMISSIONS

12. The SPO submits that Mr Kilaj’s continued detention remains necessary, as there has been no change in circumstances detracting from the reasons for his

¹⁵ See Supplemental SPO Notice, para. 3.

¹⁶ KSC-BC-2018-01, F00633, Specialist Prosecutor, *Prosecution Submissions on Review of Detention*, 15 April 2024, confidential, with Annexes 1-2, confidential. A public redacted version of the SPO submissions was filed on 17 April 2024, F00633/RED.

¹⁷ KSC-BC-2018-01, F00636, Specialist Prosecutor, *Prosecution Notice*, 19 April 2024, confidential.

¹⁸ KSC-BC-2018-01, F00644, Defence for Isni Kilaj, *Kilaj Consolidated Response to (1) Prosecution Submissions on Review of Detention, and (2) Prosecution Notice*, 24 April 2024, confidential.

¹⁹ The Defence informally requested an extension of time on 22 April 2024, to which the SPO responded that it did not object, and the Defence was instructed by the Single Judge to incorporate said request into its submissions on Mr Kilaj’s detention, by 24 April 2024 at 23:59. See KSC-BC-2018-01, CRSPD53, Email from the Single Judge to Counsel for Mr Kilaj Regarding Request for Short Extension of Time to Respond to F00633, 22 April 2024, confidential.

²⁰ Supplemental SPO Notice, paras 3-4.

detention established in the First Detention Decision, Second Detention Decision and Third Detention Decision.²¹ To the contrary, the SPO asserts that: (i) the finding of grounded suspicion in the First Detention Decision, which has been upheld on appeal, has been significantly strengthened by additional evidence;²² and (ii) the risks under Article 41(6)(b) of the Law have only increased, in light of further incriminating evidence against Mr Kilaj, namely [REDACTED], and considering that the decision on the confirmation of the Indictment is drawing closer.²³ The SPO further maintains that no modalities of conditional release are able to sufficiently mitigate the existing risks with respect to Mr Kilaj.²⁴ Lastly, the SPO submits that, in light of the severity of the risks, the stage of proceedings and the length of time Mr Kilaj has been detained, his continued detention remains reasonable, proportional and necessary at this time.²⁵

13. The Defence responds that there is insufficient evidence to support a finding of grounded suspicion that Mr Kilaj has in fact committed any offence under Article 15(2) of the Law.²⁶ The Defence further submits that the SPO overstates the significance of [REDACTED] with respect to the necessity of Mr Kilaj's continued detention, as: (i) [REDACTED] merely corroborates inferences previously drawn by the SPO from [REDACTED];²⁷ and (ii) the 2019 Kosovo Criminal Code, Code No. 06/L-074 ("KCC") does not criminalise the giving of a false statement by a suspect during an interview under caution.²⁸ The Defence also submits that, in light of the

²¹ SPO Submissions, paras 2, 13, 26.

²² SPO Submissions, paras 13-14.

²³ SPO Submissions, paras 2, 16, 20-21, 26. With regard to the SPO's submission on the forthcoming decision on the confirmation of the Indictment, the Single Judge notes the SPO's subsequent acknowledgment in the Supplemental SPO Notice that its request to suspend the Pre-Trial Judge's consideration of the Revised Indictment impacts the timeline of the proceedings and modifies this submission. *See* Supplemental SPO Notice, para. 5.

²⁴ SPO Submissions, para. 29.

²⁵ SPO Submissions, para. 30.

²⁶ Response, paras 5-10.

²⁷ [REDACTED].

²⁸ Response, paras 12-13.

duration of Mr Kilaj's pre-trial detention and delays in the confirmation process, Mr Kilaj's detention has become disproportionate and it is no longer reasonable for him to remain in detention.²⁹ Lastly, the Defence requests the scheduling of a status conference for the purpose of receiving an update from the SPO on the progress of its investigations and the filing of any indictment against Mr Kilaj.³⁰

III. APPLICABLE LAW

14. Pursuant to Article 41(6) of the Law, the SC shall only order the arrest and detention of a person when (a) there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is at risk of flight; (ii) will destroy, hide, change or forge evidence of a crime, or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that the person has threatened to commit.

15. Pursuant to Article 41(10) of the Law, until a judgment is final or until release, upon expiry of the two (2) months from the last ruling on detention on remand, the Panel seized with the case shall examine whether reasons for detention on remand still exist, and render a ruling by which detention on remand is extended or terminated.

16. Pursuant to Article 41(12) of the Law, in addition to detention on remand, the following measures may be ordered by the SC to ensure the presence of the accused, including by video-conference, to prevent reoffending or to ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave his or her place of residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion. Pursuant to

²⁹ Response, paras 19-21.

³⁰ Response, paras 22-23.

Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

17. Pursuant to Rule 56(2) of the Rules, the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case. In case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

18. Pursuant to Rule 57(1) of the Rules, before the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law, the detention of a Suspect shall be reviewed by the Single Judge every two (2) months or at any time earlier upon request by the Suspect or the SPO, or *proprio motu*, where a change of circumstances since the last review has occurred. In addition to the grounds provided for in Article 41(6) of the Law, each request for an extension shall be justified by investigative measures to be taken by the SPO. The total duration of the detention under this provision shall not exceed one (1) year.

19. Pursuant to Rule 9(5)(a) of the Rules, the Panel may, *proprio motu*, or upon showing of good cause extend or reduce any time limit prescribed by the Rules or set by the Panel. Pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.

20. Pursuant to Rule 9(6) of the Rules, where no prejudice is caused to the opposing Party, a motion for variation of time may be disposed of without giving the opposing Party the opportunity to be heard.

IV. PRELIMINARY MATTERS

21. The Defence requests a short extension of the time limit to respond to the SPO Submissions.³¹ In support, the Defence submits that the SPO Notice, which was

³¹ Response, para. 3.

circulated at 16:12 on 19 April 2024, contains new information, which required a substantial reworking of its submissions and consultation with Mr Kilaj, neither of which could take place before the deadline.³² The Defence further submits that the requested extension would not cause prejudice to the SPO.³³

22. At the outset, the Single Judge recalls that, pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit. The Single Judge notes that the Defence informally requested an extension of time on the day of expiry of the applicable time limit, i.e. on Monday, 22 April 2024.³⁴ Nevertheless, taking into consideration the timing of the SPO Notice, namely its filing on Friday, 19 April 2024 and distribution at 16:12, the Single Judge finds that, in this particular instance, the Defence's Request for Extension was submitted sufficiently in advance, as provided in Rule 76 of the Rules.

23. As regards the showing of good cause, the Single Judge takes into account the fact that (i) the SPO filed a notice on 19 April 2024, informing the Single Judge and the Defence of its intent to file an amended indictment, a development which it acknowledges impacts the timeline of the proceedings and modifies the SPO Submissions;³⁵ and (ii) the SPO Notice contains new information to which the Defence wishes to respond in relation to Mr Kilaj's detention.³⁶ Accordingly, the Pre-Trial Judge finds good cause for an extension of time, in accordance with Rule 9(5)(a) of the Rules.

³² Response, para. 3.

³³ Response, para. 3.

³⁴ As noted in footnote 19 above, the Defence was instructed to include a formal request for an extension of time in its submissions, to be filed by Wednesday, 24 April 2024 at 23:59.

³⁵ See SPO Notice, para. 2.

³⁶ See Response, para. 3.

24. Lastly, the Single Judge finds that no prejudice is caused to the SPO in ruling on the Request for Extension prior to receiving a formal response to the request, in accordance with Rule 9(6) of the Rules.

V. DISCUSSION

A. APPLICABLE STANDARD

25. The Single Judge recalls that his obligation under Article 41(10) of the Law is to examine whether the reasons for detention on remand continue to exist,³⁷ including the grounds set out in Article 41(6) of the Law, namely whether: (i) there is a grounded suspicion that the person has committed the crime(s) under Article 41(6)(a) of the Law; and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law are present.³⁸ The duty to determine whether the circumstances underpinning detention still exist imposes on the Single Judge the task to, *proprio motu*, assess whether he is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the person remains warranted.³⁹ The two (2)-month automatic review is not strictly limited to whether or not a change of circumstances occurred, but such a change can be determinative and shall be taken into

³⁷ See, for example, KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention* ("First Haradinaj Detention Appeal Decision"), 9 February 2021, public, para. 55.

³⁸ First *Haradinaj Detention Appeal Decision*, para. 55. See also KSC-BC-2020-04, F00075/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Second Shala Detention Decision"), 10 September 2021, public, para. 19; F00224/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Sixth Shala Detention Decision"), 22 June 2022, public, para. 19.

³⁹ KSC-BC-2020-06, IA006/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention* ("Second Krasniqi Detention Appeal Decision"), 1 October 2021, public, para. 15. See also *Sixth Shala Detention Decision*, para. 19. Although these standards were established in the context of reviews of detention undertaken under Rule 57(2) of the Rules, the Single Judge sees no reason to depart therefrom for the purpose of the present review.

consideration if raised by a Party or *proprio motu*.⁴⁰ Furthermore, the Single Judge may refer to findings in previous decisions if he is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.⁴¹ The Single Judge is neither required to make findings on the factors already decided upon in the initial ruling on detention, nor to entertain submissions that merely repeat arguments that have already been addressed in earlier decisions.⁴²

26. The Single Judge likewise underscores that any analysis of Mr Kilaj's detention is duly considering his presumption of innocence. This means, as a consequence, that his detention cannot be taken lightly and that the SPO bears the burden of establishing that his detention is necessary.⁴³ The SPO must provide specific arguments and concrete evidence to establish that continued detention is necessary at the time of the review.⁴⁴

B. GROUNDED SUSPICION

27. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that the detained person has committed a crime within the SC's jurisdiction. This is a condition *sine qua non* for the validity of the

⁴⁰ See Second *Krasniqi* Detention Appeal Decision, para. 16. See also Sixth *Shala* Detention Decision, para. 19.

⁴¹ KSC-BC-2020-04, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention* ("Second *Shala* Detention Appeal"), 11 February 2022, public, para. 18. See also Sixth *Shala* Detention Decision, para. 19.

⁴² First *Haradinaj* Detention Appeal Decision, para. 55; Second *Krasniqi* Detention Appeal Decision, para. 17; Sixth *Shala* Detention Decision, para. 19.

⁴³ See, for example, KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release* ("First *Shala* Detention Decision"), 23 June 2021, public, para. 13; KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release* ("First *Thaçi* Decision on Detention"), 22 January 2021, public, para. 19, with further references. See also ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment ("*Merabishvili v. Georgia*"), 28 November 2017, para. 234.

⁴⁴ Sixth *Shala* Detention Decision, para. 19.

detained person's continued detention.⁴⁵ The evidentiary threshold of "grounded suspicion"⁴⁶ embodies an assessment of specific facts and information that need not be conclusive or rise to the same level as that justifying a conviction or the bringing of a charge.⁴⁷ For the purpose of determining whether Mr Kilaj's detention is appropriate under Article 41(6)(a) of the Law, it suffices that the Single Judge finds a grounded suspicion that Mr Kilaj may have committed one or more Article 15(2) offences, based on the material and information submitted by the SPO.

28. The SPO recalls the Single Judge's findings in the First Detention Decision that there is a grounded suspicion that Mr Kilaj has committed offences under Article 15(2) of the Law, and submits that these findings have been upheld on appeal and buttressed by additional evidence.⁴⁸ The SPO asserts that no developments since the First Detention Decision detract from this finding, and that the existence of grounded suspicion has only been strengthened by additional evidence, in particular [REDACTED], strongly supporting that, contrary to Mr Kilaj's claims, the material seized from his residence was [REDACTED].⁴⁹ According to the SPO, this new evidence, together with evidence previously considered by the Single Judge, demonstrates a strong likelihood that Mr Kilaj: (i) [REDACTED]; (ii) [REDACTED]; (iii) sought to destroy the material before the SPO could recover it from his residence; and (iv) knowingly made false statements

⁴⁵ First *Shala* Detention Decision, para. 14. See also ECtHR, *Merabishvili v. Georgia*, para. 222.

⁴⁶ See Article 19(1)(1.9) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ("KCPC"). Similarly, see Article 5(1)(c) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in, *inter alia*, ECtHR, *Fox, Campbell and Hartley v. United Kingdom*, no. 1244/86; 12245/86; 12383/86, Judgment, 30 August 1990, para. 32; *Erdagöz v. Turkey*, no. 21890/93, Judgment, 22 October 1997, para. 51; *Ilgar Mammadov v. Azerbaijan*, no. 15172/12, Judgment, 22 May 2014, para. 88; *Selahattin Demirtaş (no. 2) v. Turkey*, no. 14305/17, Judgment, 22 December 2020, para. 314.

⁴⁷ ECtHR, *Merabishvili v. Georgia*, para. 184, with further references.

⁴⁸ SPO Submissions, para. 13.

⁴⁹ [REDACTED].

to the SPO about its provenance in order to conceal the criminal offences underlying his unlawful possession of the material.⁵⁰

29. The Defence submits that there is insufficient evidence to support a finding of grounded suspicion.⁵¹ In particular, the Defence asserts that no evidence has been put forth in the nearly six months since Mr Kilaj's arrest that he: (i) *in fact* revealed, or attempted to reveal, secret information, in violation of Article 392 of the KCC; (ii) participated in a group of persons which by common action *in fact* obstructed or attempted to obstruct an official person in performing official duties, in violation of Article 401(2) of the KCC; and/or (iii) committed any Article 15(2) offence.⁵² According to the Defence, while undeniably enough to give rise to suspicion, neither [REDACTED], [REDACTED] amounts to proof that Mr Kilaj committed an offence under Article 15(2) of the Law.⁵³ In this regard, the Defence submits that no evidence has been produced that Mr Kilaj in fact [REDACTED], and further, that Mr Kilaj's alleged possession of [REDACTED] material, [REDACTED], is insufficient to indicate the commission of an offence under Article 15(2) of the Law.⁵⁴ Additionally, and contrary to the SPO's claims, the Defence asserts that [REDACTED] does not significantly strengthen the SPO's position, but at best only corroborates inferences previously drawn by the SPO from [REDACTED].⁵⁵

30. The Single Judge recalls that, in the First Detention Decision, he determined, under Article 41(6)(a) of the Law, that there is a grounded suspicion that Mr Kilaj has committed, alone or together with others, offences under Article 15(2) of the Law.⁵⁶ This finding rests on: (i) previous findings in the Search and Seizure Decision

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² Response, paras 5, 7-8.

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ First Detention Decision, paras 24-32.

of a grounded suspicion that evidence of an offence under Article 15(2) of the Law can be found in the residence(s), vehicle(s), and/or on the person of Mr Kilaj, and that the search will result in the discovery and seizure thereof; as well as (ii) the Single Judge's further considerations and findings with respect to the confidential [REDACTED] material seized by the SPO during the search of Mr Kilaj's residence on 2 November 2023 ("Seized Material").⁵⁷

31. The Single Judge also recalls that (i) in the First Detention Appeal Decision, the Court of Appeals Panel upheld his findings of the First Detention Decision;⁵⁸ (ii) in the Second Detention Decision, he found that the additional evidence provided by the SPO as a result of its ongoing investigation has only strengthened such findings;⁵⁹ and (iii) in the Third Detention Decision, he found that no contrary intervening information or developments since the First Detention Decision undermined these findings.⁶⁰

32. The Single Judge acknowledges the Defence's submissions⁶¹ that the SPO has not adduced evidence to support the allegations that Mr Kilaj: (i) ever *in fact* revealed, or attempted to reveal, secret information; and/or (ii) participated in a group of persons which by common action *in fact* obstructed or attempted to obstruct an official person in performing official duties, within the meaning of Articles 392 and 401(2) of the KCC, respectively. The Single Judge notes that these same arguments were raised and dismissed in the First Detention Decision,⁶² and accordingly, they will not be entertained again in the present decision. In any event, the Single Judge notes that the Defence appears to concede that, at this stage, a mere

⁵⁷ First Detention Decision, paras 24-32.

⁵⁸ First Detention Appeal Decision, paras 17-34.

⁵⁹ Second Detention Decision, paras 35-36.

⁶⁰ Third Detention Decision, para. 24.

⁶¹ See Response, para. 5.

⁶² First Detention Decision, paras 27-31.

suspicion suffices to establish the existence of a grounded suspicion under Article 41(6)(a) of the Law.⁶³

33. In light of the foregoing, and in the absence of any contrary intervening information concerning the grounded suspicion established in the First Detention Decision, the Single Judge finds that the requirement set forth under Article 41(6)(a) of the Law continues to be met.

C. NECESSITY OF DETENTION

34. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be *articulable* in the sense that they must be specified in detail.⁶⁴ In this regard, Article 41(6)(b) of the Law echoes the principle that the continued detention of a person can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.⁶⁵ Therefore, the Panel must rely on case-specific reasoning and concrete grounds in deciding whether to continue detention.⁶⁶ The Single Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"⁶⁷ that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exists, denoting

⁶³ See Response, paras 6, 9.

⁶⁴ See Article 19(1.31) of the KCPC, which defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". See also, for example, KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release* ("First Veseli Detention Appeal"), 30 April 2021, public, para. 15.

⁶⁵ KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, public, para. 113.

⁶⁶ SCCC 26 April 2017 Judgment, para. 115; KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release* ("First Thaçi Detention Appeal"), 30 April 2021, public, para. 22. See also ECtHR, *Khudoyorov v. Russia*, no. 6847/02, Judgment ("*Khudoyorov v. Russia*"), 8 November 2005, para. 173; First *Shala* Detention Decision, para. 16.

⁶⁷ See chapeau of Article 41(6)(b) of the Law.

an acceptance of the possibility, not the inevitability, of a future occurrence.⁶⁸ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁶⁹ The Single Judge further observes that these grounds are in the alternative, and that the existence of one ground suffices to determine the necessity of detention.⁷⁰

35. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Single Judge recalls that, while the evaluation involves an element of discretion,⁷¹ it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of the detained person.⁷² When assessing the relevant factors, the Single Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁷³

36. Lastly, in relation to the grounds set forth in Article 41(6)(b)(ii)-(iii) of the Law, the Single Judge emphasises that, while the risks may materialise as a result of the detained person's acts or omissions, they do not require physical execution on his or her part.⁷⁴

1. Risk of Flight

37. The SPO recalls the Single Judge's previous findings in the Second Detention Decision that Mr Kilaj presents a moderate flight risk, that is nevertheless sufficient to necessitate his continued detention, and the considerations set out in this

⁶⁸ First *Shala* Detention Decision, para. 16; First *Thaçi* Detention Decision, para. 20, with further references.

⁶⁹ First *Veseli* Detention Appeal, para. 17; First *Shala* Detention Decision, para. 16.

⁷⁰ First *Shala* Detention Decision, para. 20; First *Thaçi* Detention Decision, para. 25.

⁷¹ First *Thaçi* Detention Decision, para. 21, with further references.

⁷² See First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references; similarly, ECtHR, *Aleksanyan v. Russia*, no. 46468/06, Judgment, 22 December 2008, para. 179.

⁷³ First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references.

⁷⁴ First *Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

respect.⁷⁵ The SPO further recalls the Single Judge's findings in the Third Detention Decision that the filing of an Indictment against Mr Kilaj further increases the risk that he may flee the jurisdiction.⁷⁶ In this respect, the SPO adds that the risk of flight has since increased in light of further incriminating evidence against Mr Kilaj, namely [REDACTED], which it asserts significantly strengthens the SPO's case and potentially exposes Mr Kilaj to additional charges under Article 15(2) of the Law for making false statements to the SPO during his interview.⁷⁷

38. The Defence submits that the SPO overstates the impact of [REDACTED] in arguing that it potentially exposes Mr Kilaj to additional charges under Article 15(2) of the Law.⁷⁸ In particular, the Defence asserts that the only relevant provisions of the KCC, namely Articles 384 and 385, relate to perjury in judicial or criminal proceedings and the giving of a false or incomplete statement by a co-operating witness, respectively, neither of which apply as Mr Kilaj was never a witness, co-operative or otherwise.⁷⁹

39. As regards the flight risk under Article 41(6)(b)(i) of the Law, the Single Judge recalls his finding that (i) Mr Kilaj's knowledge of potential serious charges, (ii) the severity of the potential sentence, (iii) his awareness that [REDACTED], and (iv) the evidence adduced against him exceeds what he had previously foreseen on the basis of the material seized at his residence, are some of the factors that have a bearing upon the assessment of the flight risk.⁸⁰ Notwithstanding recent developments, the Single Judge also pays heed to the fact that an Indictment was filed against Mr Kilaj on 15 December 2023 and subsequently revised on 11 March

⁷⁵ SPO Submissions, para. 15.

⁷⁶ SPO Submissions, para. 15.

⁷⁷ SPO Submissions, para. 16.

⁷⁸ Response, para. 12.

⁷⁹ Response, paras 12-13.

⁸⁰ First Detention Decision, para 39; Second Detention Decision, para. 43; Third Detention Decision, para. 29. *See similarly*, First *Haradinaj* Detention Appeal Decision, para. 61.

2024, which the SPO now intends to amend at some time in the future, rendering even more concrete the likelihood that Mr Kilaj faces serious charges. In addition, the Single Judge recalls his previous finding that Mr Kilaj would, in principle, have the means and opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of the SC, including but not limited to Albania.⁸¹

40. The Single Judge also recalls the considerations favourable to Mr Kilaj concerning his settled family life and ties within the community, and his willingness to cooperate with the SPO on the day of his arrest. The Single Judge continues to find that these factors only diminish, but do not eliminate the risk of flight.

41. In light of the above, and in the absence of any contrary intervening information, the Single Judge concludes that a moderate risk of flight in relation to Mr Kilaj continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

42. The SPO recalls the Single Judge's previous findings that: (i) there is a risk that Mr Kilaj will obstruct the progress of criminal proceedings, which was upheld on appeal in the First Detention Appeal Decision;⁸² (ii) this risk increased as a result of the developments in the SPO's investigation and of Mr Kilaj's increasing awareness of the allegations against him and the evidence in support;⁸³ and (iii) Mr Kilaj's awareness of the filing of an Indictment against him, as well as the prospect of serious charges and a greater sentence increased his incentive to continue obstructing the progress of criminal proceedings.⁸⁴ The SPO submits that

⁸¹ First Detention Decision, para. 40; Second Detention Decision, para. 45.

⁸² SPO Submissions, para. 17.

⁸³ SPO Submissions, para. 18.

⁸⁴ SPO Submissions, para. 19

[REDACTED] provides “fresh and convincing” evidence of Mr Kilaj’s already demonstrated willingness to obstruct SC proceedings.⁸⁵

43. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Single Judge recalls his previous finding that Mr Kilaj’s possession of the Seized Material demonstrates a willingness to violate court orders and to intervene in proceedings to which he is not a Party.⁸⁶ The Single Judge also recalls that, in the Second Detention Decision, he was persuaded that, in light of the additional information that had emerged as a result of the SPO’s investigation, and as Mr Kilaj had gained progressive knowledge of the allegations against him and the evidence in support, the risk that he may obstruct proceedings in which he may be a Party had increased.⁸⁷

44. Further to the above, the Single Judge recalls his findings in the Third Detention Decision that: (i) Mr Kilaj’s awareness that an Indictment has been filed against him is an important factor in assessing the risk of obstruction of proceedings; and (ii) given that the prospect that Mr Kilaj may face criminal charges is ever more concrete under those circumstances, the risk of collusion for the purpose of obstructing the proceedings remained particularly high.⁸⁸

45. The Single Judge further recalls that he made the aforementioned findings, bearing in mind the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.⁸⁹

⁸⁵ SPO Submissions, para. 20.

⁸⁶ First Detention Decision, para. 46; Second Detention Decision, para. 49; Third Detention Decision, para. 33.

⁸⁷ Second Detention Decision, para. 50.

⁸⁸ Third Detention Decision, para. 34.

⁸⁹ First Detention Decision, para. 47; Second Detention Decision, para. 51; Third Detention Decision, para. 35. *See also, amongst others*, KSC-BC-2023-10, F00009/RED, *Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders*, 2 October 2023, public, para. 21; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-581.

46. The above considerations still carry weight today. The Single Judge remains mindful of the developments since the Third Detention Decision, and in particular the SPO's request to suspend consideration of the Revised Indictment pending its submission of an amended indictment. However, in light of Mr Kilaj's knowledge of a potential amendment to the Revised Indictment and the prospect of facing criminal charges, the Single Judge considers that these developments do not lessen the risk of collusion for the purpose of obstruction.

47. In light of the above, and in the absence of any contrary intervening information, the Single Judge finds that the risk that Mr Kilaj may obstruct the progress of criminal proceedings continues to exist.

3. Risk of Committing Further Crimes

48. The SPO recalls that the Single Judge has previously considered that the factors underpinning the risk of obstruction of criminal proceedings are also relevant to the assessment of the risk of criminal offences.⁹⁰ The SPO submits that these factors have increased.⁹¹

49. As regards the risk of committing further crimes under Article 41(6)(b)(iii) of the Law, the Single Judge continues to be of the opinion that the relevant factors to be considered are the same as those recited with respect to the obstruction of the proceedings.⁹² The Single Judge remains mindful that the existence of such a risk does not automatically translate into a risk of committing further crimes, but considers that the factors underpinning the former are of relevance to the assessment of the latter in the present case.⁹³ In particular, the Single Judge remains

⁹⁰ SPO Submissions, para. 21.

⁹¹ SPO Submissions, para. 21.

⁹² First Detention Decision, para. 52; Second Detention Decision, para. 55; Third Detention Decision, para. 38.

⁹³ First Detention Decision, para. 52. *See* First *Shala* Detention Decision, para. 39.

persuaded that there is a risk that Mr Kilaj will repeat the offences alleged to have been committed by him.

50. In light of the above, and in the absence of any contrary intervening information, the Single Judge considers that the risk that Mr Kilaj may commit further offences continues to exist.

4. Conclusion

51. In view of the foregoing, the Single Judge finds that there are articulable grounds to believe that a moderate risk that Mr Kilaj may flee continues to exist, and that there remains a risk that he may obstruct the progress of criminal proceedings and commit further offences, thus necessitating Mr Kilaj's continued detention, in accordance with Article 41(6)(b) of the Law. The Single Judge will assess below whether these risks can be adequately mitigated by imposing conditions in connection with the provisional release of Mr Kilaj.

D. CONDITIONAL RELEASE

52. The SPO submits that no modalities of conditional release can sufficiently mitigate the existing risks.⁹⁴ In support, it recalls the Single Judge's previous findings that: (i) the risk of Mr Kilaj obstructing the proceedings or committing further offences can only be effectively managed through the communications monitoring regime available at the SC Detention Facilities;⁹⁵ (ii) the conditions proposed by Mr Kilaj are inadequate to overcome the challenges associated with provisional release;⁹⁶ and (iii) no additional measures could sufficiently mitigate the existing risks.⁹⁷ The SPO asserts that no developments since the Third Detention Decision detract from these findings, and that [REDACTED] of evidence seized

⁹⁴ SPO Submissions, para. 29.

⁹⁵ SPO Submissions, para. 22.

⁹⁶ SPO Submissions, paras 25-26.

⁹⁷ SPO Submissions, para. 24.

from Mr Kilaj's residence further demonstrates Mr Kilaj's willingness to defy court orders and obstruct SC proceedings and the risk that, if released, he may engage in further obstructive conduct.⁹⁸ Furthermore, according to the SPO, the effectiveness of any modalities of conditional release must be assessed in the context of: (i) the persisting climate of intimidation of witnesses and interference with criminal proceedings against former Kosovo Liberation Army ("KLA") members in Kosovo, conditions which it asserts prompted the need to change the venue to the Host State for these proceedings; and (ii) the documented corruption affecting the criminal justice system in Kosovo.⁹⁹

53. The Defence responds that the SPO's claims that the proposed cash bail would not provide a significant disincentive to Mr Kilaj from obstructing proceedings, and that any cash bail amount could be covered by associates whose interests are closely aligned with those of Mr Kilaj, are unfounded and speculative.¹⁰⁰ In this regard, the Defence repeats its previous arguments that: (i) there is always a risk that any attempt to [REDACTED] would be immediately reported, and the potential loss of EUR 30,000 under these circumstances would operate as a disincentive to Mr Kilaj from taking any such risks; and (ii) the SPO does not provide any evidence that Mr Kilaj has associates who are able or willing to forfeit EUR 30,000 in the event he were to violate conditions of provisional release, and/or that incurring any such debt would not deter Mr Kilaj from breaching his release conditions.¹⁰¹ The Defence further asserts that the SPO's suggestion that Mr Kilaj's bail might be covered by a third party demonstrates prejudicial hostility towards Mr Kilaj on account of his former membership with the KLA, which it asserts infringes on Mr Kilaj's

⁹⁸ SPO Submissions, para. 26.

⁹⁹ SPO Submissions, para. 27.

¹⁰⁰ Response, paras 14-15.

¹⁰¹ Response, paras 14-15. *See also* Third Detention Decision, para. 42.

presumption of innocence and should be disregarded in its entirety by the Single Judge.¹⁰²

54. The Single Judge recalls that, when deciding on whether a person should be released or detained, he must consider all proposed and alternative measures to prevent the risks in Article 41(6)(b) of the Law.¹⁰³

55. Regarding the risk of flight, the Single Judge recalls that he has previously found that the conditions proposed by the Defence could mitigate the risk of flight in relation to Mr Kilaj.¹⁰⁴ The Single Judge takes note of the SPO's submissions that (i) the risk that Mr Kilaj may flee the jurisdiction has increased in light of further incriminating evidence against him, namely [REDACTED]; and (ii) such evidence potentially exposes Mr Kilaj to additional charges under Article 15(2) of the Law for providing false statements to the SPO at the time of his interview regarding the provenance of the Seized Material.¹⁰⁵ However, the Single Judge considers that: (i) while [REDACTED] may confirm suspicions forming the basis of some of the allegations against Mr Kilaj, it does not give rise to new factual allegations; and (ii) the assessment of the risk is based on the specific facts and circumstances at the time of review, and not on what may (or may not) occur in the future. Accordingly, the Single Judge finds that the conditions proposed by the Defence continue to sufficiently address the risk of flight in relation to Mr Kilaj.

56. As regards the risk of obstructing the progress of SC proceedings or committing further offences, the Single Judge remains persuaded that, in principle, none of the conditions put forth by the Defence, nor any additional conditions

¹⁰² Response, para. 16.

¹⁰³ As regards the obligation to consider "alternative measures", see SCCC 26 April 2017 Judgment, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova*, no. 23755/07, Judgment ("*Buzadji v. Moldova*"), 5 July 2016, para. 87; ECtHR, *Idalov v. Russia*, no. 5826/03, Judgment, 22 May 2012, para. 140.

¹⁰⁴ First Detention Decision, para. 59; Second Detention Decision, para. 62; Third Detention Decision, para. 44.

¹⁰⁵ See SPO Submissions, para. 16.

imposed by the Single Judge, could fully restrict Mr Kilaj's ability to obstruct the progress of SC proceedings and/or commit further offences. The Single Judge remains mindful that, by virtue of possessing the Seized Material, Mr Kilaj has knowledge of [REDACTED], as well as other confidential [REDACTED] information that pertains to SC proceedings. Furthermore, the Single Judge remains of the view that, were Mr Kilaj to be released, and despite his previous assurances to the contrary, he could use a device belonging to a family member to convey a message, or ask a family member to do so, whether by means of such a communications device, the internet, or orally. In this regard, the Single Judge remains convinced that such risks can be effectively managed only through the communications monitoring regime available at the SC Detention Facilities.¹⁰⁶

57. For the foregoing reasons, the Single Judge finds that none of the conditions put forth by the Defence, nor any other conditions imposed by the Single Judge, could fully restrict Mr Kilaj's ability to obstruct the progress of SC proceedings and commit further offences.

E. PROPORTIONALITY OF DETENTION

58. The SPO submits that Mr Kilaj's detention remains reasonable and proportional.¹⁰⁷

59. The Defence responds that Mr Kilaj's detention has become unreasonable, considering that: (i) he has been in detention for nearly six months; (ii) no indictment has been or will be confirmed in the near future; (iii) he has not been informed of the charges against him with any particularity; and (iv) rather than progressing, matters have taken several steps backwards.¹⁰⁸ In light of recent

¹⁰⁶ See First Detention Decision, para. 60; Second Detention Decision, para. 64; Third Detention Decision, para. 46.

¹⁰⁷ SPO Submissions, para. 30.

¹⁰⁸ Response, paras 18-21.

developments, including the SPO Notice and resulting delays in the confirmation process, the Defence asserts that the Single Judge must re-evaluate the proportionality and reasonableness of Mr Kilaj's detention, notwithstanding his prior findings with respect to grounded suspicion and modalities of conditional release.¹⁰⁹ According to the Defence, the more time passes and the prospect of a decision on the confirmation of the indictment recedes, Mr Kilaj's continued detention becomes less proportionate.¹¹⁰

60. At the outset, the Single Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention, as reflected in Rule 56(2) of the Rules, which places on the Single Judge the obligation to ensure that a person is not detained for an unreasonable period of time prior to the opening of a case.¹¹¹ The Single Judge notes that the question whether the length of time spent in pre-trial detention is reasonable cannot be assessed in the abstract, but must be assessed based on the facts of each case and according to its specific features.¹¹² The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, continued detention "stops being reasonable" and the individual needs to be released.¹¹³ In this respect, the Single Judge also considers relevant to his assessment the nature of the offence and the severity of the penalty in the event of a conviction,¹¹⁴ as well as

¹⁰⁹ Response, para. 20.

¹¹⁰ Response, para. 21.

¹¹¹ KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention* ("Gucati Arrest and Detention Appeal Decision"), 9 December 2020, public, paras 72-73.

¹¹² ECtHR, *Buzadji v. Moldova*, para. 90. See, similarly, Second Detention Decision, para. 39.

¹¹³ KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, public, para. 49.

¹¹⁴ *Gucati Arrest and Detention Appeal Decision*, paras 72-73. Offences against the administration of justice, while not as grave as the core crimes under Article 13 and 14 of the Law, are serious offences and the public interest in protecting the integrity of proceedings through effective prosecution of

the investigative and procedural steps taken towards moving the case forward since the last review of detention.

61. The Single Judge notes that, since Mr Kilaj's arrest and detention on 6 November 2023, the SPO has progressively taken additional investigative steps, and provided further evidence and details on the facts at issue.¹¹⁵ The Single Judge also notes that: (i) the SPO submitted an Indictment for confirmation before the Pre-Trial Judge on 15 December 2023,¹¹⁶ and the confirmation process has been underway since that time; (ii) the SPO submitted a Revised Indictment on 11 March 2024 pursuant to Rule 86(4) of the Rules;¹¹⁷ and (iii) the SPO intends to submit an amended indictment [REDACTED].¹¹⁸ In this respect, the Single Judge recalls that the confirmation of the Indictment triggers the framework and calendar for pre-trial proceedings.¹¹⁹ Moreover, the Single Judge recalls, pursuant to Article 41(10) of the Law and Rule 57(1) of the Rules, Mr Kilaj's detention shall be reviewed every two (2) months.

62. However, while the SC legal framework expressly foresees the possibility to detain a suspect prior to the filing of an indictment or its confirmation for up to one (1) year,¹²⁰ the Single Judge is particularly mindful in the present case that: (i) Mr Kilaj has been detained for nearly six months, since his arrest on 6 November 2023; (ii) the offences for which Mr Kilaj is considered a suspect carry a possible penalty between one (1) and five (5) years; and (iii) while an Indictment has been

such offences cannot be underestimated. *See Gucati Arrest and Detention Appeal Decision*, para. 71. However, the Single Judge is mindful that such offences carry a lower penalty.

¹¹⁵ Second Detention Decision, para. 69; Third Detention Decision, para. 52.

¹¹⁶ *See above*, para. 4.

¹¹⁷ *See above*, para. 7.

¹¹⁸ *See above*, para. 11.

¹¹⁹ Second Detention Decision, para. 69.

¹²⁰ Second Detention Appeal Decision, para. 17. *See* Rule 57(1)-(2) of the Rules. In this respect, the Single Judge recalls that the Court of Appeals Panel found that Hysni Gucati's pre-trial detention of more than two months, even in the absence of a confirmed indictment against him, remained proportional. *See* KSC-BC-2020-07, IA001-F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, public, paras 73-74.

filed against him, followed by a revised indictment on 11 March 2024, the SPO has now requested the suspension of the Pre-Trial Judge's consideration of the Revised Indictment, in light of its intent to file an amended indictment [REDACTED], substantially delaying the timeline of the proceedings. Furthermore, in the view of the Single Judge, the procedural stance of the case since the Third Detention Decision has not come closer to triggering the framework and calendar for pre-trial proceedings. To the contrary, recent developments indicate that the opening of a case will not occur in the near future.

63. Having regard to all of the above factors and duly considering Mr Kilaj's presumption of innocence and right to liberty, the Single Judge finds that extending Mr Kilaj's detention under the present circumstances, namely considering the SPO's request to suspend consideration of the Revised Indictment which consequently cannot be confirmed in the near future, renders Mr Kilaj's detention unreasonable. While mindful that, as found in this decision, the risks of obstruction and the commission of further offences remain and cannot be entirely mitigated by any proposed or additional conditions, the Single Judge nevertheless considers that, under the present circumstances, the existence of these risks does not outweigh Mr Kilaj's fundamental right to liberty.

64. On this basis, the Single Judge concludes that extending Mr Kilaj's detention, under these present circumstances, would be unreasonable within the meaning of Rule 56(2) of the Rules. Accordingly, the Single Judge decides to order Mr Kilaj's release subject to strict conditions, as outlined in paragraphs 65 to 66 below, and pending the implementation of all necessary practical arrangements by the Registrar. Mindful of Mr Kilaj's fundamental right to liberty, the Single Judge orders the Registrar to undertake the necessary steps and practical arrangements expeditiously, in cooperation with the Host State, as necessary.

F. CONDITIONS FOR RELEASE

65. Mindful of the above finding regarding the persistence of the risks of obstruction and the commission of further offences, the Single Judge decides to order the following strict requirements as a condition for Mr Kilaj's release, with a view towards minimising any such risks as much as possible:

- a. Mr Kilaj shall not leave the territory of Kosovo unless permitted by a competent panel of the SC;
- b. Mr Kilaj 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 Kilaj's presence is required at the seat of the SC, the Registry will provide him with his passport for that sole purpose; his passport shall be re-surrendered upon his return to Kosovo;
- c. Mr Kilaj shall provide an address in which he will reside for the duration of the judicial proceedings and shall request permission from the SC prior to any change of residence;
- d. Mr Kilaj shall provide a financial security to the Registrar in the form of a monetary transfer in the amount of EUR 30,000, to be paid in full within two (2) weeks from notification of this decision [REDACTED], as a pre-condition for his release;
- e. Mr Kilaj shall refrain from any contact or communication, direct or indirect (through any other person), of any kind and through any means,¹²¹ with [REDACTED];

¹²¹ The Single Judge notes that Counsel for Mr Kilaj, who is authorised to represent him before the SC, is exempt from this ruling, but is nevertheless reminded to continue to act in accordance with the applicable SC framework.

- f. Mr Kilaj shall refrain from making, directly or indirectly, any public statement to the media and/or on social media regarding the SC, the SPO and/or any SC proceedings, including any statements involving threats, force, or [REDACTED] and obstruction of criminal investigation;
- g. Mr Kilaj shall report on a weekly basis to the Kosovo Police, in accordance with the procedures designated by the Registrar;
- h. Mr Kilaj shall attend any hearing required by the SC; to this end, Mr Kilaj is ordered to 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; any failure to appear before the SC, as ordered, will lead to the forfeiture of the financial security and the immediate issuance of a warrant of arrest;
- i. Mr Kilaj shall respect the classification of the present decision and shall not release, disclose or otherwise discuss its contents, directly or indirectly, with any person, including his family, with the exception of his counsel until the present decision has been made public upon order of the Single Judge; and
- j. Mr Kilaj shall abide by any other decision or order of the SC.

66. The Single Judge emphasises that, should any of the above conditions not be met, a warrant will be immediately issued for Mr Kilaj's arrest.

67. Mr Kilaj and his Defence team are ordered not to reveal the content of this decision, which remains confidential, to any other person, including family members, until all practical arrangements have been put in place and Mr Kilaj's secure release in Kosovo is ensured. In this regard, the Single Judge exempts from this ruling Counsel for Mr Kilaj, who is authorised to represent him before the SC, for the strictly limited purpose of communicating with Mr Kilaj's immediate family members concerning the payment of bail. Under such circumstances, Counsel shall

inform the family member of the confidential nature of the information and that he or she is not to discuss or otherwise disclose it to any other person until the present decision has been made public upon order of the Single Judge.

68. Lastly, in light of Mr Kilaj's release, the Single Judge does not consider a hearing to be necessary and accordingly rejects the Defence's request for a status conference.

VI. CLASSIFICATION

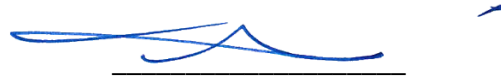
69. While the principle of publicity dictates to conduct these proceedings publicly, the Single Judge is aware that security concerns and logistical considerations compel him to issue this decision confidentially. If and when the situation allows, the Single Judge will order the submission of public redacted versions of the underlying filings and of this decision.

VII. DISPOSITION

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

- a. **ORDERS** Mr Kilaj's release from detention in Kosovo in accordance with the Host State Agreement, subject to strict conditions, as outlined in paragraphs 65 to 66 of the present decision, pending the implementation of all necessary practical arrangements by the Registrar;
- b. **ORDERS** the Registrar to [REDACTED], and to make all other necessary arrangements for the implementation of the present decision;;
- c. **DETERMINES** that Mr Kilaj's release, as described in paragraph 70(a) above, shall take effect upon full payment of the financial security for his release, in accordance with paragraph 65(d) of the present decision, and **DECIDES** to extend Mr Kilaj's detention until such time;
- d. **ORDERS** the Registrar to put on record when Mr Kilaj's financial security has been received [REDACTED];

- e. **ORDERS** the Registrar to make all practical arrangements as expeditiously as possible, and **AUTHORISES** the Registrar to liaise with the competent authorities of the Host State and any other competent authorities, as necessary;
- f. **ORDERS** Mr Kilaj and his Defence team not to reveal the content of this decision, which remains confidential, to any other person, including family members, until all practical arrangements have been put in place and Mr Kilaj's secure release in Kosovo is ensured, as outlined in paragraph 67 of the present decision; and
- g. **REJECTS** the Defence's request for a status conference, in accordance with paragraph 68 of the present decision.



Judge Nicolas Guillou
Single Judge

Dated this Friday, 3 May 2024

At The Hague, the Netherlands

Explanatory Note

The numbering of headings has been corrected.