



**In:** KSC-BC-2018-01  
**Before:** Single Judge Panel  
Judge Nicolas Guillou  
**Registrar:** Dr Fidelma Donlon  
**Date:** 17 April 2024  
**Language:** English  
**Classification:** Public

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**Decision on Request for Reclassification and Lifting of Redaction**

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**Specialist Prosecutor**

Kimberly P. West

**Duty Counsel for Isni Kilaj**

Iain Edwards

Joseph Holmes

**Registrar**

Fidelma Donlon

**THE SINGLE JUDGE**,<sup>1</sup> pursuant to Article 33(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 9(5)(a) and 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 11 January 2024, the Defence for Isni Kilaj ("Mr Kilaj" and "Defence") filed a request for a status conference before the Single Judge, for the purpose of receiving an update on the progress of investigations by the Specialist Prosecutor's Office ("SPO") and the filing of any indictment.<sup>2</sup>

2. On 15 January 2024, the SPO responded to the Defence's request, noting that an indictment had been submitted for confirmation on 15 December 2023, and accordingly, the Defence's request is moot ("Filing F00549").<sup>3</sup>

3. On 16 January 2024, in light of the SPO's response in Filing F00549, the Defence withdrew its request for a status conference ("Filing F00551").<sup>4</sup>

4. On 2 February 2024, the SPO filed a request seeking an extension of the limits for the retention of evidence seized during a search and seizure on Mr Kilaj ("Request for Extension").<sup>5</sup> On 15 February 2024, the Defence responded to the Request for Extension, seeking its dismissal.<sup>6</sup>

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

<sup>2</sup> KSC-BC-2018-01, F00548, Defence for Isni Kilaj, *Kilaj Request for Status Conference*, 11 January 2024, public.

<sup>3</sup> KSC-BC-2018-01, F00549, Specialist Prosecutor, *Prosecution Response to Defence Request F00548*, 15 January 2024, confidential.

<sup>4</sup> KSC-BC-2018-01, F00551, Defence for Isni Kilaj, *Kilaj Withdrawal of Request for Status Conference*, 16 January 2024, confidential.

<sup>5</sup> KSC-BC-2018-01, F00566, Specialist Prosecutor, *Prosecution Request for Retention of Evidence (F00484)*, 2 February 2024, confidential.

<sup>6</sup> KSC-BC-2018-01, F00579, Defence, *Kilaj Response to Prosecution Request for Retention of Evidence*, 15 February 2024, confidential.

5. On 12 March 2024, the Single Judge issued a decision on the Request for Extension, granting an extension of time for the retention of the seized evidence (“Decision F00611”).<sup>7</sup>

6. On 15 March 2024, the Defence submitted a request seeking the reclassification of Filing F00549 and Filing F00551 as public, and the issuance of a lesser redacted version of Decision F00611 (“Request”).<sup>8</sup>

7. On 4 April 2024, the SPO notified the Single Judge that it did not intend to respond to the Request and that it did not object to: (i) the reclassification of Filing F00549 as public; and (ii) a reasonable extension of time for the Defence to lodge a request pursuant to Rule 77 of the Rules with respect to Decision F00611.<sup>9</sup>

## II. APPLICABLE LAW

8. Pursuant to Rule 82(5) of the Rules, where the basis for reclassification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

9. Pursuant to Rule 9(5)(a) of the Rules, the Single Judge may, *proprio motu* or upon a showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

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<sup>7</sup> KSC-BC-2018-01, F00611, Single Judge, *Decision on Request on Variation of Time Limits Concerning Retention of Evidence*, 12 March 2024, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00611/CONF/RED.

<sup>8</sup> KSC-BC-2018-01, F00620, Defence for Isni Kilaj, *Kilaj Request for Reclassification of Two Filings, and for Lesser Redacted Version of One Decision*, 15 March 2024, confidential. A corrected version was filed on 2 April 2024, F00620/COR.

<sup>9</sup> KSC-BC-2018-01, CRSPD51, Email from SPO to CMU re F00620, 4 April 2024, confidential.

### III. SUBMISSIONS

10. The Defence requests that the Single Judge direct (i) the reclassification of Filing F00549 and Filing F00551 as public (“Request for Reclassification”); (ii) the issuance of a lesser redacted version of Decision F00611, removing the redaction at paragraph 20 (“Request for Lifting of Redaction”); and (iii) an extension of the seven-day time limit for the filing of a request for certification to appeal Decision F00611 (“Request for Extension”).<sup>10</sup>

11. In support of the Request for Reclassification, the Defence submits that Filing F00549 and Filing F00551 do not contain any confidential information, as they merely reference the fact that an indictment has been submitted for confirmation.<sup>11</sup> Accordingly, the Defence asserts that their public disclosure would not result in any potential prejudice to ongoing investigations or the security of witnesses, and consequently, maintaining the confidentiality of the filings is unnecessary and disproportionate.<sup>12</sup> Furthermore, the Defence recalls the importance of the principle of publicity of criminal proceedings<sup>13</sup> and submits that there is a public interest in the question of whether an indictment has been submitted for confirmation.<sup>14</sup>

12. In support of the Request for Lifting of Redaction, the Defence submits that the redaction applied in paragraph 20 of Decision F00611 prevents the Defence from understanding the full basis of the Single Judge’s decision, and in particular his finding with respect to the timely filing of the SPO’s Request for Extension. In the Defence’s view, the redaction in question impedes its ability to properly assess the appropriateness of filing a request for certification to appeal Decision F00611

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<sup>10</sup> Request, paras 1, 13(i)-(iii).

<sup>11</sup> Request, paras 4, 7.

<sup>12</sup> Request, para. 7.

<sup>13</sup> Request, para. 5.

<sup>14</sup> Request, para. 6.

pursuant to Rule 77 of the Rules.<sup>15</sup> Consequently, the Defence argues that fairness and the avoidance of prejudice to Mr Kilaj demands the removal of the redaction.<sup>16</sup>

#### IV. DISCUSSION

13. At the outset, the Single Judge notes that the SPO (i) does not oppose the reclassification of Filing F00549 as public; (ii) does not oppose a modification of the briefing schedule for the Defence to lodge a request for leave to appeal Decision F00611; and (iii) does not make any submissions with respect to the lifting of the redaction at paragraph 20 of Decision F00611.

14. In relation to the Request for Reclassification, the Single Judge pays heed to, on the one hand, the fact that the principle of publicity of proceedings, demands that all submissions filed before the SC shall be made public as soon as possible unless there are exceptional reasons for keeping them confidential,<sup>17</sup> and on the other hand, the duty of the Single Judge to provide for the protection of witnesses and victims, and confidential information, in accordance with Article 23(1) of the Law and Rule 80(1) of the Rules.

15. Having considered the Defence's submissions, the Single Judge further notes that: (i) Filing F00549 was filed as confidential in light of the confidential (and *ex parte*) classification of the submitted indictment referenced in the filing, but that the SPO does not object to its reclassification as public;<sup>18</sup> (ii) Filing F00551 was filed as confidential in light of the confidential classification of Filing F00549;<sup>19</sup> and (iii) neither filing contains sensitive information compromising the safety and

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<sup>15</sup> Request, paras 8-9, 11-12.

<sup>16</sup> Request, paras 9, 12.

<sup>17</sup> See, for example, KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention*, 1 October 2021, public, paras 8-9; KSC-CA-2022-01, F00103, Court of Appeals Panel, *Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions*, 9 January 2023, public, para. 2.

<sup>18</sup> See *supra* para. 7; Filing F00549, footnote 2.

<sup>19</sup> Filing F00551, para. 2.

security of witnesses, the privacy of Mr Kilaj or the security and integrity of the proceedings. Accordingly, the Single Judge finds it appropriate to order the reclassification of Filing F00549 and Filing F00551 as public in the record of the present proceedings.

16. In relation to Request for Lifting of Redaction, the Single Judge notes that the information redacted in paragraph 20 of Decision F00611 refers to the SPO's investigative activities. However, noting the absence of an objection by the SPO to the Request, the Single Judge is satisfied that the redacted information does not identify any sensitive information compromising the safety and security of witnesses, or the security and integrity of the SPO's investigation or of the proceedings. Accordingly, the Single Judge finds it appropriate to disclose to the Defence a lesser redacted version of Decision F00611, removing the redaction in paragraph 20. The Single Judge informs the Parties that such decision will be issued concomitantly with the present decision.

17. Lastly, in relation to the Request for Extension, having considered (i) the Defence's submissions, in particular with regard to its inability to properly assess the appropriateness of and make a reasoned request for certification on the basis of the redaction applied in paragraph 20 of Decision F00611; (ii) the forthcoming issuance of a lesser redacted version of Decision F00611, lifting said redaction, as outlined above; and (iii) noting that the SPO does not object to a reasonable extension, the Single Judge finds that good cause has been demonstrated warranting a limited extension of time. Accordingly, the Single Judge decides to extend the briefing schedule for the filing of any leave to appeal Decision F00611 to seven (7) days following issuance of the lesser redacted version of Decision F00611.

## V. DISPOSITION

18. For the above reasons, the Single Judge hereby:

- a. **GRANTS** the Request;
- b. **ORDERS** the Registrar to reclassify the following documents as public in the record of the present proceedings, as described in paragraph 15 above:
  - i. KSC-BC-2018-01/F00549 (currently classified as confidential);  
and
  - ii. KSC-BC-2018-01/F00551 (currently classified as confidential);
- c. **AUTHORISES** the lifting of the redaction in paragraph 20 of Decision F00611 for purposes of disclosure to the Defence, as described in paragraph 16 above;
- d. **EXTENDS** the briefing schedule for the filing of any leave to appeal to seven (7) days following issuance of the lesser redacted version of Decision F00611, as described in paragraph 17 above; and
- e. **ORDERS** the Registrar to reclassify the Request as public.



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**Judge Nicolas Guillou**  
**Single Judge**

Dated this Wednesday, 17 April 2024

At The Hague, the Netherlands.