



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor's Office
Date: 15 April 2024
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**Public redacted version of 'Prosecution submissions on review of detention
with confidential Annexes 1 and 2'**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 41(6) and (10) of the Law¹ and Rule 57 of the Rules,² and in compliance with the Single Judge's order,³ the Specialist Prosecutor's Office ('SPO') hereby files its submissions on the review of detention of Isni KILAJ ('KILAJ').
2. KILAJ's continued detention remains necessary. There has been no change in circumstances detracting from the established reasons for detention. To the contrary, the Article 41(6)(b) risks have only increased [REDACTED].

II. PROCEDURAL HISTORY

2. On 2 November 2023, the SPO (a) executed a judicially-authorized search and seizure at KILAJ's residence in Kosovo, (b) conducted a voluntary interview with KILAJ, and (c) arrested KILAJ pursuant to an arrest order issued by the Specialist Prosecutor.
3. On 6 and 9 November 2023, the Single Judge issued the Initial Detention Decision.⁴
4. On 5 January 2024, the Single Judge ordered KILAJ's continued detention.⁵

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law unless otherwise noted.

² KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules unless otherwise noted.

³ Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00603, 5 March 2024, Confidential ('Third Detention Decision') para.58.

⁴ Decision on Continued Detention, KSC-BC-2018-01/F00499, 6 November 2023, Public ('Initial Detention Decision') and Reasons for Continued Detention, KSC-BC-2018-01/F00503, 9 November 2023, Confidential ('Initial Detention Reasons'), para.66(a).

⁵ Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00547, 5 January 2024, Confidential ('Second Detention Decision').

5. On 11 January 2024, the Appeals Panel denied KILAJ's appeal against the Initial Detention Decision.⁶

6. On 26 February 2024, the Appeals Panel denied KILAJ's appeal against the Second Detention Decision.⁷

7. On 5 March 2024, the Single Judge ordered KILAJ's continued detention and set out a timeline for submissions on the next review of detention.⁸

III. APPLICABLE LEGAL FRAMEWORK

8. Before ordering KILAJ's continued detention, the Single Judge must be satisfied that: (1) there is a grounded suspicion that KILAJ has committed a crime within the jurisdiction of the Kosovo Specialist Chambers ('SC');⁹ (2) there are articulable grounds to believe that: (i) there is a risk of flight; (ii) KILAJ will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; or (iii) the seriousness of the crime or the manner or circumstances in which it was committed and KILAJ's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted crime or commit a crime which he has threatened to commit.¹⁰

9. The Court of Appeals has established that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article

⁶ Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, KSC-BC-2018-01/IA004/F00006, 11 January 2024, Confidential ('Detention Appeal Decision').

⁷ Decision on Isni Kilaj's Appeal Against Decision on Review of Detention, KSC-BC-2018-01/IA005, 26 February 2024, Confidential ('Second Appeals Decision').

⁸ Third Detention Decision, KSC-BC-2018-01/F00603.

⁹ Article 41(6)(a); Detention Appeal Decision, KSC-BC-2018-01/IA004/F00006, paras 17-25.

¹⁰ Article 41(6)(b)(i)-(iii).

41(6)(b) is sufficient to support detention.¹¹ The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.¹² The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence'.¹³ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.¹⁴ Articulable in this context means specified in detail by reference to the relevant information or evidence.¹⁵

10. In considering whether an individual should be detained or released, the relevant panel must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.¹⁶ If the Article 41(6) conditions are met and no lesser measures are available, the person shall continue to be detained.¹⁷

¹¹ See *Specialist Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49; See also *Specialist Prosecutor v. Thaçi et al.*, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021 ('Veseli Interim Release Appeals Decision'), para.15; Articles 19(1.9), 19(1.10) and 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ('KCPC').

¹² Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.19.

¹³ See Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, paras 13-19; *Specialist Prosecutor v. Thaçi et al.*, Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021, para.21 citing Gucati Appeals Decision, KSC-BC-2020-07/IA001/F00005, paras 63, 67.

¹⁴ Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.17.

¹⁵ *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC2020-06/F01862, 16 October 2023, para.12 citing Article 19.1.30 of the KCPC 2012, Law No. 04/L-123 defining 'articulable' as: 'the party offering the information or evidence must specify in detail the information or evidence being relied upon.'

¹⁶ 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, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

¹⁷ Gucati Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

IV. SUBMISSIONS

11. In the Third Detention Decision, the Single Judge found the Article 41(6) criteria continued to be met and KILAJ's detention remained necessary.¹⁸ The Single Judge must now consider anew whether those conditions continue to be satisfied.¹⁹ In doing so, the Single Judge may refer to previous decisions and material and evidence already before him, without this affecting the *de novo* character of his decision.²⁰

12. For the reasons detailed below, the SPO has fully discharged its burden²¹ by establishing that (a) all Article 41(6) criteria are met, and (b) KILAJ's continued detention is necessary.

A. GROUNDED SUSPICION

13. The Initial Detention Decision found a grounded suspicion that KILAJ has committed offences under Article 15(2) of the Law.²² This finding has been upheld on appeal,²³ and has been significantly buttressed by additional evidence.²⁴ Accordingly, the Single Judge has correctly found that the grounded suspicion that KILAJ has committed crimes within the SC's jurisdiction has only strengthened since the Initial

¹⁸ Third Detention Decision, KSC-BC-2018-01/F00603.

¹⁹ See, *inter alia*, *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of the Decision on Jakup Krasniqi's Application for Interim Release, KSC-BC-2020-06/F00180/RED, 22 January 2021 ('Krasniqi Decision'), para.16. Following his first, inter partes detention ruling, the Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention, but must examine these reasons or circumstances and determine whether they still exist. See, *inter alia*, *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F00371/RED, 25 June 2021, para.19.

²⁰ See, e.g., Krasniqi Decision, KSC-BC-2020-06/F00180/RED, para.24

²¹ Krasniqi Decision, KSC-BC-2020-06/F00180/RED, para.17.

²² See Initial Detention Decision, KSC-BC-2018-01/F00499, para.13 and Initial Detention Reasons, KSC-BC-2018-01/F00503, paras 22-32.

²³ Detention Appeal Decision, KSC-BC-2018-01/IA004/F00006, paras 27, 34.

²⁴ Prosecution Submissions on First Detention Review, KSC-BC-2018-01/F00538, Annex 1 (containing Transcript of 6 October 2023 Visit, 116083 061023-111500-135746-TR-AT-ET), Annex 2 (containing reconstructed pages of seized materials, SPOE00343600, SPOE00343604).

Detention Decision.²⁵ Nothing has occurred since this finding that could diminish the grounded suspicion.

14. To the contrary, additional evidence further strengthens the existing grounded suspicion of KILAJ's criminal conduct and underscores the necessity of his continued detention based on the relevant Article 41(6) factors. Specifically, as previously noted, during the 2 November 2023 judicially-authorized search of KILAJ's residence, the SPO recovered, *inter alia*, [REDACTED]. During his voluntary interview²⁶ with the SPO immediately prior to his 2 November arrest, KILAJ claimed that he had printed the seized [REDACTED] himself, after likely obtaining [REDACTED] from an unspecified online source.²⁷ [REDACTED].²⁸ This, in combination with the evidence previously considered by the Single Judge,²⁹ demonstrates a strong likelihood that KILAJ: (a) [REDACTED] during their 6 October Detention Centre visit; (b) violated Detention Centre regulations by removing the documents from the Detention Centre without authorisation;³⁰ (c) sought to destroy the documents before the SPO could recover them from his residence; and (d) made knowingly false statements to the SPO

²⁵ Second Detention Decision, KSC-BC-2018-01/F00547, paras 32-37; *see also* Third Detention Decision, KSC-BC-2018-01/F00603, paras 21-24.

²⁶ A copy of the revised SPO transcript of KILAJ's 2 November 2023 interview is attached hereto as Annex 1. The SPO provided a copy of the transcript to KILAJ's defence counsel as a courtesy on 12 April 2024.

²⁷ *See, e.g.*, Annex 1, 116809 TR AT Part 1 ET, pages 14-16 and Part 2, ET pages 2-3.

²⁸ [REDACTED].

²⁹ Initial Detention Decision, KSC-BC-2018-01/F00499, para.13 and Initial Detention Reasons, KSC-BC-2018-01/F00503, paras 22-32; Second Detention Decision, KSC-BC-2018-01/F00547, paras 32-37; Third Detention Decision, KSC-BC-2018-01/F00603, paras 21-24.

³⁰ *See, e.g.*, KSC-BD-29, DMU Instruction on House Rules of the Detention Facilities, Section 20 ('During a visit, a Detainee and his or her visitors may not directly exchange any items. Only at a *Counsel Visit* may a Detainee and his or her Counsel directly exchange paper documents for preparing the defence.');

see also KSC-BD-09-Rev1, Article 14.2 ('Visitors may not directly exchange any item with a Detainee during a visit. [...]') and KSC-BD-33, Section 20.1 ([...] a Detainee and his or her visitors shall not directly exchange any items during a visit''.

about the provenance of the [REDACTED] seized from his residence in order to cover up the criminal offences underlying his unlawful possession of the statement.

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

i. Risk of Flight (Article 41(6)(b)(i))

15. In previously finding that KILAJ presents a moderate flight risk sufficient to necessitate his continued detention, the Single Judge has considered, *inter alia*, KILAJ's knowledge of potential serious charges and the forthcoming filing of an indictment, the severity of the potential sentence, [REDACTED], and that the evidence against him is stronger than he had previously realised.³¹ In addition, the Single Judge noted that KILAJ has the means and opportunity to evade justice, including by traveling to jurisdictions beyond the reach of the SC.³² Subsequently, [REDACTED],³³ which further increased the risk that he may flee the SC's jurisdiction.³⁴

16. Since then, the risk that KILAJ may flee the jurisdiction has further increased as the SPO's investigation unveils more incriminating evidence against KILAJ. Notably, [REDACTED],³⁵ which significantly strengthens the case against KILAJ and undermines the core pillar of KILAJ's response to the SPO's allegations.³⁶ Moreover, [REDACTED].

ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))

³¹ Second Detention Decision, KSC-BC-2018-01/F00547, paras 43-44.

³² Second Detention Decision, KSC-BC-2018-01/F00547, para.45.

³³ [REDACTED].

³⁴ Third Detention Decision, KSC-BC-2018-01/F00603, para.29.

³⁵ [REDACTED].

³⁶ See Corrected Version of Kilaj Defence response to "Confidential redacted version of 'Prosecution request for continued detention of Isni KILAJ'", KSC-BC-2018-01/F00497/COR, 4 November 2023, Confidential, paras 5-9.

17. In the Initial Detention Decision, the Single Judge attached weight to, amongst other matters, the fact that the seized materials [REDACTED]. The fact that KILAJ possessed these materials, while knowing the unlawful status of them, demonstrated a willingness to violate court orders and to intervene in proceedings. The Single Judge found this indicative of the risk that KILAJ will obstruct the progress of criminal proceedings, which, together with the risk of committing further offences, necessitated KILAJ's continued detention.³⁷ This finding has been upheld on appeal.³⁸

18. In the Second Detention Decision, the Single Judge found that the risk that KILAJ may obstruct proceedings increased since the Initial Detention Decision, given that [REDACTED]: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].³⁹ This represents a careful evaluation of the established risks, which are heightened further because the investigation relating to KILAJ is ongoing.⁴⁰

19. In the Third Detention Decision, the Single Judge also weighed [REDACTED].⁴¹ Consequently, [REDACTED], which only increases his incentive to continue his efforts to obstruct the progress of criminal proceedings.⁴²

20. The [REDACTED] provides fresh and convincing evidence of KILAJ's already demonstrated willingness to obstruct SC proceedings.⁴³

iii. Risk of Criminal Offences (Article 41(1)(6)(b)(iii))

21. The Single Judge has previously noted that the factors underpinning the risk that KILAJ may obstruct criminal proceedings are also relevant to the assessment of

³⁷ Initial Detention Reasons, KSC-BC-2018-01/F00503, paras 46-47.

³⁸ Detention Appeal Decision, KSC-BC-2018-01/IA004/F00006, paras 33, 43-45.

³⁹ [REDACTED].

⁴⁰ Second Detention Decision, KSC-BC-2018-01/F00547, para.64.

⁴¹ Third Detention Decision, KSC-BC-2018-01/F00603, para.34.

⁴² Third Detention Decision, KSC-BC-2018-01/F00603, para.34.

⁴³ [REDACTED].

the risk that he may commit further offences.⁴⁴ As outlined above, these factors have increased.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

22. The Third Detention Decision established anew that the risk of KILAJ obstructing the proceedings or committing further offences can only be effectively managed through the communications monitoring regime available at the SC's Detention Facilities.⁴⁵

23. The Single Judge has previously rejected as inadequate the conditions proposed by KILAJ, including: (i) house arrest, surveilled by means of electronic monitoring by way of an ankle tag; (ii) daily reporting at the nearest police station; (iii) surrendering his passport and any other document that could be used for travel; and (iv) paying of a security into Court of €30,000. The Single Judge's conclusion about the inadequacy of the proposed cash security has been upheld on appeal.⁴⁶

24. The Single Judge further held that no additional measures foreseen in Article 41(12) could sufficiently mitigate the risk that KILAJ may obstruct the proceedings or commit further offences.⁴⁷

25. In particular, the Single Judge has found that KILAJ, [REDACTED], could use a device belonging to a family member to convey a message, or ask a family member to do so.⁴⁸ The previously proposed cash bail would only minimally disincentivise

⁴⁴ Third Detention Decision, KSC-BC-2018-01/F00603, para. para.38.

⁴⁵ Third Detention Decision, KSC-BC-2018-01/F00603, paras 45-46.

⁴⁶ Second Appeals Decision, KSC-BC-2018-01/IA005.

⁴⁷ Second Detention Decision, KSC-BC-2018-01/F00547, para.67; Third Detention Decision, KSC-BC-2018-01/F00603, para.47, 49.

⁴⁸ Second Detention Decision, KSC-BC-2018-01/F00547, para.63.

KILAJ from obstructing the proceedings, since violations in the manner described above would be difficult to detect.⁴⁹ Moreover, [REDACTED], it is likely that any cash bail amount could be covered by associates whose interests are closely aligned in this instance – as such, it would provide limited, if any, disincentive from violation of conditions imposed. The Single Judge thus correctly found that the proposed conditions would not overcome the challenges associated with provisional release.⁵⁰

26. There have been no developments since the Third Detention Decision capable of altering the Single Judge's conclusion that the risk of KILAJ obstructing the proceedings or committing further offences can only be effectively managed through the monitoring regime available at the SC Detention Facilities. Rather, [REDACTED] presents further evidence of: (a) KILAJ's willingness to defy court orders and obstruct the work of the SPO and SC; and (b) the unacceptable risk that KILAJ, if released, may engage in further obstructive conduct.

27. The effectiveness of any modalities of conditional release must also be assessed in the context of: (i) the 'persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo';⁵¹ (ii) the fact that the conditions in Kosovo were what prompted the need for the change in venue to the Host State for the trial of high ranking former KLA members;⁵² and (iii) recently documented corruption affecting the criminal justice sector in Kosovo.⁵³ In this regard, the Single Judge took note of prior rulings in Case 06, which established

⁴⁹ See Second Detention Decision, KSC-BC-2018-01/F00547, para.65.

⁵⁰ Second Detention Decision, KSC-BC-2018-01/F00547, paras 63-65.

⁵¹ Second Detention Decision, KSC-BC-2018-01/F00547, para.51.

⁵² Public Redacted Version of Decision on Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F00624/RED, 14 December 2021, Public, para.84.

⁵³ Public Redacted Version of Decision on Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F00624/RED, 14 December 2021, Public, para.84.

that the Kosovo Police does not have the capacity to implement measures that sufficiently mitigate existing risks.⁵⁴

28. In contrast, the communication monitoring framework in place at the SC Detention Facilities are designed to effectively restrict and monitor KILAJ's communications, thereby mitigating the risks of him obstructing the SC proceedings or engaging in or contributing to further crimes.⁵⁵

29. Accordingly, no conditions, even if they could be effectively monitored and enforced, could adequately mitigate the existing risks associated with provisional release.

D. DETENTION IS PROPORTIONAL

30. Given all of the above, the severity of the risks at issue, the length of time for which KILAJ has been detained, and the stage of the proceedings in this case, KILAJ's continued detention is reasonable, proportional, and necessary at this time.

V. CLASSIFICATION

31. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed.


⁵⁴ Second Detention Decision, KSC-BC-2018-01/F00547, para.64, citing Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06, F00582/RED, 26 November 2021, public, para.77; Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA016/F00005/RED, 25 March 2022, public, paras 28-36; *see also* Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, Public, para.43 ('The Panel agrees with the Pre-Trial Judge that such context is relevant to assessing whether the proposed conditions were sufficient to mitigate identified risks').

⁵⁵ Second Detention Decision, KSC-BC-2018-01/F00547, para.64.

VI. CONCLUSION

32. For the foregoing reasons, the SPO respectfully requests that KILAJ remain detained.

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Monday, 15 April 2024,

At The Hague, The Netherlands.