



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2018-01/IA007

**Before:** **A Panel of the Court of Appeals Chamber**  
Judge Michèle Picard  
Judge Emilio Gatti  
Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

**Date:** 13 May 2024

**Original language:** English

**Classification:** **Public**

---

**Public Redacted Version of Decision on the Specialist Prosecutor's Office's  
Appeal Against Decision on Isni Kilaj's Review of Detention**

---

**Specialist Prosecutor's Office:**  
Kimberly P. West

**Duty Counsel for Isni Kilaj:**  
Iain Edwards

**THE PANEL OF THE COURT OF APPEALS CHAMBER** of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),<sup>1</sup> acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 6 May 2024 by the Specialist Prosecutor’s Office (respectively, “Appeal” and “SPO”),<sup>2</sup> against the “Decision on Review of Detention of Isni Kilaj” (“Impugned Decision”).<sup>3</sup> Isni Kilaj (“Kilaj”) responded on 7 May 2024 that the Appeal should be dismissed (“Response”).<sup>4</sup>

## I. BACKGROUND

1. On 2 November 2023, Kilaj was arrested in Kosovo pursuant to an order issued by the SPO.<sup>5</sup> He was transferred to the Detention Facilities of the Specialist Chambers

---

<sup>1</sup> IA007/F00002, Decision Assigning a Court of Appeals Panel, 4 May 2024 (confidential).

<sup>2</sup> IA007/F00004, Prosecution appeal against Decision F00658 and request for suspensive effect, 6 May 2024 (confidential) (“Appeal”). In the Appeal, the SPO also requested that the Appeal have suspensive effect. See Appeal, paras 39-40.

<sup>3</sup> F00658, Decision on Review of Detention of Isni Kilaj, 3 May 2024 (confidential) (“Impugned Decision”).

<sup>4</sup> IA007/F00005, Kilaj response to Prosecution appeal against Decision F00658 and request for suspensive effect, 7 May 2024 (confidential) (“Response”).

<sup>5</sup> F00489, URGENT Rule 52(1) notification of arrest of Isni KILAJ, 2 November 2023 (strictly confidential and *ex parte*, reclassified as public on 9 November 2023); F00492/RED/A01/RED, Public Redacted Version of ANNEX 1 to Prosecution report on arrest of Isni KILAJ, 8 November 2023 (strictly confidential and *ex parte* version filed on 3 November 2023, reclassified as confidential on 3 November 2023).

(“Detention Facilities”) in The Hague, the Netherlands, on 3 November 2023,<sup>6</sup> pursuant to a transfer order issued by the Single Judge,<sup>7</sup> upon the SPO’s request.<sup>8</sup>

2. On 6 November 2023, pursuant to the SPO’s request,<sup>9</sup> the Single Judge ordered Kilaj’s continued detention,<sup>10</sup> and issued reasons thereto on 9 November 2023<sup>11</sup> (collectively, “First Detention Decision”). The First Detention Decision was upheld by the Court of Appeals Panel on 11 January 2024 (“First Appeal Decision on Detention”).<sup>12</sup>

3. On 15 December 2023, the SPO submitted an indictment against Kilaj for confirmation before the Pre-Trial Judge.<sup>13</sup>

---

<sup>6</sup> F00495/RED, Public Redacted Version of “Report on the Transfer of Isni Kilaj to the Detention Facilities, with strictly confidential and *ex parte* Annexes 1-2” (F00495), 8 November 2023 (strictly confidential and *ex parte* version filed on 3 November 2023); F00493, Notification of Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers, 3 November 2023 (strictly confidential).

<sup>7</sup> F00491/COR/RED, Public Redacted Version of Corrected Version of Decision on Transfer Order Pursuant to Arrest by the Specialist Prosecutor, 5 November 2023 (strictly confidential and uncorrected version filed on 3 November 2023, reclassified as confidential on 3 November 2023).

<sup>8</sup> F00490/RED, Public Redacted Version of ‘URGENT Request for transfer order’, 3 November 2023 (strictly confidential and *ex parte* version filed on 2 November 2023, reclassified as confidential on 3 November 2023).

<sup>9</sup> F00496/RED2, Further Public redacted version of ‘Prosecution request for continued detention of Isni KILAJ, with confidential annexes 1 and 2, 8 November 2023 (strictly confidential and *ex parte* version filed on 3 November 2023, reclassified as confidential on 24 November 2023).

<sup>10</sup> F00499, Decision on Continued Detention, 6 November 2023 (“Decision on Continued Detention”). See also F00497/COR/RED, Public redacted version of “Corrected Version of Kilaj Defence response to ‘Confidential redacted version of “Prosecution request for continued detention of Isni KILAJ”’, 8 November 2023 (confidential uncorrected version filed on 4 November 2023).

<sup>11</sup> F00503/RED, Public Redacted Version of Reasons for Continued Detention, 13 November 2023 (confidential version filed on 9 November 2023) (“Reasons for Continued Detention”). The Appeals Panel will refer collectively to the Decision on Continued Detention and the Reasons for Continued Decision by “First Detention Decision”.

<sup>12</sup> IA004/F00006/RED, Public Redacted Version of Decision on Isni Kilaj’s Appeal Against Decision on Continued Detention, 11 January 2024 (confidential version filed on 11 January 2024) (“First Appeal Decision on Detention”).

<sup>13</sup> F00549, Prosecution response to Defence request F00548, 15 January 2024, para. 1 (confidential reclassified as public on 17 April 2024). See also F00636, Prosecution notice, 19 April 2024 (confidential) (“SPO Notice”), para. 1; F00654, Prosecution supplemental notice, 2 May 2024 (confidential) (“SPO Supplemental Notice”), para. 2.

4. On 5 January 2024, the Single Judge reviewed and ordered the continuation of Kilaj's detention ("Second Detention Decision"),<sup>14</sup> a decision which was upheld by the Court of Appeals Panel on 26 February 2024 ("Second Appeal Decision on Detention").<sup>15</sup>
5. On 5 March 2024, the Single Judge reviewed and ordered the continuation of Kilaj's detention ("Third Detention Decision").<sup>16</sup>
6. On 11 March 2024, pursuant to Rule 86(4) of the Rules, the SPO submitted a revised indictment against Kilaj for confirmation before the Pre-Trial Judge ("Revised Indictment").<sup>17</sup>
7. 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.<sup>18</sup>
8. 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].<sup>19</sup>

---

<sup>14</sup> F00547/RED, Public Redacted Version of Decision on Review of Detention of Isni Kilaj, 18 January 2024 (confidential version filed on 5 January 2024) ("Second Detention Decision"). See also F00524/RED, Public further redacted version of "Kilaj Submissions on Review of Detention", 18 January 2024 (confidential version filed on 6 December 2023, public redacted version filed on 11 January 2024) ("Kilaj Submissions on First Detention Review"); F00538/RED, Public redacted version of 'Prosecution submissions on review of detention with confidential annexes 1 and 2', 11 January 2024 (confidential version filed on 15 December 2023) ("SPO Submissions on First Detention Review").

<sup>15</sup> IA005/F00005/RED, Public Redacted Version of Decision on Isni Kilaj's Appeal Against Decision on Review of Detention, 26 February 2024 (confidential version filed on 26 February 2024) ("Second Appeal Decision on Detention").

<sup>16</sup> F00603/RED, Public Redacted Version of Decision on Review of Detention of Isni Kilaj, 11 March 2024 (confidential version filed on 5 March 2024) ("Third Detention Decision"). See also F00575/RED, Public redacted version of 'Prosecution submissions on review of detention', 8 March 2024 (confidential version filed on 12 February 2024) ("SPO Submissions on Second Detention Review"); F00589/RED, Public redacted version of "Kilaj Response to Prosecution Submissions on Review of Detention", 8 March 2024 (confidential version filed on 22 February 2024) ("Kilaj Submissions on Second Detention Review").

<sup>17</sup> See SPO Supplemental Notice, para. 3.

<sup>18</sup> SPO Notice, para. 1.

<sup>19</sup> SPO Supplemental Notice, para. 4.

9. On 3 May 2024, after having received the Parties' submissions on the review of detention,<sup>20</sup> the Single Judge reviewed Kilaj's detention, found that extending Kilaj's detention would be unreasonable and ordered Kilaj's release to Kosovo, "subject to strict conditions" ("Ordered Conditions"), including a bail security of EUR 30,000<sup>21</sup> and prohibition from contacting [REDACTED].<sup>22</sup>

10. On 4 May 2024, the SPO filed an urgent request for suspensive effect of the Impugned Decision ("Initial Request for Suspensive Effect").<sup>23</sup> On the same day, the Appeals Panel declared that the Initial Request for Suspensive Effect was not filed in accordance with Rule 58(4) of the Rules and, *inter alia*, directed the SPO, pursuant to Rule 58(3) and (4) of the Rules to file any request for suspensive effect together with any appeal of the Impugned Decision.<sup>24</sup>

11. On 6 May 2024, the SPO filed the Appeal, requesting that the Appeals Panel (i) overturn the Impugned Decision and remand the matter to the Single Judge for further consideration; and (ii) grant suspensive effect of the Impugned Decision pending the outcome of the Appeal.<sup>25</sup> In the Appeal, the SPO develops four grounds of appeal, alleging that the Single Judge committed errors in imposing the Ordered Conditions and abused his discretion by failing to invite submissions in this respect.<sup>26</sup>

---

<sup>20</sup> F00633/RED, Public redacted version of 'Prosecution submissions on review of detention with confidential Annexes 1 and 2', 17 April 2024 (confidential version filed on 15 April 2024) ("SPO Submissions"); F00644, Kilaj Consolidated Response to (1) Prosecution Submissions on Review of Detention, and (2) Prosecution Notice, 24 April 2024 (confidential) ("Kilaj Submissions").

<sup>21</sup> For ease of reference and to follow the term used in Article 41(12)(c) of Law, the Appeals Panel will refer for the purposes of the present Decision to the term "bail" and "bail security" as designating a sum of money provided by the suspect or accused on his or her behalf for his or her surrender to custody.

<sup>22</sup> Impugned Decision, paras 2, 63-67, 70. On 7 May 2024, the Single Judge modified certain conditions via an email correspondence. See CRSPD55, Email from the Single Judge to the Kilaj Defence re F00658, 7 May 2024 (confidential) ("Single Judge Correspondence").

<sup>23</sup> IA007/F00001, Urgent Prosecution request for suspensive effect relating to Decision F00658, 4 May 2024 (confidential) ("Initial Request for Suspensive Effect").

<sup>24</sup> IA007/F00003, Decision on F00001, 4 May 2024 (confidential) ("Appeal Decision on F00001"), para. 5.

<sup>25</sup> Appeal, para. 42.

<sup>26</sup> Appeal, para. 3.

12. On 7 May 2024, Kilaj responded that both the Appeal and the SPO's request for suspensive effect should be dismissed as the Appeal fails to demonstrate any error in the Impugned Decision.<sup>27</sup>

13. On 8 May 2024, the Registry notified the Appeals Panel that the bail security in the amount of EUR 30,000 was received [REDACTED] on 7 May 2024.<sup>28</sup>

## II. STANDARD OF REVIEW

14. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.<sup>29</sup>

15. The Panel recalls that decisions concerning detention on remand are discretionary.<sup>30</sup> The very fact that there is discretion does not mean that a judge may circumvent the plain meaning of the Law.<sup>31</sup> Discretion is a rules-based concept, it does not allow for lawless, arbitrary decisions.<sup>32</sup> Thus, in the case at hand, the lower level panel has the discretion to evaluate, within the Specialist Chambers' legal framework, the circumstances militating in favour of or against extending the detention of a suspect or accused.<sup>33</sup> Because of the fact-specific nature of provisional release decisions,<sup>34</sup> the lower level panel is better placed to assess these circumstances. In

---

<sup>27</sup> Response, paras 6, 61. On 4 May 2024, the Panel clarified that any response to the Appeal shall be filed within one day of the Appeal. See Appeal Decision on F00001, para. 5.

<sup>28</sup> IA007/F00006, Registry Notification of Payment of Financial Security, 8 May 2024 (confidential) ("Registry Notification"). See Impugned Decision, paras 65(d), 70(d).

<sup>29</sup> KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati* Appeal Decision"), paras 4-14. See also Second Appeal Decision on Detention, para. 7.

<sup>30</sup> First Appeal Decision on Detention, para. 27; *Gucati* Appeal Decision, paras 49, 51.

<sup>31</sup> *Gucati* Appeal Decision, para. 49; KSC-BC-2020-04, IA001/F00005/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Provisional Release, 20 August 2021 (confidential version filed on 20 August 2021) ("*Shala* Appeal Decision"), fn. 138.

<sup>32</sup> *Gucati* Appeal Decision, para. 49.

<sup>33</sup> See similarly *Gucati* Appeal Decision, para. 49.

<sup>34</sup> *Gucati* Appeal Decision, para. 49 and references therein.

particular, the lower level panel has broad discretion to select the conditions it deems necessary to impose.<sup>35</sup>

16. The Panel recalls that when the decision that is being challenged is a discretionary decision, a party must demonstrate that the lower level panel has committed a discernible error in that the decision is: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the lower level panel's discretion.<sup>36</sup> The Court of Appeals Panel will also consider whether the lower level panel has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.<sup>37</sup>

### III. INTRODUCTION

17. At the outset, the Panel notes that Kilaj is still a suspect, who has been deprived of his liberty since his arrest on 2 November 2023. No indictment has been confirmed by the Pre-Trial Judge and the SPO has just requested that he suspend his examination of the Revised Indictment, pending the filing of an amended indictment [REDACTED].<sup>38</sup> While the possibility to detain a suspect prior to the filing of an indictment is expressly foreseen in the Specialist Chambers' legal framework,<sup>39</sup> the Panel considers that any analysis of pre-trial detention must take the presumption of

---

<sup>35</sup> See, with respect to Article 41(12) of the Law, KSC-BC-2020-06, PL001/F00008, Decision on Kadri Veseli's Request for Protection of Legality, 15 August 2022 ("*Veseli* Supreme Court Decision on Protection of Legality"), para. 58. See also *Gucati* Appeal Decision, para. 49; *Shala* Appeal Decision, fn. 138.

<sup>36</sup> *Gucati* Appeal Decision, para. 14; KSC-BC-2020-06, IA001/F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2021 ("*Veseli* First Appeal Decision on Detention"), para. 7.

<sup>37</sup> *Gucati* Appeal Decision, para. 14; *Veseli* First Appeal Decision on Detention, para. 7.

<sup>38</sup> SPO Supplemental Notice, para. 4. See also SPO Notice, para. 1.

<sup>39</sup> Rule 57(1) of the Rules.

innocence and the right to liberty as its starting point and thus that pre-trial detention cannot be maintained lightly.<sup>40</sup>

18. The Appeals Panel further recalls that panels must apply a proportionality test when conducting a review of the reasonableness of a person's detention. Namely, they must consider whether a person's detention on remand is strictly necessary to mitigate the risks of flight, obstruction or commission of further crimes under Article 41(6)(b) of the Law or whether other, less stringent, measures could be sufficient for that purpose.<sup>41</sup> The Panel also recalls that the SPO carries the burden of establishing that detention is necessary<sup>42</sup> and that its length remains reasonable.<sup>43</sup> The Panel notes that the Single Judge correctly recalled the importance of the proportionality principle in determining the reasonableness of pre-trial detention,<sup>44</sup> 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.

19. The Panel recalls that the question whether the length of time spent in pre-trial detention is reasonable must be assessed based on the facts of each case and according to its specific features.<sup>45</sup> According to Rule 56(2) of the Rules, a lack of diligence or more precisely "undue delay caused by the [SPO]" can be one of the reasons for the

---

<sup>40</sup> See Second Appeal Decision on Detention, para. 16; First Appeal Decision on Detention, para. 17.

<sup>41</sup> See *Gucati* Appeal Decision, para. 72; KSC-BC-2020-06, IA003/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021), para. 79; KSC-BC-2020-06, IA010/F00008/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021 (confidential version filed on 27 October 2021) ("*Thaçi* Second Appeal Decision on Detention"), para. 49.

<sup>42</sup> First Appeal Decision on Detention, para. 29. See also KSC-CC-PR-2017-01, F00004, 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 Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 26 April 2017, para. 115.

<sup>43</sup> Rule 56(2) provides that "[t]he 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."

<sup>44</sup> See Impugned Decision, para. 60. See also *Gucati* Appeal Decision, paras 72-73 and references therein.

<sup>45</sup> *Thaçi* Second Appeal Decision on Detention, para. 49, referring to ECtHR, *Buzadji v. The Republic of Moldova*, no. 23755/07, Judgment, 5 July 2016 ("*Buzadji* Judgment"), para. 90; ECtHR, *Wemhoff v. Germany*, no. 2122/64, Judgment, 27 June 1968, para. 10 (p. 20).



period of detention to be considered “unreasonable”.<sup>46</sup> The Panel observes that this provision reflects the jurisprudence of the European Court of Human Rights (“ECtHR”), according to which a panel must also ascertain whether “special diligence” in the conduct of the proceedings has been displayed.<sup>47</sup> The Panel also notes that the requirement of diligence and expeditiousness is heightened even more when a person is detained prior to the filing of an indictment, as the Specialist Chambers’ legal framework limits this possibility to a maximum period of one year and specifically requires the SPO to justify each request for an extension by the necessity to take further investigative measures.<sup>48</sup>

20. Turning to the Impugned Decision, the Court of Appeals Panel observes that the Single Judge, after having balanced the above-mentioned factors and in light of Kilaj’s presumption of innocence and right to liberty, found that extending Kilaj’s detention would render his detention unreasonable within the meaning of Rule 56(2) of the Rules.<sup>49</sup>

21. The Panel notes that the Single Judge was particularly mindful of the persistence of a risk that Kilaj may obstruct the progress of criminal proceedings and commit further offences.<sup>50</sup> He then considered the alternative conditions proposed by Kilaj and determined that none of them, nor any other conditions imposed by the

---

<sup>46</sup> See KSC-BC-2020-06, IA016/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022 (confidential version filed on 25 March 2022) (“*Krasniqi Third Appeal Decision on Detention*”), para. 47. See also above, fn. 43.

<sup>47</sup> ECtHR, *Chraidi v. Germany*, no. 65655/01, Judgment, 26 October 2006, para. 36; ECtHR, *Labita v. Italy*, no. 26772/95, Judgment, 6 April 2000, para. 153.

<sup>48</sup> Rule 57(1) of the Rules.

<sup>49</sup> Impugned Decision, paras 63-64.

<sup>50</sup> Impugned Decision, paras 41, 47, 50-51, 65.

Single Judge, could fully restrict Kilaj's ability to obstruct the progress of Specialist Chambers' proceedings and commit further offences.<sup>51</sup>

22. Notwithstanding the persistence of these serious risks, the Single Judge determined that they do not outweigh Kilaj's fundamental right to liberty.<sup>52</sup> Thus, the Single Judge found that, in the present circumstances, Kilaj's detention was no longer proportionate and ordered Kilaj's release under "strict conditions".<sup>53</sup> In so doing, the Single Judge took into account the fact that: (i) Kilaj is still a suspect against whom no charges have been confirmed (yet);<sup>54</sup> (ii) he had been detained for nearly six months;<sup>55</sup> (iii) the offences for which Kilaj is considered a suspect carry a penalty between one and five years;<sup>56</sup> and, most importantly, (iv) the SPO substantially delayed the timeline of the proceedings.<sup>57</sup> In particular, the Single Judge considered that while the SPO had progressively taken additional investigative steps and submitted an indictment for confirmation on 15 December 2023, the confirmation process had been underway since that time given that the SPO submitted a Revised Indictment on 11 March 2024, and two months later, notified the Single Judge of its intention to submit an amended indictment [REDACTED].<sup>58</sup> The Single Judge thus noted with concern that "the procedural stance of the case [since the last review of detention] has not come closer to triggering the framework and calendar for pre-trial proceedings".<sup>59</sup>

---

<sup>51</sup> Impugned Decision, paras 56-57, 63, 65. The Single Judge however found that the conditions proposed by Kilaj continued to sufficiently address the (moderate) risk of flight in relation to Kilaj. See Impugned Decision, para. 55.

<sup>52</sup> Impugned Decision, para. 63.

<sup>53</sup> Impugned Decision, paras 64-67, 70.

<sup>54</sup> Impugned Decision, para. 62. The Panel notes that Kilaj has now been deprived of his liberty for more than six months, since his arrest on 2 November 2023.

<sup>55</sup> Impugned Decision, para. 62. See also Impugned Decision, para. 60.

<sup>56</sup> Impugned Decision, para. 62. See also Impugned Decision, para. 60.

<sup>57</sup> Impugned Decision, para. 62. See also Impugned Decision, paras 61, 63.

<sup>58</sup> Impugned Decision, paras 61-62. See also SPO Supplemental Notice, para. 4; SPO Notice, para. 1.

<sup>59</sup> Impugned Decision, para. 62.

23. The Court of Appeals Panel observes that on appeal, the SPO does not challenge the Single Judge's assessment of the proportionality of detention under Rule 56(2) of the Rules nor his resulting decision to release Kilaj.<sup>60</sup>

24. The Court of Appeals Panel will now address the SPO's grounds of appeal which focus on the conditions of Kilaj's release ordered by the Single Judge.

#### IV. DISCUSSION

##### A. WHETHER THE SINGLE JUDGE ERRED IN IMPOSING INADEQUATE CONDITIONS OF RELEASE (GROUNDS 1-3)

###### 1. Submissions of the Parties

25. Under Grounds 1, 2 and 3 of the Appeal, the SPO submits that the Single Judge imposed inadequate conditions on Kilaj's release, which resulted from his failure to give sufficient weight to the established risks, and that he failed to provide adequate reasoning in his decision.<sup>61</sup>

26. Under Ground 1, the SPO argues that the Single Judge erred by imposing conditions which fail to adequately mitigate the specific risks in question.<sup>62</sup> The SPO submits that despite consistently finding that none of the conditions put forth by the Defence, nor any other conditions, could fully restrict Kilaj's ability to obstruct the progress of the proceedings and commit further offences, the Single Judge still released Kilaj on conditions that were more lenient than those which Kilaj himself had previously proposed.<sup>63</sup> Specifically, the SPO argues that the Single Judge failed to: (i) restrict Kilaj's use or access to means of communication in any way;<sup>64</sup> (ii) specify a

---

<sup>60</sup> Impugned Decision, paras 60-64. See also Response, paras 4-5.

<sup>61</sup> Appeal, paras 2, 3(a)-(c), 12.

<sup>62</sup> Appeal, paras 3(a), 12, 16.

<sup>63</sup> Appeal, paras 14-18.

<sup>64</sup> Appeal, paras 15, 18.

particular address where Kilaj is to reside<sup>65</sup> or provide the SPO with an opportunity to assess the suitability of the proposed address;<sup>66</sup> (iii) restrict Kilaj's movements in any way, despite Kilaj having proposed conditions of "house arrest" and monitoring through an "ankle tag";<sup>67</sup> (iv) require further information about the source of the funds for the bail security given that the source is unknown and could be covered by [REDACTED];<sup>68</sup> (v) provide for any other oversight or enforcement mechanisms for Kilaj's release, beyond the limited involvement of the Registry;<sup>69</sup> and (vi) acknowledge that monitoring by the Kosovo Police has repeatedly been found to be ineffective.<sup>70</sup> According to the SPO, all of these examples highlight the inadequacy of the conditions imposed.<sup>71</sup>

27. The SPO notes that, in addition to the conditions ordered in the Impugned Decision, Kilaj previously proposed that, if released, he would: (i) live at his home address in Prishtinë/Priština, Kosovo, effectively under house arrest; (ii) be subject to electronic monitoring by way of an ankle tag and/or regular and unannounced visits by the Kosovo Police and/or members of the SPO; (iii) report at least once per day at the nearest police station (approximately [REDACTED] kilometres away); and (iv) not use any communication device nor the internet, whether directly or indirectly, other than to communicate with his counsel.<sup>72</sup> According to the SPO, these additional

---

<sup>65</sup> Appeal, paras 15, 19. In particular, the SPO submits that Kilaj can himself elect the address at which he will reside in both Kosovo and the Host State and there was no consideration of which police station in Kosovo shall be designated. See Appeal, para. 19.

<sup>66</sup> Appeal, paras 15, 19.

<sup>67</sup> Appeal, paras 15, 17.

<sup>68</sup> Appeal, paras 15, 20-23. The SPO also submits that the bail security provides "minimal, if any, additional deterrence" against Kilaj obstructing proceedings. See Appeal, paras 20, 23. The SPO further submits that the only situation in which Kilaj would forfeit the bail is in the event he fails to appear at a hearing when ordered, whereas Kilaj has previously proposed that bail would be forfeited in the event any of the conditions of release were violated. See Appeal, para. 23, referring to Kilaj Submissions on First Detention Review, para. 25. See also Impugned Decision, para. 65(h).

<sup>69</sup> Appeal, para. 19.

<sup>70</sup> Appeal, para. 15.

<sup>71</sup> Appeal, paras 19, 24.

<sup>72</sup> Appeal, para. 17, referring to Second Detention Decision, para. 58.

proposed conditions would at least provide some restrictions on, and make more visible, Kilaj's movements and communications, while the Ordered Conditions do not mitigate "the very type of offences for which Kilaj is detained in the first place".<sup>73</sup>

28. Under Ground 2, the SPO submits that the Single Judge failed to give sufficient weight to his previous finding that "no modalities of conditional release are sufficient to mitigate the existing risks".<sup>74</sup> The SPO argues that given the Single Judge's findings in previous decisions on the risk that Kilaj would obstruct the proceedings or commit further offences, he should have ordered more strict conditions on release, including those conditions that Kilaj himself proposed.<sup>75</sup>

29. Finally, under Ground 3, the SPO argues that the Single Judge, despite his stated aim of minimising *as much as possible* the risks of obstruction and further crimes, erred by not providing adequate reasoning in imposing even less stringent conditions for Kilaj's release than those found to be inadequate only two months earlier.<sup>76</sup>

30. Kilaj responds that following an extensive and exhaustive assessment and balancing of relevant factors, the Single Judge correctly exercised his discretion and ordered Kilaj's provisional release under strict and "carefully calibrated" conditions.<sup>77</sup>

31. With respect to Ground 1, Kilaj responds that the SPO fails to demonstrate that the Single Judge erred in imposing the conditions he did, in particular given that a decision on what conditions to impose on provisional release is a "paradigm example of the exercise of judicial discretion".<sup>78</sup> In this vein, Kilaj submits that the SPO fails to

---

<sup>73</sup> Appeal, para. 18.

<sup>74</sup> Appeal, para. 25, referring to Impugned Decision, para. 56; Third Detention Decision, paras 45-48.

<sup>75</sup> Appeal, paras 26-27.

<sup>76</sup> Appeal, paras 28-30 (emphasis in original).

<sup>77</sup> Response, paras 1-3, 6. Kilaj responds further that in exercising his discretion, the Single Judge found that extending Kilaj's detention *under the present circumstances* was unreasonable. See Response, para. 27 (emphasis in original), referring to Impugned Decision, para. 63.

<sup>78</sup> Response, para. 32.

consider the Single Judge's singular familiarity with the conditions proposed by Kilaj and his experienced understanding of the appropriateness of specific conditions.<sup>79</sup>

32. In response to the SPO's challenges to the specific conditions imposed, Kilaj submits that the SPO fails to demonstrate as unreasonable the Single Judge's discretionary decision not to restrict: (i) Kilaj's use or access to means of communication as a factor mitigating any risk of contacting [REDACTED]; or (ii) Kilaj's movements by placing him under "house arrest".<sup>80</sup> With respect to the latter, Kilaj argues that the Single Judge did restrict Kilaj's movements by *inter alia* ordering him to reside at an address to be notified and that, moreover, the Single Judge has already found in previous decisions that the condition of "house arrest" would be ineffective.<sup>81</sup>

33. Regarding the specific address in Kosovo where Kilaj will reside on conditional release, Kilaj argues that the Single Judge was not required to canvass the SPO on the suitability of the proposed address in Kosovo before releasing him and that the SPO could have expressed its concerns about Kilaj's residences in previous submissions.<sup>82</sup> As a courtesy, Kilaj notes that he has designated his address in [REDACTED] as the location where he will reside on conditional release, as well as the coordinates of the closest police station, both of which have been communicated to the Registry.<sup>83</sup>

34. Regarding bail, Kilaj submits that the Single Judge has never attached any weight to the SPO's speculative and unfounded arguments on the potential source of

---

<sup>79</sup> Response, para. 33.

<sup>80</sup> Response, paras 34-35. Regarding the condition to not use or access any means of communication, Kilaj argues that the SPO fails to explain how this does not appreciably add to the Single Judge's broader order to not contact [REDACTED] and *through any means*. See Response, para. 34 (emphasis in original), referring to Impugned Decision, para. 65(e).

<sup>81</sup> Response, paras 35-36.

<sup>82</sup> Response, para. 37.

<sup>83</sup> Response, para. 38. Kilaj further submits that, as ordered by the Single Judge, the Registry is the correct body to support the administration and execution of the Impugned Decision, not the SPO. See Response, para. 39. See also Response, para. 42.

funds for bail. However, for transparency, Kilaj notes that the funds for the bail came exclusively from members of his family.<sup>84</sup>

35. Under Ground 2, Kilaj responds that the SPO fails to show that the Single Judge erred in not giving sufficient weight to the established risks.<sup>85</sup> Kilaj argues that the Single Judge clearly recognised that no conditions imposed on conditional release can ever *fully* restrict a suspect's ability to interfere with proceedings or commit further offences, but still imposed a number of strict conditions to attempt to reduce the risk to an acceptable level.<sup>86</sup> According to Kilaj, the "mere fact that they are not as strict as the SPO would have liked does not equate to an abuse of [the] Single Judge's discretion".<sup>87</sup>

36. Finally, under Ground 3, Kilaj responds that the Single Judge, in exercising his discretion, sufficiently explained that the strict conditions he imposed on Kilaj's release, while not the "very strictest" that were available to him, were adequate and designed to minimise the identified risks as much as possible.<sup>88</sup>

## 2. Assessment of the Court of Appeals Panel

37. At the outset, the Court of Appeals Panel recalls that the Single Judge acknowledged that none of the conditions put forth by the Defence, nor any other conditions imposed by the Single Judge, could "fully restrict" the identified risks.<sup>89</sup> However, having found that extending Kilaj's detention would be unreasonable, he

---

<sup>84</sup> Response, paras 40-41. See also Registry Notification.

<sup>85</sup> Response, para. 43.

<sup>86</sup> Response, paras 43-46 (emphasis in original).

<sup>87</sup> Response, para. 46. See also Response, para. 49.

<sup>88</sup> Response, paras 48-49. See also Response, para. 47. Kilaj also responds to the SPO's submission on other conditions available to the Single Judge under Article 41(12) of the Law that the conditions listed in Article 41(12)(d)-(e) do not apply to Kilaj and thus the Single Judge did not err in not considering them. See Response, para. 50. Contra Appeal, para. 29.

<sup>89</sup> Impugned Decision, para. 57. See also above, para. 21; Impugned Decision, para. 56, where the Single Judge indicated that he "remains convinced that such risks can be effectively managed only through the communications monitoring regime available at the [...] Detention Facilities".

decided to release him under “strict conditions”, “with a view towards *minimising* any such risks as much as possible”.<sup>90</sup> The Panel understands that when considering alternatives to detention, the Single Judge was guided by the principle of proportionality and Kilaj’s fundamental right to liberty and his presumption of innocence.<sup>91</sup>

38. In particular, the Single Judge ordered Kilaj to:
- a. not leave the territory of Kosovo unless permitted by a competent panel of the Specialist Chambers;
  - b. surrender to the Registrar his passport and any other travel documents;
  - c. provide an address in which he will reside for the duration of the proceedings;
  - d. provide a bail security of EUR 30,000 to the Registrar;
  - e. refrain from any contact or communication, direct or indirect (through any other person), of any kind and through any means, with [REDACTED];
  - f. refrain from making any public statement to the media and/or on social media regarding the Specialist Chambers, the SPO and/or any Specialist Chambers’ proceedings;
  - g. report on a weekly basis to the Kosovo Police;
  - h. attend any hearing required by the Specialist Chambers, any failure to appear leading to the forfeiture of the bail security and the immediate issuance of an arrest warrant;

---

<sup>90</sup> Impugned Decision, paras 63-65 (emphasis added).

<sup>91</sup> See Impugned Decision, paras 63-65. See also above, paras 17-18, 20.



- i. respect the classification of the Impugned Decision and not release, disclose or otherwise discuss its contents with any person, except his counsel, until the Impugned Decision has been made public; and
- j. abide by any other decision or order of the Specialist Chambers.<sup>92</sup>

39. The Single Judge also emphasised that should any of the Ordered Conditions not be met, a warrant will immediately be issued for Kilaj's arrest.<sup>93</sup>

40. The Panel turns first to the SPO's arguments that the Ordered Conditions fail to adequately mitigate the identified risks.<sup>94</sup>

41. The Panel recalls that under Rule 56(2) of the Rules, a panel may release the person under conditions deemed appropriate. The Panel recalls that the Single Judge has broad discretion to select the conditions he deems necessary to impose.<sup>95</sup> The Panel further recalls that the weight to be attributed to guarantees proposed by the detainee may depend on numerous factors, and that, because of the fact-specific nature of provisional release decisions, the Single Judge is better placed to assess these factors.<sup>96</sup> Accordingly, the Court of Appeals Panel will not intervene, unless the SPO has demonstrated the existence of a discernible error.<sup>97</sup>

---

<sup>92</sup> Impugned Decision, para. 65.

<sup>93</sup> Impugned Decision, para. 66. The Single Judge also ordered Kilaj and his Defence team not to reveal the content of the Impugned Decision, which remains confidential, to any other person, including family members, until all practical arrangements have been put in place and Kilaj's secure release in Kosovo is ensured. See Impugned Decision, para. 67. See also Single Judge Correspondence, which exempts Kilaj's Counsel from this ruling for the strictly limited purpose of communicating with Kilaj's immediate family members concerning the payment of bail and facilitating the surrender of Kilaj's passport and/or other travel documents to the Registry.

<sup>94</sup> Appeal, paras 14-24 (Ground 1).

<sup>95</sup> See, with respect to Article 41(12) of the Law, *Veseli* Supreme Court Decision on Protection of Legality, para. 58. See also *Krasniqi* Third Appeal Decision on Detention, para. 47.

<sup>96</sup> *Gucati* Appeal Decision, para. 49. See also above, para. 15.

<sup>97</sup> See above, para. 16.

42. The Panel observes that many of the Ordered Conditions mirror or are included in the conditions previously proposed by Kilaj,<sup>98</sup> and that most of the Ordered Conditions have been discussed by the Parties during the detention review proceedings.<sup>99</sup>

43. Concerning the SPO's argument that the Single Judge should have restricted the use of communication devices or the internet, the Panel first notes that the SPO implies that this measure could assist in enforcing or identifying violations of the obligation not to contact [REDACTED].<sup>100</sup> The Panel further notes that the SPO does not provide any argument about the effectiveness of such a measure, especially given that the SPO previously indicated that "monitoring and enforcing any limitation of communications is impossible".<sup>101</sup> The Panel finds that the SPO has failed to demonstrate that this measure would be more effective than the imposed condition to refrain from contacting [REDACTED], directly or indirectly, and through any means – the violation of which would trigger the issuance of an arrest warrant.<sup>102</sup> Accordingly, the Panel dismisses the SPO's arguments in this regard.

44. Second, the Panel notes that the SPO misrepresents the Ordered Conditions in arguing that the Impugned Decision fails to restrict Kilaj's movements "in any way".<sup>103</sup> The Panel recalls that the Single Judge did restrict Kilaj's movements by ordering him

---

<sup>98</sup> Compare Impugned Decision, para. 65(a)-(e), (g) with Second Detention Decision, para. 58. The Panel notes that the following additional conditions the SPO indicates that Kilaj previously proposed were, in fact, included in the Ordered Conditions, namely that Kilaj: (i) surrender his passport and any other travel documents, including visas and any other identity documents that can be used to travel; (ii) pay a bail of EUR 30,000; and (iii) not contact or communicate with, directly or indirectly, [REDACTED]. See Impugned Decision, para. 65(b), (d)-(e).

<sup>99</sup> Kilaj Submissions on First Detention Review, paras 12-28; SPO Submissions on First Detention Review, paras 22-30; SPO Submissions on Second Detention Review, paras 20-25; Kilaj Submissions on Second Detention Review, paras 7-9; SPO Submissions, paras 22-25; Kilaj Submissions, paras 14-16.

<sup>100</sup> Appeal, para. 18. See also Appeal, para. 16, fn. 27.

<sup>101</sup> SPO Submissions on First Detention Review, para. 28. See also SPO Submissions on Second Detention Review, para. 22; SPO Submissions, para. 25.

<sup>102</sup> Impugned Decision, paras 65(e), 66.

<sup>103</sup> Appeal, para. 15.

to (i) not leave the territory of Kosovo, (ii) surrender his passport and any other travel documents, and (iii) reside at an address to be provided and request permission from the Specialist Chambers prior to any change of residence.<sup>104</sup> Moreover, while taking issue with the fact that the Single Judge did not order stricter measures, such as house arrest or monitoring by an ankle tag, the SPO neither provides any explanation as to how the Single Judge erred in not ordering these measures nor demonstrates how such measures would be appropriate and reasonable in the circumstances of the present case.<sup>105</sup> In this respect, the Panel notes that the SPO has consistently objected to the imposition of these measures for the reasons that they “cannot be effectively monitored and enforced”, and they “do nothing to address the severe risks of obstructing proceedings and criminal offences”.<sup>106</sup> The Panel thus dismisses the SPO’s arguments in this respect.

45. Third, the SPO does not establish that the Single Judge was under an obligation, prior to issuing the Impugned Decision, to consult with the SPO about the suitability of Kilaj’s elected address in Kosovo, or about any address he might stay at when attending hearings in the Host State.<sup>107</sup> In any event, given that conditional release had been discussed since Kilaj’s first appearance before the Single Judge,<sup>108</sup> the SPO had ample opportunity to conduct any verification of Kilaj’s addresses in Kosovo<sup>109</sup> and

---

<sup>104</sup> Impugned Decision, para. 65 (a)-(c).

<sup>105</sup> See Appeal, para. 15. The Panel further notes that the ECtHR established that house arrest constitutes a deprivation of liberty within the meaning of Article 5 of the ECHR and shall therefore be subject to a similar proportionality test as detention on remand. See *Buzadji* Judgment, paras 72, 104, 112-114; ECtHR, *Lavents v. Latvia*, no. 58442/00, Judgment, 28 November 2002, paras 62-64, 70-71.

<sup>106</sup> SPO Submissions on First Detention Review, para. 27; SPO Submissions on Second Detention Review, paras 20-25; SPO Submissions, paras 22-29.

<sup>107</sup> With respect to the latter, the Appeals Panel recalls that Kilaj is still a suspect against whom no charges have been confirmed yet.

<sup>108</sup> Transcript, 4 November 2023, p. 181.

<sup>109</sup> The Panel notes that the SPO has been aware of Kilaj’s two addresses in Kosovo since October 2023. See F00633/A01, Annex 1 to Prosecution submissions on review of detention, 15 April 2024, p. 11. See also F00484, Confidential Redacted Version of Decision Authorising Search and Seizure [REDACTED], 12 December 2023 (strictly confidential and *ex parte* version filed on 20 October 2023) para. 23. See also Kilaj Submissions on First Detention Review, para. 13, fn. 13.

make necessary submissions before the Single Judge. Accordingly, the Panel dismisses the SPO's arguments in this regard.

46. Fourth, while the SPO asserts that the Impugned Decision failed to provide an oversight or enforcement mechanism for the conditions of release, the SPO recognised that the Registrar has been ordered to secure Kilaj's bail security, collect his travel documents, determine the procedures for Kilaj's weekly reporting to the Kosovo Police and to generally make all necessary practical arrangements.<sup>110</sup> Such oversight falls directly within the functions and competences of the Registry, whose role it is to support the Specialist Chambers.<sup>111</sup> The Panel also notes that, in terms of enforcement, the Single Judge stipulated that any violation of the Ordered Conditions would result in the immediate issuance of an arrest warrant for Kilaj.<sup>112</sup>

47. The Panel further considers that the Single Judge was under no obligation to specify in his decision the details of the condition that Kilaj report weekly to the Kosovo Police, including the timeline for the Kosovo Police to inform the Registry in case Kilaj fails to report. This will be administered by the Registrar, as ordered.<sup>113</sup> In this context, the Panel also recalls that the Kosovo Police shall cooperate with the Specialist Chambers and comply with any decision issued by it, including the Impugned Decision and the present Decision.<sup>114</sup>

48. The Panel notes that in submitting that monitoring by the Kosovo Police has repeatedly been found to be ineffective, the SPO relies upon previous findings by the Single Judge which concern the implementation of measures corresponding to the

---

<sup>110</sup> Appeal, para. 19.

<sup>111</sup> Article 3(5) of the Law provides that "[t]he Specialist Chambers shall be supported [by a Registry, which will also administer all necessary and auxiliary functions, including detention facilities as provided for by this Law". See also Article 34 of the Law.

<sup>112</sup> See Impugned Decision, para. 66.

<sup>113</sup> See Impugned Decision, paras 65(g), 70(e).

<sup>114</sup> Article 53(1) and (2) of the Law; Rule 200 of the Rules. See also below, para. 66.

ones in place at the Detention Facilities.<sup>115</sup> The Panel considers that it should not be interpreted as meaning that the Kosovo Police do not have the capacity to implement the measure of weekly reporting imposed in the Impugned Decision.<sup>116</sup> Accordingly, the Panel dismisses this argument.

49. Fifth, in asserting that “the effectiveness of the financial security is greatly diminished by the complete absence of information about the source of the funds”,<sup>117</sup> the SPO merely repeats arguments which the Single Judge found unpersuasive,<sup>118</sup> without demonstrating that this constitutes an error warranting the Appeals Panel’s intervention.<sup>119</sup> Furthermore, the Panel considers that the Single Judge’s decision to order the forfeiture of the bail security if Kilaj fails to appear at a hearing when ordered, and not in the event that *any* of the conditions of release are violated,<sup>120</sup> is consistent with his previous findings that the guarantee of bail is in principle designed to ensure the presence of the Accused at trial.<sup>121</sup> The Panel notes that the Single Judge, in the exercise of his discretion, found it more appropriate to assert that an arrest warrant would be immediately issued should any of the Ordered Conditions not be met. In light of the above, the Panel finds that the SPO has failed to demonstrate that

---

<sup>115</sup> See Appeal, para. 15, referring to Second Detention Decision, para. 64, referring in turn to KSC-BC-2020-06, F00582/RED, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi, 8 December 2021 (confidential version filed on 26 November 2021), para. 77; *Krasniqi* Third Appeal Decision on Detention, paras 28-36.

<sup>116</sup> See Appeal, para. 15, referring to Second Detention Decision, para. 64. The Panel notes that the imposed condition of weekly reporting to a local police station was also ordered in the context of the modification of the sentences of Hysni Gucati and Nasim Haradinaj, and the Panel has not received any information that this condition has not been properly implemented. See KSC-SC-2023-01, CS001/F00002, Decision on Commutation, Modification or Alteration of Sentence, 12 October 2023 (confidential reclassified as public on 12 October 2023) (“*Gucati* Decision on Modification of Sentence”), paras 68(b)-(c), 72; KSC-SC-2023-01, CS002/F00005, Decision on Modification of Sentence, 12 December 2023 (confidential reclassified as public on 12 December 2023) (“*Haradinaj* Decision on Modification of Sentence”), paras 21(b)-(c), 25.

<sup>117</sup> Appeal, para. 15. See also Appeal, paras 21-22.

<sup>118</sup> The Single Judge considered that bail could contribute to mitigating the risk of flight. See Impugned Decision, para. 55; SPO Submissions, para. 25. See also Third Detention Decision, para. 44; SPO Submissions on Second Detention Review, para. 22.

<sup>119</sup> See above, para. 16.

<sup>120</sup> See Impugned Decision, para. 65(h).

<sup>121</sup> Second Detention Decision, para. 65; Second Appeal Decision on Detention, paras 20-23.

the Single Judge abused his discretion with respect to the adequacy of ordering bail security as a condition for release.

50. The Panel now turns to the SPO's argument that the Single Judge failed to give sufficient weight to the established risks.<sup>122</sup> As recalled above, the Single Judge conducted a proportionality test, where he identified and judiciously weighed multiple factors, namely the risk of Kilaj obstructing the Specialist Chambers' proceedings and committing further offences, the length of Kilaj's pre-trial detention to date, the potential sentence applicable to the offences he is suspected of, and, most importantly, the substantial delay caused by the SPO.<sup>123</sup> Having weighed those factors, the Single Judge concluded that "the existence of [the identified] risks *[did] not outweigh* Mr Kilaj's fundamental right to liberty".<sup>124</sup> The Panel further observes that the SPO neither challenges the proportionality test nor discusses these other factors considered by the Single Judge when imposing the Ordered Conditions. Therefore, the Panel finds that the SPO has not demonstrated that the Single Judge failed to give weight or sufficient weight to relevant considerations, and in fact, merely disagrees with the Single Judge's exercise of his discretion concerning appropriate conditions. The Panel dismisses the SPO's argument in this regard.

51. Finally, the Appeals Panel turns to address the SPO's argument that the Single Judge did not provide adequate reasoning for the Ordered Conditions.<sup>125</sup> The Panel recalls that while a panel must provide reasoning to support its findings on the substantive considerations relevant for a decision, it is not required to articulate every

---

<sup>122</sup> Appeal, paras 25-27 (Ground 2).

<sup>123</sup> Impugned Decision, paras 60-63.

<sup>124</sup> Impugned Decision, para. 63 (emphasis added).

<sup>125</sup> See Appeal, paras 28-30 (Ground 3).

step of its reasoning and to discuss each submission, provided that it indicated with sufficient clarity the basis for its decision.<sup>126</sup>

52. Contrary to what the SPO argues, the Single Judge did “indicate with sufficient clarity the basis for his decision”, namely Kilaj’s fundamental rights to liberty and presumption of innocence.<sup>127</sup> The Panel reiterates that those fundamental rights guided the Single Judge to order Kilaj’s release with conditions and the SPO does not challenge this reasoning.<sup>128</sup> Having acknowledged that no condition could “fully restrict” Kilaj’s ability to obstruct the progress of Specialist Chambers’ proceedings and/or commit further offences,<sup>129</sup> the Single Judge, in exercising his discretion, ordered conditions that he found adequate in order to “minimis[e] the identified risks as much as possible”.<sup>130</sup> In this context, the Single Judge was under no obligation to explain further why he neither ordered any further conditions listed under Article 41(12) of the Law, nor any of the stricter conditions Kilaj had proposed to comply with in his previous submissions. For these reasons, the Appeals Panel finds that the Single Judge has not failed to provide adequate reasoning in respect of the Ordered Conditions and dismisses the SPO argument in this regard.

53. In light of the above, the Appeals Panel dismisses Grounds 1, 2 and 3 of the Appeal.

---

<sup>126</sup> Second Appeal Decision on Detention, para. 32. See also KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 33.

<sup>127</sup> See Impugned Decision, paras 63-65.

<sup>128</sup> See above, paras 17-20, 37.

<sup>129</sup> Impugned Decision, para. 57.

<sup>130</sup> Impugned Decision, para. 65. See also Impugned Decision, para. 64.

B. WHETHER THE SINGLE JUDGE FAILED TO INVITE SUBMISSIONS ON THE ADEQUACY OF THE ORDERED CONDITIONS (GROUND 4)

**1. Submissions of the Parties**

54. Under Ground 4, the SPO submits that the Single Judge had inadequate information before him to enable a meaningful assessment of the Ordered Conditions of Kilaj's release.<sup>131</sup> In view of this and given the risks at issue as well as the stated aim of minimising them, the SPO submits that the Single Judge abused his discretion by failing to invite submissions on the Ordered Conditions of Kilaj's release, and in turn, failing to consider all relevant facts as they existed at the time of the Impugned Decision.<sup>132</sup> The SPO submits four arguments to this end.

55. First, the SPO argues that while the Parties made submissions on the two-month review of Kilaj's detention, Rule 57(3) of the Rules expressly requires that the Parties be heard prior to any decision on release.<sup>133</sup>

56. Second, the SPO submits that, in light of the inconsistency with all prior detention decisions, the conditions proposed by Kilaj himself, and the fact that when panels have released persons on compassionate grounds, they have always invited submissions, it could not have reasonably foreseen and made submissions on the specific conditions ultimately imposed.<sup>134</sup>

57. Third, the SPO submits that while the Single Judge is not obliged to receive information from others in the context of the bi-monthly detention reviews, he should have invited submissions from all interested parties.<sup>135</sup> In its view, doing so would have provided information that would have enabled the Single Judge to properly

---

<sup>131</sup> Appeal, paras 13, 31-32.

<sup>132</sup> Appeal, paras 3(d), 31, 36-37.

<sup>133</sup> Appeal, paras 32-33.

<sup>134</sup> Appeal, paras 33-34.

<sup>135</sup> Appeal, paras 32-35.



reason his decision.<sup>136</sup> The SPO advances specific arguments on the importance of the Single Judge having received submissions from it, the Registry, the Kosovo Police and the Host State, respectively.

58. Concerning any submissions by the SPO and the Registry, the SPO contends that they were necessary given that the SPO and the Registry have access to information – including about developments in the case since the previous submissions and the current situation on the ground in Kosovo and the Host State – and that such submissions could have been provided in a timely manner while respecting the rights of interested parties and the integrity of proceedings.<sup>137</sup>

59. Specifically concerning submissions from the Kosovo Police and the Host State, the SPO argues that such submissions should have been invited by the Single Judge given that this is the first instance of pre-trial release of a detained suspect and given that both are impacted by the Ordered Conditions.<sup>138</sup> It adds that while such submissions are not necessary in all circumstances, they would have been appropriate in this instance, including because the Impugned Decision does not provide for any “SPO/KSC oversight of or involvement in”, *inter alia*, the designation of an appropriate police station and permits Kilaj to elect at which residence he will reside both in Kosovo and in the Host State when attending hearings.<sup>139</sup> With respect to the latter, the SPO adds that the Host State’s submissions were essential considering that under the Host State Agreement<sup>140</sup> detained persons shall not be provisionally released in the Host State, and yet, when Kilaj attends hearings in the future, he will be a provisionally released person on the territory of the Netherlands.<sup>141</sup> In the SPO’s view

---

<sup>136</sup>Appeal, paras 32-33.

<sup>137</sup> Appeal, paras 33-34.

<sup>138</sup> Appeal, para. 35.

<sup>139</sup> Appeal, para. 35. See also Appeal, para. 19.

<sup>140</sup> Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, 15 February 2016 (“Host State Agreement”).

<sup>141</sup> Appeal, para. 35.

the permissibility of this course of action is, at best ambiguous, and at worst, is in violation of the express terms of the Law and the Host State Agreement.<sup>142</sup>

60. Fourth, the SPO submits that the Single Judge erred in failing to receive any submissions regarding the feasibility or efficacy of the stricter conditions previously proposed by Kilaj.<sup>143</sup> In its view, such information was necessary in order to determine that they would not serve the stated purpose of minimising the grave risk at issue to the maximum extent possible.<sup>144</sup>

61. Kilaj responds that the SPO fails to show that the Single Judge erred in exercising his discretion by not inviting submissions on the adequacy of conditions.<sup>145</sup> Specifically, he argues that: (i) Rule 57(3) of the Rules to which the SPO refers does not exist and neither Rule 56(3) nor Rule 57(3) of the Rules appear to apply to the SPO's apparent point;<sup>146</sup> (ii) the SPO acknowledges that the Single Judge was under no obligation to receive additional information from any other source;<sup>147</sup> and (iii) the judicial decision-making process is not one of consultation or negotiation.<sup>148</sup>

## **2. Assessment of the Court of Appeals Panel**

62. Concerning the SPO's first argument, the Appeals Panel understands the SPO to be of the view that if the Single Judge, in the context of his bi-monthly detention review under Rule 57(1) of the Rules, is minded to release Kilaj, the Rules require the Parties to be heard specifically on this matter. The Appeals Panel notes that, in support of its argument, the SPO appears to refer to a prior version of the Rules, and

---

<sup>142</sup> Appeal, para. 35.

<sup>143</sup> Appeal, para. 36.

<sup>144</sup> Appeal, para. 36.

<sup>145</sup> Response, para. 52.

<sup>146</sup> Response, para. 51.

<sup>147</sup> Response, para. 52.

<sup>148</sup> Response, paras 37, 52.

specifically to former Rule 57(3),<sup>149</sup> which no longer exists in the Rules. Moreover, the Appeals Panel considers that Rule 56(2) of the Rules,<sup>150</sup> read together with Rule 42(1)(d) of the Rules,<sup>151</sup> establish the purpose of the bi-monthly detention reviews set out in Rule 57(1) of the Rules.<sup>152</sup> The purpose is to ensure that a person is not detained for an unreasonable period prior to the opening of the case thereby rendering the detention arbitrary, including on the basis of an undue delay caused by the SPO. Further, the Appeals Panel notes that the SPO concedes that the Parties were heard by the Single Judge before the issuance of the Impugned Decision.<sup>153</sup> The Appeals Panel does not consider that Rule 56(2) of the Rules imposes on the Single Judge an obligation to request additional submissions from the Parties in the event that he is minded to order release. The SPO has therefore failed to demonstrate that, as a matter of law, the Single Judge was required to seek additional submissions from the Parties before ordering Kilaj's release.

63. Concerning the SPO's second argument that it could not have reasonably foreseen and made submissions on the specific conditions ultimately imposed, the Panel recalls, as observed above, that many of the Ordered Conditions mirror or are included in the ones proposed by Kilaj and that most of the Ordered Conditions have been discussed by the Parties during the detention review proceedings.<sup>154</sup> Moreover,

---

<sup>149</sup> See Appeal, para. 32. See also KSC, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev2/2020, 5 May 2020.

<sup>150</sup> Rule 56(2) of the Rules provides that "[t]he 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."

<sup>151</sup> Rule 42(1)(d) of the Rules provides that "[d]uring and investigation by the SPO, a person: [...] (d) shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except in accordance with the Law and the Rules."

<sup>152</sup> Rule 57(1) of the Rules provides that "[b]efore 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 a Single Judge assigned pursuant to Article 33(2) of the Law every two (2) months or at any time earlier, upon request by the Suspect or the Specialist Prosecutor, or *proprio motu*, where a change in circumstances since the last review has occurred."

<sup>153</sup> Appeal, para. 33. See also SPO Submissions; Kilaj Submissions.

<sup>154</sup> See above, para. 42.

given the delays in respect of an indictment against Kilaj, and irrespective of any practice by panels of inviting submissions in the context of compassionate release, the Appeals Panel considers that the SPO could not ignore that the Single Judge was required to assess, in view of the current circumstances of the case, whether Kilaj's pre-trial detention had become unreasonable within the meaning of Rule 56(2) of the Rules.<sup>155</sup> The Panel therefore finds that the SPO has failed to demonstrate that it could not have reasonably foreseen and made submissions on the Ordered Conditions.

64. Concerning the SPO's third argument, and with respect to its specific submissions on the importance of further input by the SPO concerning developments in the case or on the situation on the ground in Kosovo or the Host State, the Appeals Panel considers that it was incumbent upon the SPO to bring these matters to the attention of the Single Judge in the context of its submissions giving rise to the Impugned Decision. Further, the Appeals Panel notes that this appeal represents an additional opportunity for the SPO to bring to the attention of a panel these matters which, in its view, warrant re-assessment of the Ordered Conditions. No such information has been put before the Appeals Panel. While the Appeals Panel notes the SPO's submission that the confidential information in its possession cannot be made available to external authorities,<sup>156</sup> the Appeals Panel considers that neither it nor the Single Judge fall into this category.

65. Concerning the SPO's specific submissions on the importance of further input by the Registry, as recalled above, the oversight function that the Single Judge assigned to the Registry is perfectly within the functions and competence of the Registry, whose role is to support the Specialist Chambers.<sup>157</sup> Moreover, the Appeals Panel observes that, pursuant to Rule 23(2)(a) of the Rules, the Registrar may make representations to any panel on issues arising in the context of a specific case which

---

<sup>155</sup> See above, paras 17-18.

<sup>156</sup> Appeal, para. 19.

<sup>157</sup> See above, para. 46.

affect the discharge of her functions. The Appeals Panel has no doubt that any information in the possession of the Registry concerning recent developments in the case or the current situation in Kosovo or with respect to the Host State, as argued by the SPO, will necessarily inform it in carrying out its functions as ordered by the Single Judge.

66. Concerning the SPO's specific submissions on the importance of further input from the Kosovo Police on the basis that the Impugned Decision does not provide for any "SPO/KSC oversight of or involvement in", first, the designation of the appropriate police station, and second, the choice of Kilaj's residence,<sup>158</sup> the Appeals Panel makes the following observations regarding the designation of a police station. First, the Appeals Panel observes that in previous instances where the sentence of a convicted person has been modified by the President of the Specialist Chambers and they have been released to Kosovo and ordered, *inter alia*, to report to a police station in Kosovo, the Registrar was ordered to designate the police station in Kosovo that would implement the ordered conditions.<sup>159</sup> By contrast, in this instance, the Single Judge ordered Kilaj to report weekly to the Kosovo Police "in accordance with the procedures designated by the Registrar".<sup>160</sup> Second, as recalled above, the Panel observes that the Kosovo Police, as an entity in Kosovo, shall comply without undue delay with any request for assistance or any order or decision issued by the Specialist Chambers.<sup>161</sup> Third, the Panel observes that, in the SPO's own submission, the Registry is in possession of information, "including about the dynamic and ongoing investigations and proceedings [...] [and] Kilaj's conduct",<sup>162</sup> and that, as found above,<sup>163</sup> such information will necessarily guide it in the establishment of appropriate

---

<sup>158</sup> Appeal, paras 19, 35.

<sup>159</sup> *Gucati* Decision on Modification of Sentence, para. 68(b); *Haradinaj* Decision on Modification of Sentence, para. 21(b).

<sup>160</sup> Impugned Decision, para. 65(g).

<sup>161</sup> See above, para. 47.

<sup>162</sup> Appeal, para. 34.

<sup>163</sup> See above, para. 65.

procedures as ordered by the Single Judge. In view of these observations, the Appeals Panel considers that the SPO has not articulated why the direction set out in the Impugned Decision, which places the onus on the Registrar to set up a procedure for Kilaj to report to the Kosovo Police, is deficient, thereby requiring submissions from the Kosovo Police.

67. The Panel now turns to the SPO's further argument that the Single Judge should have invited submissions from the Kosovo Police with respect to an address where Kilaj will reside in Kosovo.<sup>164</sup> As discussed above,<sup>165</sup> the Panel considers that the SPO failed to demonstrate that, prior to issuing the Impugned Decision, the Single Judge was under an obligation to consult with the SPO with respect to the designation of an address in Kosovo for Kilaj. The same is true for the SPO's argument that the Single Judge erred in not inviting submissions from the Kosovo Police concerning such address.

68. Concerning the SPO's specific submissions on the importance of further input from the Host State on the basis that Kilaj will be a provisionally released person on the territory of the Netherlands when he attends hearings in the future,<sup>166</sup> the Appeals Panel observes that the SPO refers to Article 42(1) of the Host State Agreement<sup>167</sup> and Article 41(11) of the Law.<sup>168</sup> The Appeals Panel further observes that both provide that a person detained in the Detention Facilities in the Host State shall not be released in

---

<sup>164</sup> Appeal, para. 35.

<sup>165</sup> See above, para. 45.

<sup>166</sup> Appeal, para. 35.

<sup>167</sup> Article 42(1) of the Host State Agreement provides that "[p]ersons detained by the Kosovo Relocated Specialist Judicial Institution in the Host State shall not be provisionally released in the Host State in accordance with Article 41(11) of Law No. 05/L-053, except for persons who are nationals or permanent residents of the Host State."

<sup>168</sup> Article 41(11) of the Law provides that "[i]f released, any person detained in the Specialist Chambers' detention facilities in the Host State shall not be released in the Host State. Instead they shall be transported to and released in the country where they were originally detained on behalf of the Specialist Chambers or in Kosovo, or if they do not have rights of residency in either of those places, in a country where they are ordinarily and/or lawfully resident, or to another State that agrees to accept them."

the Host State. The Appeals Panel considers that the Impugned Decision is clear that, upon release from the Detention Facilities, Kilaj will be released “in Kosovo in accordance with the Host State Agreement”.<sup>169</sup> Thus, Kilaj will not be provisionally released in the Host State upon his release. Concerning Kilaj’s return to the Host State, the Appeals Panel notes that Kilaj has been ordered to surrender his passport and any other travel documents to the Registrar, that he would re-enter the Host State pursuant to specific direction to do so by the competent panel, during which time he will reside at a previously identified address, and that the Registry has been ordered to liaise, as necessary, with the Host State.<sup>170</sup> Accordingly, the Appeals Panel considers that the SPO has failed to demonstrate that the Impugned Decision is incompatible with the terms of the Law or the Host State agreement.

69. In view of the above, the Appeals Panel considers that the SPO has failed to demonstrate that the Single Judge abused his discretion in not inviting submissions from it, the Registry, the Kosovo Police and the Host State.

70. The Appeals Panel now turns to the SPO’s fourth argument that it was necessary for the Single Judge to receive submissions in order to determine if the stricter conditions previously proposed by Kilaj would not serve the Single Judge’s stated purpose of minimising the grave risk at issue to the maximum extent possible.<sup>171</sup> The Appeals Panel observes that the Single Judge explicitly stated that he was under an obligation to consider “all proposed and alternative measures” to prevent the risks set out in Article 41(6)(b) of the Law.<sup>172</sup> Subsequently, he clearly indicated that he had taken into account the measures proposed by Kilaj.<sup>173</sup> The Appeals Panel is of the view that if the Single Judge considered that additional submissions were needed, nothing prevented him from requesting them. The Appeals Panel therefore dismisses the

---

<sup>169</sup> Impugned Decision, para. 70(a).

<sup>170</sup> Impugned Decision, paras 65(b), (c), (h), 69(e).

<sup>171</sup> Appeal, para. 35.

<sup>172</sup> Impugned Decision, para. 54.

<sup>173</sup> Impugned Decision, paras 55-57.

SPO's argument that it was necessary for the Single Judge to receive submissions on the conditions previously proposed by Kilaj.

71. In light of the above, the Appeals Panel considers that the SPO has failed to demonstrate that the Single Judge abused his discretion by failing to invite submissions on the Ordered Conditions of Kilaj's release, and in turn, failing to consider all relevant facts as they existed at the time of the Impugned Decision.<sup>174</sup> Accordingly, the Panel dismisses Ground 4 of the Appeal.

### C. REQUEST FOR SUSPENSIVE EFFECT

72. The SPO argues that, pursuant to Rule 58 of the Rules, should any of the risks outlined in its Appeal concerning the merits of the Impugned Decision materialise, Kilaj's release under the conditions imposed by the Single Judge "could cause potentially irreversible, far-reaching, adverse, and dire harm to ongoing investigations, proceedings, [REDACTED]"<sup>175</sup> and that suspension of the Impugned Decision is "necessary to avoid such irreversible consequences and defeating the purpose of the appeal".<sup>176</sup> Kilaj responds that there are no exceptional grounds to justify suspensive effect of the Impugned Decision and the SPO's request should be dismissed.<sup>177</sup>

73. The Panel considers that as it has dismissed the Appeal in its entirety, the SPO's request for suspensive effect is moot.

---

<sup>174</sup> Appeal, paras 3(d), 37.

<sup>175</sup> Appeal, paras 1-2, 38.

<sup>176</sup> Appeal, paras 2, 38.

<sup>177</sup> Response, paras 53-61.



#### D. CLASSIFICATION OF FILINGS

74. The Panel notes that the Impugned Decision was filed confidentially, and the Appeal and Response were filed as confidential pursuant to Rule 82(4) of the Rules.<sup>178</sup> While the Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential,<sup>179</sup> the Panel is aware that security concerns and logistical considerations compel it to issue this Decision confidentially.<sup>180</sup> The Panel will issue a public redacted version of this Decision and order the Parties to file public redacted versions of the underlying filings in due course.

75. For the same reasons, the Appeals Panel orders Kilaj and his Defence team to respect the classification of this Decision and to not release, disclose or otherwise discuss its contents, directly or indirectly, with any person, including family members, until this Decision has been made public upon order of this Panel when Kilaj's secure release in Kosovo is ensured.<sup>181</sup>

#### V. DISPOSITION

76. For these reasons, the Court of Appeals Panel:

**DENIES** the Appeal;

**FINDS** the SPO's request for suspensive effect to be moot; and

**ORDERS** Kilaj and his Defence team to respect the classification of this Decision and to not release, disclose or otherwise discuss its contents, directly

---

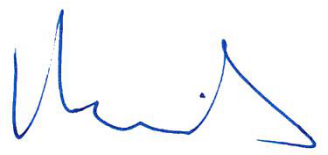
<sup>178</sup> See Appeal, para. 41.

<sup>179</sup> See e.g. KSC-BC-2020-06, IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

<sup>180</sup> See also Impugned Decision, para. 69.

<sup>181</sup> See also Impugned Decision, paras 67, 70(f).

or indirectly, with any person, including family members, until this Decision has been made public upon order of this Panel.



**Judge Michèle Picard,  
Presiding Judge**

Dated this Monday, 13 May 2024

At The Hague, the Netherlands