

In: KSC-BC-2018-01
Specialist Prosecutor *v.* Isni Kilaj

Before: Single Judge Panel
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Duty Counsel for Isni Kilaj

Date: 3 May 2024

Language: English

Classification: Public

**Public redacted version of Kilaj urgent request for leave to file sur-reply to
"Prosecution reply to F00648 and F00652 regarding retention of evidence"**

Specialist Prosecutor's Office

Kimberly P. West

Duty Counsel for Isni Kilaj

Iain Edwards

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1. The Defence for Mr Isni Kilaj (“Defence”) files this urgent request for leave to file a sur-reply to the Prosecution’s reply¹ to its response² to the Prosecution’s Second Request³ for retention of four items seized pursuant to the Search and Seizure Decision,⁴ and Decision F00611.⁵

2. The Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”) make no provision for the filing of a sur-reply, but it is submitted that a party should be granted leave to file a sur-reply, or further response, where the Reply raises a new issue.⁶ The Reply contains numerous new issues; in particular it highlights [REDACTED] that arises directly out of the assertions contained in the Reply. It also includes certain misrepresentations of the Defence’s submissions. The Single Judge will have to [REDACTED] by making findings of fact before being in a position to rule on the Request. This cannot be done on the basis of the arguments filed by the Parties to date.

3. The Defence exercises caution in not setting out its substantive submissions in this urgent request for leave, but limits its submissions to identifying the issues it would address in the event leave to file a sur-reply is granted.

¹ Prosecution reply to F00648 and F00652 regarding retention of evidence, KSC-BC-2018-01/F00653, 2 May 2024, confidential (“Reply”)

² Kilaj response to Prosecution second request for retention of evidence, KSC-BC-2018-01/F00648, 30 April 2024, confidential (“Response”)

³ Prosecution request for retention of evidence (F00611), KSC-BC-2018-01/F00643, 24 April 2024, confidential (“Request”)

⁴ Confidential Redacted Version of Decision Authorising Search and Seizure [REDACTED], KSC-BC-2018-01/F00484/CONF/RED, 20 October 2023, strictly confidential and *ex parte*, (“Search and Seizure Decision”), para. 50

⁵ Confidential Redacted Version of Decision on Request on Variation of Time Limits concerning Retention of Evidence, KSC-BC-2018-01/F00611/CONF/RED, 12 March 2024, para. 29. A confidential lesser redacted version was filed on 18 April 2024 further to a Defence request (F00620).

⁶ *See eg.* (ICTY) *Prosecutor v. Sainović & Ojdanić*, No. IT-99-37-AR65, [Decision on Provisional Release](#), 30 October 2002, para. 5

4. The Defence also stresses that it recognises that today is the deadline for the Single Judge to issue a decision on the Request. However, it is submitted that the Single Judge should give the Request the most informed consideration based on the fullest and most complete evidential picture, even if this means going beyond the deadline. The Defence therefore waives its right to take any point on the expiry of the deadline in order that it may prepare and file its sur-reply, even if that means a decision on the Request is delivered after today.
5. If granted leave, the Defence proposes to file submissions on the following issues:
- (i) Correcting the claim that the Defence alleges that the external forensic institute has itself shown a lack of diligence and expeditiousness;⁷
 - (ii) The relevance of the argument that the SPO has reviewed most of the seized items within the time afforded to the issue of its diligence and expeditiousness in reviewing the four Pending Items;⁸
 - (iii) Whether there is any “basis to believe that providing the final two remaining Pending Items to any other institute would yield different results”;⁹
 - (iv) The extent to which it is relevant that [REDACTED];¹⁰
 - (v) Whether it would be fair for the Single Judge to rely on the suggestion that [REDACTED];
 - (vi) The credibility of the Prosecution’s assertion that [REDACTED];¹¹
 - (vii) The credibility of the Prosecution’s assertion that [REDACTED];¹²

⁷ Reply, para. 2

⁸ Reply, para. 2

⁹ Reply, para. 2

¹⁰ Reply, para. 7

¹¹ Reply, para. 8

¹² Reply, para. 8

- (viii) Whether it is reasonable for a diligent and expeditious SPO to assert that [REDACTED];¹³
- (ix) Whether it is reasonable for a diligent and expeditious SPO to fail to [REDACTED];¹⁴
- (x) The reasonableness of the Prosecution in failing to [REDACTED];
- (xi) The proportionality and reasonableness of an [REDACTED] extension of the Single Judge's time-frame for retention of [REDACTED] and [REDACTED] when, on the SPO's own account, it appears that [REDACTED];¹⁵
- (xii) The question of the probative value of the various factual assertions made in the Reply [REDACTED] that are unevicenced by any supporting document, specifically [REDACTED].

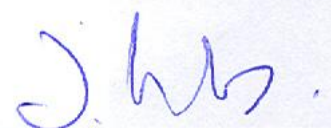
6. For the foregoing reasons, the Defence respectfully requests that the Single Judge grant leave to file a sur-reply.

Word count: 930



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Friday, 3 May 2024

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¹³ Reply, para. 8

¹⁴ Reply, para. 8

¹⁵ Reply, paras 11-12