

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

Before: Single Judge Panel
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Isni Kilaj

Date: 23 August 2024

Language: English

Classification: Public

Public Redacted Version of
“Kilaj Application for Temporary Variation of Conditions for Release”

Specialist Prosecutor’s Office

Kimberly P. West

Counsel for Isni Kilaj

Iain Edwards

Joe Holmes

I. INTRODUCTION

1. This an application for a temporary variation of the conditions attached to Isni Kilaj's release. This is to permit him to travel to [REDACTED] Albania with his wife for a short vacation [REDACTED] 2024.

II. PROCEDURAL HISTORY

2. On 3 May 2024, after having considered submissions of the Special Prosecutor's Office ("SPO")¹ and of the Defence² on Mr Kilaj's continued detention, the Single Judge recalled that:

he has previously found that the conditions proposed by the Defence could mitigate the risk of flight in relation to Mr Kilaj [and that] the conditions proposed by the Defence continue to sufficiently address the risk of flight in relation to Mr Kilaj.³

The Single Judge concluded that:

extending Mr Kilaj's detention under the present circumstances, namely considering the SPO's request to suspend consideration of the Revised Indictment which consequently cannot be confirmed in the near future, renders Mr Kilaj's detention unreasonable [within the meaning of Rule 56(2) of the Rules of Procedure and Evidence ("RPE")].⁴

¹ Prosecution submissions on review of detention, KSC-BC-2018-01/F00633, 15 April 2024, confidential ("SPO Submissions") (public redacted version notified on 17 April 2024).

² Kilaj Consolidated Response to (1) Prosecution Submissions on Review of Detention, and (2) Prosecution Notice, KSC-BC-2018-01/F00644, 24 April 2024, confidential ("Defence Submissions") (public redacted version notified on 15 May 2024).

³ Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00658, 3 May 2024, confidential ("SJ Decision"), para. 55 (corrected and public redacted versions notified on 15 May 2024).

⁴ *Ibid*, paras 63-64.

3. The Single Judge went on to order a number of strict requirements as a condition of Mr Kilaj's release, including, in relevant part, the following:
- a. Mr Kilaj shall not leave the territory of Kosovo *unless permitted by a competent panel of the SC*;
 - b. Mr Kilaj shall surrender to the Registrar his passport and any other travel documents, including visas and any other identity documents that can be used to travel [...];
 - c. Mr Kilaj shall provide an address in which he will reside for the duration of the judicial proceedings *and shall request permission from the SC prior to any change of residence*;
 - d. Mr Kilaj shall provide a financial security to the Registrar in the form of a monetary transfer in the amount of EUR 30,000 [...];
[...]
 - g. Mr Kilaj shall report on a weekly basis to the Kosovo Police, in accordance with the procedures designated by the Registrar;
[...]
 - j. *Mr Kilaj shall abide by any other decision or order of the SC.*⁵
4. On 7 May 2024, the Registrar received the requisite financial security of EUR 30,000.⁶
5. On 13 May 2024, a Panel of the Court of Appeals Chamber dismissed the SPO's appeal against the SJ Decision.⁷
6. On 15 May 2024, Mr Kilaj was transferred to Kosovo and released from the custody of the KSC.⁸ The Registrar has retained Mr Kilaj's passport and national identity card in accordance with the SJ Decision.⁹

⁵ *Ibid*, para. 65 (emphasis added).

⁶ Registry Notification of Payment of Financial Security, KSC-BC-2018-01/F00661, 8 May 2024, confidential (public redacted version notified on 9 August 2024).

⁷ Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention, KSC-BC-2018-01/IA007/F00007, 13 May 2024, confidential ("Appeal Decision") (public redacted version notified on 15 May 2024); Prosecution appeal against Decision F00658 and request for suspensive effect, KSC-BC-2018-01/IA007/F00004, 6 May 2024, confidential (public redacted version notified on 31 July 2024).

⁸ Notification of Isni Kilaj's Transfer to Kosovo, KSC-BC-2018-01/F00670, 15 May 2024, para. 3.

⁹ *Ibid*, para. 5.

III. APPLICABLE LAW

7. Generally, Rule 48(2) of the RPE confers on a Panel the power to issue such decisions or orders as may be necessary for the preparation and conduct of the proceedings. Rule 56(5) empowers a Panel to impose such conditions upon a detained person's release as deemed appropriate to ensure the presence of that person.
8. Specifically, it is submitted that the Single Judge is competent to rule on this application to vary. It is a long-established principle in international criminal law that Judges have jurisdiction to entertain and, where appropriate, grant applications for variations of conditional release.¹⁰ It is not unusual in international criminal proceedings – and even less so in domestic proceedings – for Judges to deal with such applications. Each case is fact-sensitive. Moreover, the very wording of the release conditions to which Mr Kilaj is subject envisages the possibility of variation. For example, condition (a) relating to Mr Kilaj remaining on the territory of Kosovo signals the prospect of permission being requested for him to leave Kosovo, which would necessarily require variation. Likewise, of permission being requested for Mr Kilaj to change residence under condition (c). The terms of condition (j) – that Mr Kilaj shall abide by any other decision or order of the SC – hew to the language of Rule 48(2).

¹⁰ See eg. ICTY [Prosecutor v. Ramush Haradinaj et al., IT-04-84-PT, Decision on Defence Motion on Behalf of Ramush Haradinaj to Request Re-Assessment of Conditions of Provisional Release Granted 6 June 2005](#), 12 October 2005; ICTY [Prosecutor v. Ramush Haradinaj et al., IT-04-84-AR65.1, Decision on Ramush Haradinaj Modified Provisional Release](#), 10 March 2006, para. 24, citing ICTY [Prosecutor v. Perišić, IT-04-81-PT, Decision Granting Momčilo Perišić's Motion to Modify Conditions of Provisional Release](#), 19 October 2005; ICTY [Prosecutor v. Prlić et al., IT-04-74-PT, Decision to Grant Accused Slobodan Praljak's Supplemental Application for Variation of Conditions of Provisional Release](#), 14 October 2005.

IV. SUBMISSIONS

9. It is worth reiterating that, ever since the first detention decision delivered shortly after Mr Kilaj's arrest, the Single Judge considered that release conditions specifically addressing the risk of flight could adequately mitigate that risk.¹¹ It is fair to say that, from the outset, the managed risk of fleeing the jurisdiction was not a matter that particularly troubled the Single Judge.
10. Further, it is important to recall, as did the Panel of the Court of Appeals Chamber, that Mr Kilaj is still a suspect against whom no charges have (yet) been confirmed.¹²
11. Since his transfer to Kosovo and release from the custody of the SC, Mr Kilaj has complied fully and strictly to each and every one of the conditions set out in the SJ Decision. He has not left the territory of Kosovo at any time. He has not applied for, and has not received, any new passport or travel document from the Kosovo – or any other – authorities. He has resided at his family home, the address of which was communicated to the SC, on every day since his transfer to Kosovo. He has reported every week to the Kosovo Police in compliance with the procedures designated by the Registrar. And he has fully complied with the conditions set out in paragraph 65(e) and (f) of the SJ Decision in both letter and spirit.
12. Whilst the Single Judge recognised that releasing Mr Kilaj from custody was not free of risk,¹³ by his conduct and behaviour Mr Kilaj has demonstrated that

¹¹ Reasons for Continued Detention, KSC-BC-2018-01/F00503, 9 November 2023 (confidential) (public redacted version notified on 13 November 2024), para. 59; SJ Decision, para. 55.

¹² Appeals Decision, paras 17 and 22, and footnote 107.

¹³ SJ Decision, paras 63 and 65.

he was, and continues to be, deserving of the trust reposed in him by the Single Judge. His undertakings to abide fully by his conditional release have been matched by his actions over the last three months. Of greatest relevance to this application, Mr Kilaj has shown that he can be trusted not to abscond, and to comply with the conditions designed to mitigate any flight risk.

13. Mr Kilaj, a man facing no confirmed charges and benefitting from the presumption of innocence, would now like to take a short holiday from [REDACTED] 2024 with his wife to [REDACTED] Albania. [REDACTED]. The Single Judge will understand that the last 12 months has been a period of immense stress and unhappiness for Mr Kilaj, his wife, and their entire family; truly an *annus horribilis*. [REDACTED].
14. Mr Kilaj has identified [REDACTED]¹⁴ for this break, should the Single Judge grant the instant application. Its address is [REDACTED] Albania.¹⁵ He has not booked the accommodation yet given that the request may be the subject of litigation, and the Single Judge may not be in a position to rule on the application before [REDACTED]. If this application is met with a favourable ruling – even an in-principle decision – he will make the reservation immediately and confirm the final dates with the Registry.
15. Mr Kilaj therefore requests that the Single Judge temporarily vary the conditions of his release to permit him to take a break with his wife in [REDACTED]. The conditions of his release that would need to be varied for this limited purpose are those that are designed to mitigate the risk of flight only. Those conditions designed to mitigate any risks of obstructing the

¹⁴ [REDACTED].

¹⁵ Location in Google Maps [REDACTED].

proceedings, or of committing (further) offences, need not be adjusted in any way, and the Defence do not ask that they be.

16. The Defence respectfully proposes for the Single Judge's consideration that his release conditions be varied as follows (in bold):

a. Mr Kilaj shall not leave the territory of Kosovo unless permitted by a competent panel of the SC; **he may travel directly to [REDACTED] Albania on [REDACTED] 2024, and shall return directly to the territory of Kosovo on [REDACTED] 2024;**

b. Mr Kilaj shall surrender to the Registrar his passport and any other travel documents, including visas and any other identity documents that can be used to travel [...]; **the Registry will return Mr Kilaj's passport for the sole purpose of his travel to [REDACTED] Albania on [REDACTED] 2024, and his return to the territory of Kosovo on [REDACTED] 2024; his passport shall be re-surrendered upon his return to Kosovo;**

c. Mr Kilaj shall provide an address in which he will reside for the duration of the judicial proceedings and shall request permission from the SC prior to any change of residence; **between [REDACTED] 2024 and [REDACTED] 2024 only, he shall reside at [REDACTED] Albania;**

[...]

g. Mr Kilaj shall report on a weekly basis to the Kosovo Police, in accordance with the procedures designated by the Registrar; **he shall report to the Kosovo Police by telephone on [REDACTED] 2024; he shall next report to the Kosovo Police in person after his return to Kosovo on [REDACTED] 2024;**

[...]

17. Lest it be argued that Mr Kilaj seeks this variation in order that he might travel to Albania as a means of escaping Kosovo and the jurisdiction of the KSC, the Defence submits that any such contention should be firmly rejected. Since his transfer to Kosovo on 15 May 2024, Mr Kilaj has abided by all conditions of his release in good faith. There is nothing in his conduct and behaviour that indicates the slightest intention to abscond. Had he wished to flee to Albania, he could have done so at any time over the last three months. The very fact that he has instructed that this application be made, knowing that there is a possibility it could be denied, demonstrates the extent to which he is prepared to respect the orders of the Single Judge and to seek prior permission to leave

Kosovo and temporarily change his place of residence. He is wholly prepared to follow the correct procedures and to “play by the rules”.

18. Finally, Mr Kilaj has been reminded, and understands, that were he to breach any condition of his release, including any varied condition, a warrant for his arrest will be immediately issued. Mr Kilaj has also been reminded, and understands, that were he to abscond and fail to appear before the SC as ordered, this would lead to the forfeiture of the EUR 30,000 financial security.
19. Mr Kilaj wishes to reassure the Single Judge that he has no intention of absconding, that he will return to Kosovo on [REDACTED] 2024, that he would have too much to lose by violating his conditional release and being rearrested with no prospect of future release, and that he and his family cannot afford to lose the EUR 30,000 financial security. He could be trusted in the past to comply with his conditional release, and he can be trusted to comply with the requested varied conditions.

V. CONCLUSION

20. For the foregoing reasons, the Defence requests that the Single Judge vary Mr Kilaj’s release conditions as proposed in paragraph 16, or as may otherwise be ruled appropriate.

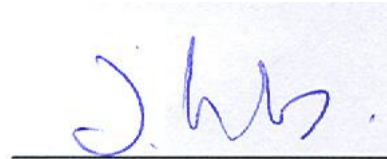
Respectfully submitted.

Word count: 2,208



Iain Edwards

Counsel for Isni Kilaj



Joe Holmes

Co-Counsel for Isni Kilaj

Friday, 23 August 2024

Abidjan, Côte d'Ivoire