



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2023-12
The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Fidelma Donlon

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Decision on Review of Detention of Isni Kilaj

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(6), (10) and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 5 December 2024, Isni Kilaj ("Mr Kilaj" or "Accused") was arrested in Kosovo,² pursuant to a decision and arrest warrant issued *proprio motu* by the Pre-Trial Judge ("Decision on Arrest"),³ and further to the confirmation of an indictment against him, Hashim Thaçi, Fadil Fazliu, Bashkim Smakaj, and Hajredin Kuçi ("Confirmation Decision").⁴

2. On 9 December 2024, at the initial appearance of Mr Kilaj,⁵ the Pre-Trial Judge ordered his continued detention ("First Detention Decision")⁶ and set the

¹ KSC-BC-2023-12, F00015, President, [Decision Assigning a Pre-Trial Judge](#), 6 June 2024, public.

² KSC-BC-2023-12, F00043, Registrar, *Notification of Arrest of Isni Kilaj Pursuant to Rule 55(4)*, 5 December 2024, public.

³ KSC-BC-2023-12, F00037, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Related Matters*, 29 November 2024, confidential, with Annexes 1-8, strictly confidential and *ex parte*. A public redacted version of the main filing was issued on 19 December 2024, [F00037/RED](#). The Specialist Prosecutor had requested that the Pre-Trial Judge terminate Mr Kilaj's conditional release and order him to return to the Specialist Chambers' Detention Facilities. See KSC-BC-2023-12, F00023, Specialist Prosecutor, *Prosecution Submissions Pursuant to F00022*, 17 October 2024, strictly confidential and *ex parte*, para. 22, with Annexes 1, 3, 5, confidential, and Annexes 2, 4, strictly confidential and *ex parte*. A confidential redacted version was submitted on 27 November 2024, F00023/SCONF/RED; a public redacted version was submitted on 13 December 2024, F00023/RED.

⁴ KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* ("Confirmation Decision"), 29 November 2024, confidential.

⁵ KSC-BC-2023-12, Transcript of Hearing, 9 December 2024 ("Initial Appearance Transcript"), public, pp. 85-125. Mr Kilaj's initial appearance was first scheduled on 8 December 2024, but was postponed to 9 December 2024 at the request of his Counsel. See KSC-BC-2023-12, F00059, Pre-Trial Judge, [Decision Setting the Date for Initial Appearances and Related Matters](#), 6 December 2024, public; F00063, Pre-Trial Judge, [Decision Rescheduling Initial Appearance of Isni Kilaj](#), 7 December 2024, public.

⁶ See Initial Appearance Transcript, p. 120, line 20 to p. 124, line 23.

briefing schedule for the Parties' submissions in relation to the review of Mr Kilaj's detention.⁷

3. On 19 December 2024, Mr Kilaj filed an appeal against the First Detention Decision.⁸

4. On 21 January 2025, the Specialist Prosecutor's Office ("SPO") filed its submissions on the periodic review of Mr Kilaj's detention.⁹ The Defence for Mr Kilaj ("Kilaj Defence") did not respond.

5. On 28 January 2025, the Court of Appeals Panel rejected Mr Kilaj's appeal and upheld the First Detention Decision.¹⁰

II. SUBMISSIONS

6. The SPO submits that the requirements under Article 41(6) of the Law are satisfied, necessitating Mr Kilaj's continued detention.¹¹ In particular, the SPO first asserts that there remains a (well-)grounded suspicion that Mr Kilaj has committed or attempted to commit multiple offences within the jurisdiction of the Specialist Chambers ("SC") and there have been no developments since the issuance of the Confirmation Decision and the Decision on Arrest that would affect this determination.¹² As regards the risks under Article 41(6)(b) of the Law, the SPO submits that they continue to apply.¹³ In particular, the SPO asserts that the ongoing disclosure process provides Mr Kilaj with further access

⁷ See Initial Appearance Transcript, p. 124, lines 10-18.

⁸ KSC-BC-2023-12, IA001/F00001/COR, Kilaj Defence, *Corrected Version of Kilaj Appeal Against Decision on Continued Detention*, 19 December 2024, confidential.

⁹ KSC-BC-2023-12, F00127, Specialist Prosecutor, *Prosecution Submissions on Review of Detention of Isni Kilaj*, 21 January 2025, public.

¹⁰ KSC-BC-2023-12, IA001/F00005, Court of Appeals Panel, [*Decision on Isni Kilaj's Appeal Against Decision on Continued Detention*](#) ("Kilaj Detention Appeal Decision"), 28 January 2025, public.

¹¹ SPO Submissions, para. 11.

¹² SPO Submissions, paras 12-13.

¹³ SPO Submissions, paras 14-21.

to sensitive information and reinforces the necessity of his detention. The SPO adds that no modalities of conditional release could sufficiently mitigate the existing risks.¹⁴ Lastly, given the progress made in the case, the SPO avers that Mr Kilaj's detention remains reasonable and proportional.¹⁵ Based on the above, the SPO submits that Mr Kilaj should remain in detention.¹⁶

III. APPLICABLE LAW

7. Pursuant to Article 41(6) of the Law, the SC shall only order the arrest and detention of a person when: (a) there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is a risk of flight; (ii) will destroy, hide, change or forge evidence of a crime, or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

8. Pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, until a judgment is final or until release, upon expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist, and render a ruling by which detention on remand is extended or terminated.

9. Pursuant to Article 41(12) of the Law, in addition to detention on remand, the following measures may be ordered by the SC to ensure the presence of the accused, including by video-teleconference, to prevent reoffending or to ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific

¹⁴ SPO Submissions, paras 1, 22-27.

¹⁵ SPO Submissions, paras 1, 28.

¹⁶ SPO Submissions, para. 29.

places or persons, attendance at police station or other venue, and diversion. Pursuant to Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

10. Pursuant to Rule 56(2) of the Rules, the Pre-Trial Judge shall ensure that a person is not detained for an unreasonable period prior to the opening of the case, and, 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.

IV. DISCUSSION

A. APPLICABLE STANDARD

11. The Pre-Trial Judge recalls that she has an obligation under Article 41(10) of the Law to examine, every two (2) months, whether the reasons for detention on remand continue to exist,¹⁷ including the grounds set out in Article 41(6) of the Law, namely whether: (i) there is a grounded suspicion that the person has committed the crime(s) under Article 41(6)(a) of the Law; and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law are present.¹⁸ The duty to determine whether the circumstances underpinning detention still exist imposes on the Pre-Trial Judge the task to assess, *proprio motu*, whether she is still

¹⁷ See, for example, KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, [Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention](#) ("First Haradinaj Detention Appeal Decision"), 9 February 2021, public, para. 55; KSC-BC-2020-06, IA006/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention](#) ("Second Krasniqi Detention Appeal Decision"), 1 October 2021, public, para. 15; KSC-BC-2020-04, F00224/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#) ("Sixth Shala Detention Decision"), 22 June 2022, public, para. 19.

¹⁸ [Sixth Shala Detention Decision](#), para. 19; [First Haradinaj Detention Appeal Decision](#), para. 55. See also KSC-BC-2020-04, F00075/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#) ("Second Shala Detention Decision"), 10 September 2021, public, para. 19; KSC-BC-2020-07, F00143, Pre-Trial Judge, [Decision on Review of Detention of Hysni Gucati](#), 24 February 2021, public, para. 17.

satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the person remains warranted.¹⁹ This two (2)-month automatic review is not strictly limited to whether or not a change of circumstances occurred, but such a change can be determinative and shall be taken into consideration if raised by a Party or *proprio motu*.²⁰ Furthermore, the Pre-Trial Judge may refer to findings in previous decisions if she is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.²¹ The Pre-Trial Judge is neither required to make findings on the factors already decided upon in the initial ruling on detention, nor to entertain submissions that merely repeat arguments that have already been addressed in earlier decisions.²²

12. The Pre-Trial Judge likewise underscores that any analysis of Mr Kilaj's detention must duly consider his presumption of innocence.²³ This means, as a consequence, that pre-trial detention cannot be taken lightly and that the SPO bears the burden of establishing that Mr Kilaj's detention is necessary.²⁴ This also means

¹⁹ [Second Krasniqi Detention Appeal Decision](#), para. 15; [Sixth Shala Detention Decision](#), para. 19.

²⁰ See [Second Krasniqi Detention Appeal Decision](#), para. 16; [Sixth Shala Detention Decision](#), para. 19.

²¹ KSC-BC-2020-04, IA003/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention](#) ("Second Shala Detention Appeal Decision"), 11 February 2022, public, para. 18. See also [Sixth Shala Detention Decision](#), para. 19.

²² [First Haradinaj Detention Appeal Decision](#), para. 55; [Second Krasniqi Detention Appeal Decision](#), para. 17; [Second Shala Detention Appeal Decision](#), para. 18; [Sixth Shala Detention Decision](#), para. 19.

²³ See KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release](#) ("First Thaçi Detention Decision"), 22 January 2021, para. 18; KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, [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](#) ("SCCC 26 April 2017 Judgment"), 26 April 2017, public, para. 113. Similarly, ECtHR, [McKay v. the United Kingdom](#), no. 543/03, Judgment, 3 October 2006, para. 43.

²⁴ See, for example, KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release](#) ("First Shala Detention Decision"), 23 June 2021, public, para. 13; [First Thaçi Detention Decision](#), para. 19, with further references. See also ECtHR, [Merabishvili v. Georgia](#), no. 72508/13, Judgment ("Merabishvili v. Georgia"), 28 November 2017, para. 234.

that the SPO must provide specific arguments and concrete evidence to establish that continued detention is necessary at the time of the review.²⁵

B. GROUNDED SUSPICION

13. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion²⁶ that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.²⁷

14. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Kilaj is criminally responsible for offences within the jurisdiction of the SC, namely attempting to obstruct official persons in performing official duties and contempt of court within the meaning of Articles 401(2) and (5), and 393 of the 2019 Kosovo Criminal Code, Code No. 06/L-074, respectively, in violation of Article 15(2) of the Law.²⁸ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.²⁹ The Pre-Trial Judge notes that there have been no developments in the case negating these findings.

15. Therefore, in the absence of any contrary intervening information or developments, the Pre-Trial Judge finds that there continues to exist a grounded

²⁵ [Sixth Shala Detention Decision](#), para. 19.

²⁶ See Article 19(1)(1.9) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ("KCPC"). See similarly, Article 5(1)(c) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in, *inter alia*, ECtHR, [Fox, Campbell and Hartley v. United Kingdom](#), nos 12244/86; 12245/86; 12383/86, Judgment, 30 August 1990, para. 32; [Erdagöz v. Turkey](#), no. 21890/93, Judgment, 22 October 1997, para. 51; [Ilgar Mammadov v. Azerbaijan](#), no. 15172/13, Judgment, 22 May 2014, para. 88; [Selahattin Demirtaş \(No. 2\) v. Turkey](#), no. 14305/17, Judgment, 22 December 2020, para. 314.

²⁷ [First Shala Detention Decision](#), para. 14. See also ECtHR, [Merabishvili v. Georgia](#), para. 222.

²⁸ Confirmation Decision, para. 313(d).

²⁹ See Confirmation Decision, para. 43. See also [Decision on Arrest](#), para. 43. See similarly, [Second Shala Detention Decision](#), para. 22; [Sixth Shala Detention Decision](#), para. 24.

suspicion that Mr Kilaj has committed offences within the jurisdiction of the SC, as set forth under Article 41(6)(a) of the Law.³⁰

C. NECESSITY OF DETENTION

16. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be *articulable* in the sense that they must be specified in detail.³¹ In this regard, Article 41(6)(b) of the Law echoes the principle that the continued detention of a person can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.³² Therefore, the Pre-Trial Judge must rely on case-specific reasoning and concrete grounds in deciding to order continued detention.³³

17. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"³⁴ that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.³⁵ In other words, the standard to be applied is less than certainty, but more than a mere

³⁰ See similarly First Detention Decision in the Initial Appearance Transcript, p. 123, lines 14-18.

³¹ See Article 19(1.31) of the KCPC, which defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". See also, for example, [First Shala Detention Decision](#), para. 16; KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, [Decision on Kadri Veseli's Appeal Against Decision on Interim Release](#) ("First Veseli Detention Appeal Decision"), 30 April 2021, public, paras 15, 18.

³² [SCCC 26 April 2017 Judgment](#), para. 113.

³³ [SCCC 26 April 2017 Judgment](#), para. 115; [First Shala Detention Decision](#), para. 16; KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release](#) ("First Thaçi Detention Appeal Decision"), 30 April 2021, public, para. 22. See also ECtHR, [Khudoyorov v. Russia](#), no. 6847/02, Judgment ("Khudoyorov v. Russia"), 8 November 2005, para. 173.

³⁴ See chapeau of Article 41(6)(b) of the Law.

³⁵ See similarly, [First Shala Detention Decision](#), para. 16; [Second Shala Detention Decision](#), para. 24; [Sixth Shala Detention Decision](#), para. 26; [First Thaçi Detention Decision](#), para. 20, with further references.

possibility of a risk materialising.³⁶ The Pre-Trial Judge further observes that these grounds are in the alternative, and that the existence of one ground suffices to establish the necessity of detention.³⁷

18. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Pre-Trial Judge recalls that, while the evaluation involves an element of discretion,³⁸ it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of the detained person.³⁹ When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁴⁰

19. Lastly, in relation to the grounds set forth in Article 41(6)(b)(ii)-(iii) of the Law, the Pre-Trial Judge emphasises that it suffices that the risks may materialise as a result of the detained person's acts or omissions, but they do not require physical execution on his or her part.⁴¹

1. Risk of Flight

20. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge finds that the considerations set out in the Decision on Arrest and First Detention Decision are still relevant, namely that: (a) Mr Kilaj has an incentive to abscond in light of: (i) the gravity of the offences with which he is charged; (ii) his knowledge of the evidence presented by the SPO in support; (iii) the prospect of a

³⁶ See similarly, [First Veseli Detention Appeal Decision](#), para. 17; [First Shala Detention Decision](#), para. 16.

³⁷ See also [Kilaj Detention Appeal Decision](#), para. 17. Similarly, [First Shala Detention Decision](#), para. 20; [First Thaçi Detention Decision](#), para. 25.

³⁸ See also [Kilaj Detention Appeal Decision](#), para. 16. See similarly, [First Thaçi Detention Decision](#), para. 21, with further references.

³⁹ See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references. See similarly, ECtHR, [Aleksanyan v. Russia](#), no. 46468/06, Judgment, 22 December 2008, para. 179.

⁴⁰ See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references.

⁴¹ [First Shala Detention Decision](#), para. 19; [First Thaçi Detention Decision](#), para. 24.

potentially significant sentence in the event of conviction;⁴² and (b) he has the means to flee and opportunity to evade justice.⁴³ The Pre-Trial Judge is also attentive to the fact that Mr Kilaj has now gained increased insight into the evidence underpinning the charges through the ongoing disclosure process.⁴⁴

21. Furthermore, the Pre-Trial Judge remains of the view that, notwithstanding the considerations favourable to Mr Kilaj concerning his settled family life and community ties in Kosovo, his willingness to cooperate with the SPO on the day of his arrest, and his purported compliance with the previous conditions of release imposed upon him,⁴⁵ these factors only partially mitigate, but do not eliminate the risk of flight, particularly now that concrete charges have been confirmed against him.⁴⁶

22. Therefore, in light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that the risk of flight in relation to Mr Kilaj continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

23. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge finds that the considerations set out in the Decision on Arrest and the First Detention Decision continue to apply, namely: (i) Mr Kilaj's demonstrated willingness to violate court orders and intervene in proceedings to which he is not a Party, by willingly misusing SC witness-related information in

⁴² [Decision on Arrest](#), paras 56-57.

⁴³ [Decision on Arrest](#), para. 58; First Detention Decision in the Initial Appearance Transcript, p. 122, line 18 to p. 123, line 2.

⁴⁴ The Pre-Trial Judge notes that, since the First Detention Decision, the SPO has made three (3) disclosures. See Disclosures Packages Nos 6-8.

⁴⁵ See further Section IV.C.4 below. See KSC-BC-2018-01, F00658/COR/RED, Single Judge, *Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj*, 3 May 2024 (date of public redacted corrected version 15 May 2024), public.

⁴⁶ [Decision on Arrest](#), para. 59; First Detention Decision in the Initial Appearance Transcript, p. 122, line 18 to p. 123, line 2. See also [Kilaj Detention Appeal Decision](#), para. 35.

wanton disregard for SC confidentiality rules;⁴⁷ (ii) his knowledge of the charges against him and awareness of the evidence in support; and (iii) his access to sensitive witness-related information, once served with the Confirmed Indictment.⁴⁸ The Pre-Trial Judge considers that the ongoing disclosure process⁴⁹ further elevates the risk that he may obstruct the proceedings.

24. As previously held, Mr Kilaj's purported compliance with his conditions for release does not counterbalance these considerations.⁵⁰ Rather, the Pre-Trial Judge is of the view that the risk of collusion for the purpose of obstructing the proceedings remains particularly high.⁵¹

25. Lastly, the Pre-Trial Judge assesses the above factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC.⁵²

26. Therefore, in light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that the risk that Mr Kilaj will obstruct the progress of criminal proceedings continues to exist.

3. Risk of Committing Further Offences

27. As regards the risk of committing further offences under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further offences, the factors underpinning the former are of relevance to the assessment of the latter in the present circumstances.⁵³ In this regard, the Pre-Trial Judge notes

⁴⁷ [Decision on Arrest](#), paras 61-62; First Detention Decision in the Initial Appearance Transcript, p. 123, lines 3-7.

⁴⁸ [Decision on Arrest](#), paras 61-62; First Detention Decision in the Initial Appearance Transcript, p. 123, lines 3-7.

⁴⁹ *See supra* para. 20.

⁵⁰ [Decision on Arrest](#), para. 62.

⁵¹ [Decision on Arrest](#), para. 61.

⁵² [Decision on Arrest](#), para. 63.

⁵³ [Decision on Arrest](#), para. 22. *See also* [First Shala Detention Decision](#), para. 39.

that the relevant factors to be considered are the same as those outlined in paragraphs 23-26 above with respect to the risk of obstruction of proceedings. For these reasons, the Pre-Trial Judge finds that there exists a risk that Mr Kilaj will repeat the offences he is alleged to have committed.⁵⁴

28. Therefore, in light of the above, the Pre-Trial Judge concludes that the risk that Mr Kilaj will commit further offences continues to exist.

4. Purported Past Compliance with Release Conditions

29. The Pre-Trial Judge finds that Mr Kilaj's purported compliance with his previous release conditions,⁵⁵ which remains a relevant factor in assessing his continued detention,⁵⁶ only carries limited weight when assessed against the other factors set forth above, namely: (i) the confirmation of concrete charges against him, carrying an increased likelihood of a significant sentence;⁵⁷ (ii) the specific nature of the charges confirmed against him,⁵⁸ demonstrating his willingness to violate court orders and intervene in proceedings, including those to which he is not a Party;⁵⁹ and (iii) Mr Kilaj's increased knowledge of the evidence and increased access to sensitive witness-related information through the ongoing disclosure process.⁶⁰ In the view of the Pre-Trial Judge, these factors render the risk of obstruction and collusion particularly high and, when balanced against these considerations, Mr Kilaj's purported compliance with his release conditions is insufficient to mitigate the existing risks and to tilt the balance in favour of his conditional release.

⁵⁴ [Decision on Arrest](#), para. 65; First Detention Decision in Initial Appearance Transcript, p. 123, lines 3-7.

⁵⁵ [Kilaj Detention Appeal Decision](#), para. 33.

⁵⁶ See First Detention Decision in the Initial Appearance Transcript, p. 122, lines 18-19; [Decision on Arrest](#), para. 57.

⁵⁷ See *supra* paras 14, 21. See also First Detention Decision in the Initial Appearance Transcript, p. 122; [Decision on Arrest](#), paras 56-57.

⁵⁸ See *supra* para. 14.

⁵⁹ See *supra* para. 23.

⁶⁰ See *supra* paras 20, 23.

5. Conclusion

30. In view of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that Mr Kilaj may flee, obstruct the progress of the SC proceedings, and commit further offences, therefore necessitating Mr Kilaj's continued detention, in accordance with Article 41(6)(b) of the Law. The Pre-Trial Judge will assess below whether these risks can be adequately mitigated by any conditions for Mr Kilaj's release.

D. CONDITIONAL RELEASE

31. The Pre-Trial Judge recalls that, when deciding on whether a person should be released or detained, she must consider all proposed and alternative measures to prevent the risks in Article 41(6)(b) of the Law.⁶¹

32. The Pre-Trial Judge recalls her previous finding in the First Detention Decision that, while mindful of Mr Kilaj's purported past compliance with the conditions imposed for his release, she remained persuaded that none of the conditions proposed by the Defence, including bail in the amount of €40.000, frequent reporting to the Kosovo police, and restrictions on communications and movement, could sufficiently mitigate the existing risks.⁶²

33. The Pre-Trial Judge remains of the view that no conditions, whether previously proposed by the Defence or imposed *proprio motu* by the Pre-Trial Judge,⁶³ could mitigate, at this stage, the existing risks, in particular that the Accused will obstruct the progress of SC proceedings or commit further offences. Notably, the Pre-Trial Judge is of the view that such conditions: (i) do not address the possibility of Mr Kilaj employing communication devices belonging to other

⁶¹ As regards the obligation to consider "alternative measures", see [SCCC 26 April 2017 Judgment](#), para. 114. See also ECtHR, [Buzadji v. the Republic of Moldova](#), no. 23755/07, Judgment ("Buzadji v. Moldova"), 5 July 2016, para. 87; [Idalov v. Russia](#), no. 5826/03, Judgment, 22 May 2012, para. 140.

⁶² See First Detention Decision in the Initial Appearance Transcript, p. 123, line 22 to p. 124, line 1.

⁶³ See KSC-BC-2020-06, IA017/F00011/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention](#), 5 April 2022, public, para. 51.

persons or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of Mr Kilaj's communications.

34. In the view of the Pre-Trial Judge, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further offences, as much as possible.⁶⁴ In this regard, the Pre-Trial Judge recalls that the Registrar and the Panel, who have unrestricted access to confidential information concerning witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.⁶⁵

35. In this context, the Pre-Trial Judge clarifies that she has also taken into account Mr Kilaj's purported past compliance with his release conditions. However, she considers that limited weight is to be given to this factor, when assessed against the considerations underlying the above findings regarding the continued existence of risks,⁶⁶ in particular now that the charges against him have been confirmed and the disclosure process is under way.

36. Accordingly, in light of the above, the Pre-Trial Judge concludes that the conditions for Mr Kilaj's release previously proposed by the Kilaj Defence during the initial appearance, and/or any *additional* reasonable conditions imposed by the

⁶⁴ Similarly, KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention](#) ("Second Thaçi Detention Appeal Decision"), 27 October 2021, public, para. 68.

⁶⁵ KSC-BC-2023-10, F00165, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Haxhi Shala](#), 9 February 2024, public, para. 54.

⁶⁶ In this regard, it is recalled that the Single Judge granted Mr Kilaj conditional release, although having found the continued existence of risks, on the sole basis that his continued detention had, under the circumstances at the time, become unreasonable within the meaning of Rule 56(2) of the Rules. See KSC-BC-2018-01, F00658/COR/RED, Single Judge, [Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj](#), 3 May 2024, public, paras 51, 64.

Pre-Trial Judge, remain insufficient to adequately mitigate the risks under Article 41(6)(b)(i)-(iii) of the Law.

E. PROPORTIONALITY OF DETENTION

37. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention, as reflected in Rule 56(2) of the Rules.⁶⁷ The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, continued detention “stops being reasonable” and the individual needs to be released.⁶⁸ However, the Pre-Trial Judge notes that the question whether the length of time spent in pre-trial detention is reasonable cannot be assessed in the abstract, and must be assessed based on the facts of each case and according to its specific features.⁶⁹ Furthermore, the Pre-Trial Judge recalls that such an assessment can only be based on the circumstances at the time of review, and not on what may or may not occur in the foreseeable future.⁷⁰

38. The Pre-Trial Judge recalls her previous finding in the First Detention Decision that, notwithstanding his past detention from 2 November 2023 to 15 May 2024, Mr Kilaj’s detention was proportionate in light of the possible sentence he faces in the event of conviction and the progress of the proceedings. Since the First Detention Decision, the Pre-Trial Judge has: (i) held a status

⁶⁷ KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, [Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention](#), 9 December 2020, public, paras 72-73; KSC-BC-2018-01, [IA007/F00007/RED](#), Court of Appeals Panel, *Public Redacted Version of Decision on the Specialist Prosecutor’s Office’s Appeal Against Decision on Isni Kilaj’s Review of Detention*, 13 May 2024, public, para. 18.

⁶⁸ [Second Thaçi Detention Appeal Decision](#), para. 49, with further references.

⁶⁹ ECtHR, [Buzadji v. Moldova](#), para. 90.

⁷⁰ KSC-BC-2023-10, F00325, Pre-Trial Judge, [Third Decision on Review of Detention of Haxhi Shala](#), 5 June 2024, public, para. 47.

conference with all Parties,⁷¹ in order to review the status of the case and organise the disclosure of evidence between the Parties; (ii) issued the “Framework Decision on Disclosure of Evidence and Related Matters”,⁷² setting the timelines for the disclosure of evidence between the Parties with a view to ensuring the efficiency of the process; and (iii) the SPO has completed its disclosure of evidence pursuant to Rule 102(1)(a) of the Rules.⁷³ Thus, in the view of the Pre-Trial Judge, the proceedings are moving forward expeditiously.

39. Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Kilaj’s detention will be regularly reviewed upon the expiry of two (2) months from the last ruling on detention or at any time upon request, or *proprio motu*, where a change in circumstances since the last review has occurred.

40. In view of the foregoing, the Pre-Trial Judge finds that the time Mr Kilaj has spent in pre-trial detention is not unreasonable within the meaning of Rule 56(2) of the Rules.

⁷¹ KSC-BC-2023-12, Transcript of Hearing, 17 December 2024, public. See also F00072, Pre-Trial Judge, [Order Setting the Date for the First Status Conference and for Submissions](#), 10 December 2024, public, pp. 126-198.

⁷² KSC-BC-2023-12, F00100, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#), 20 December 2024, public.

⁷³ See Disclosure Packages 6, 8; SPO Submissions, para. 6.

V. DISPOSITION

41. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **ORDERS** Mr Kilaj's continued detention;
- b. **ORDERS** Mr Kilaj, if he so wishes, to file submissions on the next review of detention by **Monday, 10 March 2025**, with response and reply following the timeline set out in Rule 76 of the Rules; and
- c. **ORDERS** the SPO, should Mr Kilaj decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Kilaj's detention by **Friday, 14 March 2025**, and Mr Kilaj, if he so wishes, to file his response by **Friday, 21 March 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Friday, 7 February 2025

At The Hague, the Netherlands.