

**In:** KSC-BC-2023-12

**Specialist Prosecutor v.** Hashim Thaçi, Bashkim Smakaj,  
Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

**Before:** Pre-Trial Judge  
Judge Marjorie Masselot

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Isni Kilaj

**Date:** 10 March 2025

**Language:** English

**Classification:** Public

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**Public redacted version of  
Kilaj submissions on review of detention**

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## I. INTRODUCTION

1. The Defence for Mr Isni Kilaj ("Defence") files these submissions on the forthcoming review of his detention pursuant to Article 41(10) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), and the Pre-Trial Judge's order of 7 February 2025.<sup>1</sup>

2. By the time the Pre-Trial Judge delivers her next decision on review of detention, Mr Kilaj – a man entitled to the presumption of innocence – will have spent a total of 10½ months in pre-trial detention, plus nearly seven months with his liberty seriously curtailed on conditional release in Kosovo. There is a very real chance – indeed, it is likely – that the total amount of time he will have spent in pre-trial detention, plus the time spent subject to onerous conditions on provisional release, exceeds any period of time he would spend in prison if convicted on, and sentenced for, Counts 14 and 15. In these circumstances, continued detention is neither reasonable nor proportionate within the meaning of Rule 56(2) of the Rules.

3. Further, recent disclosure of exculpatory evidence made by the Specialist Prosecutor's Office ("SPO", "Prosecution") under Rule 103 has shone a spotlight on the fact that Witness 4 ([REDACTED]) has not been in contact with Mr Kilaj [REDACTED].<sup>2</sup> Specifically, [REDACTED].<sup>3</sup>

4. Despite disclosure of 894 items of evidence under Rules 102(1)(a), 102(1)(b) and 102(3), nothing has been produced by the SPO to support the suggestion that Mr Kilaj

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<sup>1</sup> Decision on Review of Detention, KSC-BC-2023-12/F00162, 7 February 2025, Disposition para. 41(b)

<sup>2</sup> SPO Official Note, [REDACTED], KSC-BC-2023-12-119146-119147

<sup>3</sup> SPO Official Note, [REDACTED], KSC-BC-2023-12-115744-115745 RED

was ever in contact with Witness 3 ([REDACTED]) in connection with his status as a Prosecution witness.

5. The more disclosure that is made by the SPO in this case, the clearer it becomes that Mr Kilaj's alleged offending – taking the evidence at its highest – is less serious than as was initially portrayed. This is important information, not previously before the Pre-Trial Judge, to be taken into account when deciding on the reasonableness and proportionality of Mr Kilaj's continued detention, and in reassessing the conditions of provisional release proposed by the Defence. It is submitted that it is now clear that continued detention is no longer reasonable or proportionate, and that any residual concerns about the risk of flight, or obstruction of proceedings, or commission of (further) offences can be adequately assuaged by the imposition of onerous conditions.

## II. PROCEDURAL HISTORY

6. On 2 November 2023, Mr Kilaj was arrested pursuant to an order by the Specialist Prosecutor's Office ("SPO", "Prosecution").<sup>4</sup> The next day, he was transferred to the SC Detention Facilities in The Hague,<sup>5</sup> and the SPO submitted a request for Mr Kilaj's continued detention.<sup>6</sup>

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<sup>4</sup> Urgent Rule 52(1) Notification of Arrest of Isni Kilaj, KSC-BC-2018-01/F00489, 2 November 2023, public

<sup>5</sup> Report on the Transfer of Isni Kilaj to the Detention Facilities, KSC-BC-2018-01/F00495, 3 November 2023, strictly confidential and *ex parte* (public redacted version filed on 8 November 2023)

<sup>6</sup> Prosecution Request for Continued Detention of Isni Kilaj, KSC-BC-2018-01/F00496, 3 November 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte* (public redacted version filed on 7 November 2023)

7. On 4 November 2023, Mr Kilaj had his first appearance hearing.<sup>7</sup> On 6 November 2023, the former Single Judge ordered Mr Kilaj's continued detention,<sup>8</sup> and issued reasons thereto on 9 November 2023.<sup>9</sup>

8. On 15 December 2023, the SPO submitted the first iteration of its indictment against Mr Kilaj and his co-Accused for confirmation by the former PTJ.<sup>10</sup>

9. On 5 January 2024, and again on 5 March 2024, the Single Judge ordered Mr Kilaj's continued detention.<sup>11</sup>

10. On 11 March 2024, the SPO submitted a second iteration of its indictment – described as a revised indictment – against Mr Kilaj and his co-Accused for confirmation.<sup>12</sup>

11. On 19 April 2024, the SPO filed a notice informing the PTJ of its intention to file what was described as an amended indictment.<sup>13</sup> About two weeks later, on 2 May 2024, the SPO filed the Supplemental Notice informing the PTJ and the Defence that it had requested the suspension of the revised indictment of 11 March 2024 in light of its intention to submit an amended indictment by a specified date.<sup>14</sup>

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<sup>7</sup> KSC-BC-2018-01, Transcript, First Appearance, 4 November 2023

<sup>8</sup> Decision on Continued Detention, KSC-BC-2018-01/F00499, 6 November 2023, public

<sup>9</sup> Reasons for Continued Detention, KSC-BC-2018-01/F00503, 9 November 2023, confidential (public redacted version issued on 13 November 2023)

<sup>10</sup> Prosecution Response to Defence Request F00548, KSC-BC-2018-01/F00549, 15 January 2024, public. *See also* Prosecution Supplemental Notice, KSC-BC-2018-01/F00654, 2 May 2024, confidential ("Supplemental Notice"), para. 4; Submission of Indictment for Confirmation and Related Requests, KSC-BC-2023-12/F00002, 15 December 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*

<sup>11</sup> Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00547, 5 January 2024, confidential (public redacted version issued on 18 January 2024); Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00603, 5 March 2024, confidential (public redacted version issued on 11 March 2024)

<sup>12</sup> Supplemental Notice, para. 3. *See also* Submission of Revised Indictment for Confirmation, KSC-BC-2023-12/F00007, 11 March 2024, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*

<sup>13</sup> Prosecution Notice, KSC-BC-2018-01/F00636, 19 April 2024, public. *See also* Prosecution Submissions Pursuant to Order F00008, KSC-BC-2023-12/F00009, 18 April 2024, strictly confidential and *ex parte*

<sup>14</sup> Prosecution Submissions Pursuant to Order F00011, KSC-BC-2023-12/F00014, 2 May 2024, strictly confidential and *ex parte*

12. On 3 May 2024, after having considered the Parties' submissions<sup>15</sup> on his continued detention, the Single Judge ordered Mr Kilaj's release in Kosovo ("Release Decision").<sup>16</sup> On 15 May 2024, 6½ months after his arrest, Mr Kilaj was transferred to Kosovo and released from the custody of the SC.<sup>17</sup>

13. On 27 June 2024, the SPO filed the third version of its proposed indictment against Mr Kilaj and his co-Accused for confirmation.<sup>18</sup>

14. On 17 October 2024, the SPO filed submissions requesting *inter alia* that the PTJ terminate Mr Kilaj's conditional release and order him to return to the SC Detention Facilities ("Return Request").<sup>19</sup>

15. On 12 November 2024, pursuant to an order of the PTJ, the SPO submitted for confirmation a further amended indictment together with its accompanying outline.<sup>20</sup>

16. On 29 November 2024, the PTJ confirmed the further amended indictment against Mr Kilaj and his co-Accused in part, and ordered the SPO to submit a confirmed indictment.<sup>21</sup> On the same day, the PTJ issued an arrest warrant for *inter alios* Mr Kilaj ("Arrest Decision").<sup>22</sup>

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<sup>15</sup> Prosecution submissions on review of detention, KSC-BC-2018-01/F00633, 15 April 2024, confidential (public redacted version notified on 17 April 2024); Kilaj Consolidated Response to (1) Prosecution Submissions on Review of Detention, and (2) Prosecution Notice, KSC-BC-2018-01/F00644, 24 April 2024, confidential (public redacted version notified on 15 May 2024)

<sup>16</sup> Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00658, 3 May 2024, confidential (corrected and public redacted versions notified on 15 May 2024)

<sup>17</sup> Notification of Isni Kilaj's Transfer to Kosovo, KSC-BC-2018-01/F00670, 15 May 2024, public

<sup>18</sup> Prosecution Notice, KSC-BC-2018-01/F00725, 18 July 2024, public. *See also* Submission of Amended Indictment for Confirmation, KSC-BC-2023-12/F00017, 27 June 2024, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*

<sup>19</sup> Prosecution Submissions Pursuant to F00022, KSC-BC-2023-12/F00023, 17 October 2024, strictly confidential and *ex parte*, with Annexes 1-5, strictly confidential and *ex parte*

<sup>20</sup> Submission of Further Amended Indictment for Confirmation, KSC-BC-2023-12/F00028, 12 November 2024, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*

<sup>21</sup> Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036, 29 November 2024, strictly confidential and *ex parte* ("Confirmation Decision")

<sup>22</sup> Decision on Request for Arrest Warrants and Related Matters, KSC-BC-2023-12/F00037, 29 November 2024, confidential, with Annexes 1-8, strictly confidential and *ex parte*

17. On 2 December 2024, the SPO filed the confirmed indictment (“Confirmed Indictment”) as ordered.<sup>23</sup>

18. On 5 December 2024, nearly seven months after his conditional release, Mr Kilaj was re-arrested by the SPO in Kosovo<sup>24</sup> and transferred again to the SC Detention Facilities.

19. On Monday, 9 December 2024, Mr Kilaj had his initial appearance before the PTJ. Mr Kilaj pleaded not guilty to both counts against him in the Confirmed Indictment,<sup>25</sup> and an application for conditional release was made on his behalf.<sup>26</sup> The PTJ found against the Defence and ordered Mr Kilaj’s continued detention.<sup>27</sup>

20. On 19 December 2024, Mr Kilaj appealed the First Detention Decision.<sup>28</sup>

21. On 28 January 2025, the Court of Appeals Panel rejected the appeal and upheld the First Detention Decision.<sup>29</sup>

22. On 7 February 2025, the Pre-Trial Judge delivered the Decision on Review of Detention.<sup>30</sup>

### III. CLASSIFICATION

23. Pursuant to paragraph 15 of the Order Regarding (Re)classification of Filings,<sup>31</sup> and Rules 82(3), these submissions are confidential because they refer to confidential

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<sup>23</sup> Submission of Confirmed Indictment, KSC-BC-2023-12/F00040, 2 December 2024, strictly confidential, with Annex 1, strictly confidential, containing the Confirmed Indictment (public redacted version filed on 6 December 2024)

<sup>24</sup> KSC-BC-2023-12/F00043, Notification of Arrest of Isni Kilaj Pursuant to Rule 55(4), 5 December 2023, confidential

<sup>25</sup> Transcript, 9 December 2024, p. 93:22-25

<sup>26</sup> Transcript, 9 December 2024, p. 96:16-p. 115:18; p. 118:25-p. 119:22

<sup>27</sup> Transcript, 9 December 2024, p. 120:21-p. 124:23 (“First Detention Decision”)

<sup>28</sup> Corrected Version of Kilaj Appeal Against Decision on Continued Detention, KSC-BC-2023-12, IA001/F00001/COR, 19 December 2024, confidential (public redacted version filed on 30 January 2025)

<sup>29</sup> Decision on Isni Kilaj’s Appeal Against Decision on Continued Detention, KSC-BC-2023-12, IA001/F00005, 28 January 2025

<sup>30</sup> Decision on Review of Detention, KSC-BC-2023-12/F00162, 7 February 2025

<sup>31</sup> Order Regarding (Re)classification of Filings, KSC-BC-2023-12/F00111, 14 January 2025, confidential

information relating to Prosecution witnesses and evidence. A public redacted version will be filed shortly.

#### IV. SUBMISSIONS

24. The Defence focusses its submissions on (a) the question of the reasonableness and proportionality of continued detention in light of the length of Mr Kilaj's pre-trial detention and other restrictions on his liberty to date, and (b) the impact of newly disclosed exculpatory evidence on the availability and appropriateness of conditions attaching to provisional release. The Defence reserves the right to make new submissions in the future on the extent to which there are (or are not) articulable grounds to believe that Mr Kilaj presents a risk of flight, of obstructing the progress of proceedings, or of committing (further) offences.

*(a) The total amount of time Mr Kilaj has spent in pre-trial detention, plus the time spent subject to conditions on provisional release, likely exceeds any eventual sentence*

25. Mr Kilaj spent some 6½ months in pre-trial detention between his first arrest on 2 November 2023 and his being granted conditional release on 15 May 2024. By the time the current two-month review period expires on or around 7 April 2025, Mr Kilaj will have spent another four months in pre-trial detention. This period of 10½ months is time that will be credited to any sentence of imprisonment in the event he is convicted of the charges in the Confirmed Indictment. In addition, he spent nearly seven months with his liberty severely restricted, subject to onerous release conditions in Kosovo, between 15 May 2024 and his re-arrest on 5 December 2024. While it may be that he cannot expect to have all of this time credited to any eventual sentence of imprisonment, were he to be convicted, it is submitted that he would be entitled to some additional credit.

26. Pursuant to Rule 196(2), Mr Kilaj will be entitled to request commutation of any sentence of imprisonment after serving two-thirds of that sentence. At the very least, 10½ months represents two-thirds of a sentence of nearly 15¾ months' imprisonment.



This is evidently in excess of the 6-month maximum sentence available for the offence of contempt of court under Article 393 of the Kosovo Criminal Code ("KCC"), charged in Count 14 of the Confirmed Indictment.

27. Even if Mr Kilaj is convicted of the more serious offence of attempted obstruction of official persons under Article 401(2) and (5) of the KCC, charged in Count 15 of the Confirmed Indictment, it is likely that any sentence will be at the lower end of the range of one to five years' imprisonment. This is the case given that not only was there no actual obstruction, but there is positive evidence Mr Kilaj did not even communicate with any SPO witnesses with a view to interfere with their cooperation with the Prosecution.

28. Mr Kilaj's alleged culpability must be compared with the culpability of Messrs Januzi and Bahtijari who were convicted on their pleas of the more serious offence of intimidation under Article 387 of the KCC, and of obstruction under Article 401(2) and (5).<sup>32</sup> Messrs Januzi and Bahtijari were each sentenced, for this more serious package of offences, to a single sentence of two years' imprisonment.<sup>33</sup> Mr Kilaj can reasonably expect, if convicted on both Counts 14 and 15, to receive a sentence that is less – and even significantly less – than the two years' imprisonment passed in respect of Messrs Januzi and Bahtijari.

29. In conclusion, it is submitted that there is a very real chance – and indeed, it is likely – that the total amount of time Mr Kilaj has spent in pre-trial detention, plus the time spent subject to onerous conditions on provisional release, exceeds any period of time he would spend in prison if convicted on and sentenced for Counts 14 and 15. This militates in favour of a finding by the Pre-Trial Judge that continued detention is

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<sup>32</sup> *Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala*, Public redacted version of Reasons for the Decision on the Plea Agreements, KSC-BC-2023-10/F00693/RED, 27 February 2025, paras 34, 45-46.

<sup>33</sup> *Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala*, Public redacted version of Reasons for the Decision on the Plea Agreements, KSC-BC-2023-10/F00693/RED, 27 February 2025, para. 114(c) and (d)



no longer reasonable or proportionate within the meaning of Rule 56(2) of the Rules, notwithstanding any finding that may be made that proceedings in this case are moving forward expeditiously.

*(b) It has become clear with the disclosure of exculpatory evidence that Mr Kilaj's alleged offending is far less serious than was initially asserted by the Prosecution*

30. The more disclosure that is made by the SPO in this case, the clearer it becomes that Mr Kilaj's alleged offending – taking the evidence at its highest – is less serious than as was initially asserted.

31. At paragraph 16 of the Confirmation Decision, the Pre-Trial Judge sets out in summary form the SPO's case against Mr Kilaj in respect of the 6 October 2023 visit to Mr Thaçi:

In particular, the SPO contends that Mr Thaçi gave instructions to be conveyed to [REDACTED], a protected witness in Case 06, about how to testify and that, as part of his instructions, Mr Thaçi also referenced and provided portions of [REDACTED]'s confidential prior statements. The SPO further claims that Mr Thaçi also discussed the confidential evidence of SPO witness [REDACTED].<sup>34</sup>

32. At paragraph 156 of the Confirmation Decision, the Pre-Trial Judge finds that the supporting material shows that:

during the 6 October 2023 Visit, Mr Thaçi gave Messrs Kilaj and Kryeziu detailed information about two SPO witnesses who had not yet testified in Case 06, provided detailed instructions that Mr Kilaj was to convey to one of these witnesses before his testimony, and also discussed the evidence of other SPO witnesses in the *Thaçi et al.* trial. The supporting material demonstrates that Mr Thaçi's instructions covered both the content of the (then) impending testimony of the witness as well as the manner of testifying.<sup>35</sup>

33. At paragraph 159 of the Confirmation Decision, the Pre-Trial Judge finds that:

As to the content of the (then) impending testimony in Case 06, the 6 October 2023 Visit Transcript shows that, at one point in the course of said visit, Mr Thaçi handed copies of Witness 4's [REDACTED] prior statements ("Prior

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<sup>34</sup> Footnotes omitted

<sup>35</sup> Footnotes omitted

Statements of Witness 4”) to Mr Kilaj and, in whispered tones, proceeded to: [...] (iii) direct Mr Kilaj to instruct Witness 4 as to how to modify the substance of his testimony and his manner of testifying; (iv) highlight the urgency of the task to Mr Kilaj by clarifying that Witness 4 “[REDACTED]”; (v) provide Mr Kilaj with further context regarding Witness 3 and Witness 4’s prior statements [...] and (vi) explain how the modified testimony would play out in practice.<sup>36</sup>

34. Compelling exculpatory evidence has been disclosed since the Confirmation Decision under Rule 103, evidence that had presumably not been placed before the Pre-Trial Judge during her consideration of the material underpinning the proposed indictment, demonstrating that Witness 4 [REDACTED] has not been in contact with Mr Kilaj [REDACTED]. This evidence is contained in an SPO Official Note [REDACTED],<sup>37</sup> disclosed to the Defence on 18 December 2024. It is noted that: “[REDACTED].”<sup>38</sup> Further, [REDACTED].<sup>39</sup> Finally, [REDACTED].<sup>40</sup>

35. This evidence is fully consistent with the contents of an earlier SPO Official Note [REDACTED], disclosed under Rule 103 on the same day as the Pre-Trial Judge’s last Decision on Review of Detention, 7 February 2025:

[REDACTED].<sup>41</sup>

36. It is noteworthy that [REDACTED].

37. The above is powerful, positive evidence that, even if Mr Thaçi gave him instructions as alleged in the indictment, Mr Kilaj did nothing to execute those instructions. Further, the Prosecution has now disclosed a significant amount of evidence – some 894 items to date – under Rules 102(1)(a), 102(1)(b) and 102(3). Nothing has been produced by the SPO to support the suggestion that Mr Kilaj was ever in contact with Witness 3 ([REDACTED]) in connection with his status as a

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<sup>36</sup> Footnotes omitted

<sup>37</sup> KSC-BC-2023-12-119146-119147

<sup>38</sup> KSC-BC-2023-12-119146-119147, para. 4

<sup>39</sup> KSC-BC-2023-12-119146-119147, para. 5

<sup>40</sup> KSC-BC-2023-12-119146-119147, para. 6

<sup>41</sup> KSC-BC-2023-12-115744-115745 RED, para. 8

Prosecution witness, or indeed with any other SPO witness, whether before or after their testimony.

38. Contrary to the submissions of the Prosecution advanced as far back as December 2023 that Mr Kilaj had made “efforts to obstruct the progress of criminal proceedings” (and that there were concrete risks he may *continue* those efforts)<sup>42</sup> there is now concrete evidence showing that Mr Kilaj never made any such efforts. At its highest, the Prosecution evidence appears to show that Mr Kilaj may have engaged in a discussion with Mr Thaçi, but it was a discussion that never evolved into any action.

39. And contrary to the Prosecution’s oft-evoked arguments that Mr Kilaj has an increasingly acute incentive to flee, or to obstruct proceedings, or commit offences, as more evidence is disclosed, the reality is that the more disclosure is made, the less serious the case against him appears.

40. The consequence of this is that the risks enumerated in Article 41(6)(b) have reduced. It is submitted that they can certainly be managed with the imposition of the strict conditions set out in full in the Release Decision, and by which Mr Kilaj has already shown himself able and willing to abide *to the letter*. Indeed, the security proposed now of €40,000 goes a substantial way to demonstrate that he has every incentive not to flee, or engage in obstruction, or commit (further offences).

## V. CONCLUSION

41. For the foregoing reasons, it is respectfully submitted that Mr Kilaj’s detention should not be renewed and that he be afforded the benefit of conditional release.

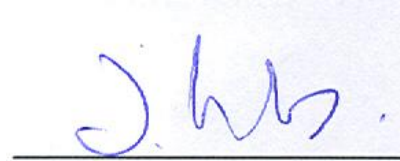
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<sup>42</sup> Prosecution submissions on review of detention with confidential annexes 1 and 2, KSC-BC-2018-01/F00538, 15 December 2023, para. 20



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10 March 2025

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