



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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Second 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,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 ("Decision on Detention").⁶

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* ("Decision on Arrest"), 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*, 29 November 2024, confidential. A public redacted version was issued on 12 February 2025, [F00036/RED](#).

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.

3. On 28 January 2025, the Court of Appeals Panel upheld the Decision on Detention.⁷
4. On 7 February 2025, the Pre-Trial Judge ordered Mr Kilaj's continued detention ("First Review Decision").⁸
5. On 10 March 2025, the Defence for Mr Kilaj ("Kilaj Defence") filed its submissions on the periodic review of Mr Kilaj's detention ("Defence Submissions").⁹
6. On 21 March 2025, the Specialist Prosecutor's Office ("SPO") responded to the Defence Submissions.¹⁰ The Kilaj Defence replied on 28 March 2025.¹¹

II. SUBMISSIONS

7. The Kilaj Defence submits that Mr Kilaj's continued detention is no longer reasonable or proportionate, and that any risks under Article 41(6)(b) of the Law have been reduced and can be adequately mitigated through the imposition of strict conditions for Mr Kilaj's conditional release.¹² In support, the Kilaj Defence asserts that: (i) the total time Mr Kilaj has spent in pre-trial detention (nearly ten (10) months) and on conditional release (nearly seven (7) months), likely exceeds any

⁷ 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.

⁸ KSC-BC-2023-12, F00162, Pre-Trial Judge, [Decision on Review of Detention of Isni Kilaj](#), 7 February 2025, public.

⁹ KSC-BC-2023-12, F00208, Kilaj Defence, *Kilaj Submissions on Review of Detention*, 10 March 2025, confidential. A public redacted version was filed on 11 March 2025, F00208/RED.

¹⁰ KSC-BC-2023-12, F00234, Specialist Prosecutor, *Prosecution Response to 'Kilaj Submissions on Review of Detention'* ("SPO Response"), 21 March 2025, confidential.

¹¹ KSC-BC-2023-12, F00244, Kilaj Defence, *Reply to Prosecution Response to 'Kilaj Submissions on Review of Detention'* ("Defence Reply"), 28 March 2025, confidential. A public redacted version was filed on 1 April 2025, F00244/RED.

¹² Defence Submissions, paras 2, 5, 29, 40; Defence Reply, paras 6, 14-15. As regards conditions of provisional release, the Kilaj Defence generally refers to the conditions imposed by the Single Judge at the time of ordering Mr Kilaj's conditional release in May 2024, including payment of a security in the amount of 40,000 euros, and adds that Mr Kilaj has already shown that he is able and willing to strictly abide by said conditions. See Defence Submissions, para. 40.

sentence that may be imposed, should he be convicted at trial;¹³ and (ii) newly disclosed evidence has revealed that Mr Kilaj's alleged conduct is far less serious than initially asserted by the SPO, and concretely shows that Mr Kilaj never made any efforts to obstruct the progress of the criminal proceedings and did not communicate with any SPO witness in relation to their testimony or cooperation with the SPO.¹⁴

8. The SPO responds that Mr Kilaj's continued detention remains necessary and proportionate.¹⁵ In particular, the SPO asserts that none of the issues raised by the Kilaj Defence constitute a relevant change in circumstances detracting from the necessity of his continued detention, and there has been no contrary intervening information or development since the First Review Decision impacting the Pre-Trial Judge's previous findings.¹⁶ To the contrary, the SPO avers that the risks under Article 41(6)(b) of the Law have increased with the advancement of the pre-trial phase, which is proceeding expeditiously.¹⁷

9. As regards proportionality, the SPO submits that the Kilaj Defence distorts the legal test and makes inappropriate submissions, by comparing Mr Kilaj's situation with that of other accused who have pleaded guilty, and asserting that he would be entitled to commutation of sentence, if convicted.¹⁸ Lastly, in response to the Kilaj Defence's submissions regarding recently disclosed evidence, the SPO submits that the probative value, strength, quality or credibility of the evidence are matters to be

¹³ Defence Submissions, paras 2, 25-29; Defence Reply, paras 7, 10, 12. The Kilaj Defence adds that, even if Mr Kilaj were to be convicted of the more serious offence of attempted obstruction, which carries a possible sentence of one (1) to five (5) years of imprisonment, any sentence is likely to be at the lower end of the range, considering that: (i) there was no actual obstruction; and (ii) Mr Kilaj did not communicate with any SPO witness with a view to interfering with their testimony. *See* Defence Submissions, para. 27; Defence Reply, paras 7-10.

¹⁴ Defence Submissions, paras 3-5, 27, 30-40; Defence Reply, paras 8-10.

¹⁵ SPO Response, paras 1, 6, 11.

¹⁶ SPO Response, paras 2-3.

¹⁷ SPO Response, paras 3, 8.

¹⁸ SPO Response, paras 6-7.

discussed at trial and a review of detention under Article 41(6) of the Law is not the proper place for such an assessment.¹⁹

III. APPLICABLE LAW

10. Pursuant to Article 41(6) of the Law, the Specialist Chambers (“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.

11. 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.

12. 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 places or persons, attendance at police station or other venue, and diversion. Pursuant to Rule 56(5) of

¹⁹ SPO Response, para. 9. In this regard, the SPO adds that the Kilaj Defence advanced this very same argument in his appeal of the Decision on Detention, which was dismissed by the Court of Appeals Panel. *See* SPO Response, para. 9, *referring to* [Kilaj Detention Appeal Decision](#), para. 41.

the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

13. 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

14. 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,²⁰ 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.²¹ 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 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.²²

²⁰ 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.

²¹ [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.

²² [Second Krasniqi Detention Appeal Decision](#), para. 15; [Sixth Shala Detention Decision](#), para. 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*.²³ 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.²⁴ 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.²⁵

15. The Pre-Trial Judge likewise underscores that any analysis of Mr Kilaj's detention must duly consider his presumption of innocence.²⁶ 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.²⁷ This also means that the SPO must provide specific arguments and concrete evidence to establish that continued detention is necessary at the time of the review.²⁸

²³ See [Second Krasniqi Detention Appeal Decision](#), para. 16; [Sixth Shala Detention Decision](#), para. 19.

²⁴ 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.

²⁵ [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.

²⁶ 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.

²⁷ 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.

²⁸ [Sixth Shala Detention Decision](#), para. 19.

B. GROUNDED SUSPICION

16. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion²⁹ 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.³⁰

17. 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.³¹ 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.³² The Pre-Trial Judge notes that there have been no developments in the case negating these findings.

18. In this regard, the Pre-Trial Judge takes note of the Kilaj Defence's submissions essentially challenging the evidentiary basis for the confirmed charges and the merits of the SPO's case, in light of material disclosed pursuant to Rules 102 and 103 of the Rules.³³ The Pre-Trial Judge emphasises that a decision on review of

²⁹ 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.

³⁰ [First Shala Detention Decision](#), para. 14. See also ECtHR, [Merabishvili v. Georgia](#), para. 222.

³¹ Confirmation Decision, para. 313(d).

³² See Confirmation Decision, para. 43. See also [Decision on Arrest](#), para. 43; [First Review Decision](#), para. 14. See similarly, [Second Shala Detention Decision](#), para. 22; [Sixth Shala Detention Decision](#), para. 24.

³³ See *supra* para. 7.

detention is not the proper forum to challenge the evidence underpinning the confirmed charges. In this regard, the Pre-Trial Judge recalls that, in the context of her review of detention under Article 41(6) of the Law, she cannot be expected to examine the merits of the case and the quality and strength of the evidence disclosed by the SPO in preparation for trial, which are matters to be discussed at trial.³⁴

19. Moreover, the Pre-Trial Judge finds that the Kilaj Defence has not demonstrated a change in circumstances that would negate her previous finding as to the existence of a grounded suspicion pursuant to Article 41(6)(a) of the Law.

20. Therefore, in the absence of any contrary intervening information or developments, the Pre-Trial Judge finds that there continues to exist a grounded suspicion that Mr Kilaj has committed offences within the jurisdiction of the SC, as set forth under Article 41(6)(a) of the Law.³⁵

C. NECESSITY OF DETENTION

21. 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.³⁶ 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.³⁷ Therefore, the Pre-Trial Judge must rely on

³⁴ See [Kilaj Detention Appeal Decision](#), para. 41; KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention](#), 1 October 2021, public, para. 23.

³⁵ See similarly, [First Review Decision](#), para. 15; Decision on Detention in the Initial Appearance Transcript, p. 123, lines 14-18.

³⁶ 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.

³⁷ [SCCC 26 April 2017 Judgment](#), para. 113.

case-specific reasoning and concrete grounds in deciding to order continued detention.³⁸

22. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the “belief”³⁹ 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.⁴⁰ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴¹ 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.⁴²

23. 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,⁴³ 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.⁴⁴ When assessing

³⁸ [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, 8 November 2005, para. 173.

³⁹ See chapeau of Article 41(6)(b) of the Law.

⁴⁰ 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.

⁴¹ See similarly, [First Veseli Detention Appeal Decision](#), para. 17; [First Shala Detention Decision](#), para. 16.

⁴² See also [Kilaj Detention Appeal Decision](#), para. 17. Similarly, [First Shala Detention Decision](#), para. 20; [First Thaçi Detention Decision](#), para. 25.

⁴³ See also [Kilaj Detention Appeal Decision](#), para. 16. See similarly, [First Thaçi Detention Decision](#), para. 21, with further references.

⁴⁴ 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.

the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁴⁵

24. 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.⁴⁶

1. Risk of Flight

25. 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 First Review 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; and (iii) the prospect of a potentially significant sentence in the event of conviction;⁴⁷ and (b) he has the means to flee and opportunity to evade justice. The Pre-Trial Judge is also attentive to the fact that Mr Kilaj continues to gain increased insight into the evidence underpinning the charges through the ongoing disclosure process.⁴⁸

26. 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,⁴⁹ these factors only partially mitigate, but do not eliminate the

⁴⁵ See [First Shala Detention Decision](#), para. 17; [First Thaçi Detention Decision](#), para. 21, with further references.

⁴⁶ [First Shala Detention Decision](#), para. 19; [First Thaçi Detention Decision](#), para. 24.

⁴⁷ [First Review Decision](#), para. 20. See also [Decision on Arrest](#), paras 56-57.

⁴⁸ The Pre-Trial Judge notes that, since the First Review Decision, the SPO has made four (4) additional disclosures pursuant to Rule 102(1)(b) of the Rules. See Disclosure Package Nos 11, 17, 19, 21.

⁴⁹ See [First Review Decision](#), para. 21. See also KSC-BC-2018-01, F00658/COR/RED, Single Judge, [Public Redacted Version of Corrected Version of Decision on Review of Isni Kilaj](#) ("Kilaj

risk of flight, particularly now that concrete charges have been confirmed against him.⁵⁰

27. 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

28. 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 First Review 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 wanton disregard for SC confidentiality rules;⁵¹ (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.⁵² The Pre-Trial Judge considers that the ongoing disclosure process⁵³ further elevates the risk that he may obstruct the proceedings.

29. As previously held, Mr Kilaj's purported compliance with his conditions for release does not counterbalance these considerations.⁵⁴ Rather, the Pre-Trial Judge

Conditional Release Decision"), 3 May 2024 (date of public redacted corrected version 15 May 2024), public.

⁵⁰ [First Review Decision](#), para. 21; Decision on Detention in the Initial Appearance Transcript, p. 122, line 18 to p. 123, line 2; [Decision on Arrest](#), para. 59. See also [Kilaj Detention Appeal Decision](#), para. 35.

⁵¹ [First Review Decision](#), para. 23. See also Decision on Detention in the Initial Appearance Transcript, p. 123, lines 3-7; [Decision on Arrest](#), paras 61-62.

⁵² [First Review Decision](#), para. 23; Decision on Detention in the Initial Appearance Transcript, p. 123, lines 3-7; [Decision on Arrest](#), paras 61-62.

⁵³ See *supra* para. 25.

⁵⁴ [First Review Decision](#), para. 24; [Decision on Arrest](#), para. 62.

is of the view that the risk of collusion for the purpose of obstructing the proceedings remains particularly high.⁵⁵

30. 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.⁵⁶

31. 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

32. 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.⁵⁷ In this regard, the Pre-Trial Judge notes that the relevant factors to be considered are the same as those outlined in paragraphs 28-30 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.⁵⁸

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

⁵⁵ [First Review Decision](#), para. 24; [Decision on Arrest](#), para. 61.

⁵⁶ [First Review Decision](#), para. 25; [Decision on Arrest](#), para. 63.

⁵⁷ [First Review Decision](#), para. 27; [Decision on Arrest](#), para. 22. *See also* [First Shala Detention Decision](#), para. 39.

⁵⁸ *See similarly* [First Review Decision](#), para. 27; Decision on Detention in Initial Appearance Transcript, p. 123, lines 3-7; [Decision on Arrest](#), para. 65.

4. Conclusion

34. 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

35. 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.⁵⁹

36. The Pre-Trial Judge recalls her previous finding 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.⁶⁰

37. Contrary to the Kilaj Defence's submissions,⁶¹ 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,⁶² could mitigate, at this stage, the existing risks, in particular that the Accused will obstruct the progress of SC

⁵⁹ 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.

⁶⁰ See [First Review Decision](#), paras 32-36; Decision on Detention in the Initial Appearance Transcript, p. 123, line 22 to p. 124, line 1.

⁶¹ Defence Submissions, paras 5, 40.

⁶² 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.

proceedings or commit further offences.⁶³ 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 persons or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of Mr Kilaj's communications.

38. 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

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

⁶³ 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 [Kilaj Conditional Release Decision](#), paras 51, 64.

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.

E. PROPORTIONALITY OF DETENTION

40. 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.⁶⁶ 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.⁶⁷ 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.⁶⁸ 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.⁶⁹

41. The Pre-Trial Judge recalls that: (i) Mr Kilaj was detained from 2 November 2023 to 15 May 2024 and again since his arrest on 5 December 2024; (ii) he is charged with one count of attempting to obstruct official persons in performing official duties and one count of contempt of court, which carry a possible sentence of up to five (5) years and six (6) months, respectively;⁷⁰ and (iii) the risks under Article 41(6)(b) of the Law (in particular, the risk of obstruction

⁶⁶ 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.

⁶⁷ [Second Thaçi Detention Appeal Decision](#), para. 49, with further references.

⁶⁸ ECtHR, [Buzadji v. Moldova](#), para. 90. In this context, whether a charged offence is alleged to have been committed as part of a group is a relevant circumstance in evaluating the reasonableness of continued detention. See, for example, ECtHR, [Bak v. Poland](#), no. 7870/04, 16 January 2007, paras 56, 62-63; [Tomecki v. Poland](#), no. 47944/06, Judgment, 20 May 2008, para. 33.

⁶⁹ KSC-BC-2023-10, F00325, Pre-Trial Judge, [Third Decision on Review of Detention of Haxhi Shala](#), 5 June 2024, public, para. 47.

⁷⁰ KSC-BC-2023-12, F00055/A01, Specialist Prosecutor, [Public Redacted Confirmed Indictment](#), 2 December 2024, public.

and commission of further offences) cannot be mitigated by any proposed or additional conditions for release.⁷¹

42. The Pre-Trial Judge also takes into consideration that, since the First Review Decision: (i) the SPO has (largely) completed the disclosure of evidence in its possession pursuant to Rule 102(1)(b) of the Rules⁷² and made further disclosures pursuant to Rule 103 of the Rules;⁷³ (ii) the Pre-Trial Judge has issued the “Decision on Framework for the Handling of Confidential Information and Witness Contacts”, adopting certain measures and prohibitions related to the handling of confidential information and contact with any witnesses or victims in the present case or any other cases;⁷⁴ (iii) the SPO has filed its first notice pursuant to Rule 102(3) of the Rules⁷⁵ and disclosed a number of items, as requested by the Defence;⁷⁶ (iv) remaining investigative steps are progressing steadily;⁷⁷ and (v) the Court of Appeals Panel has rendered its decision on the SPO’s appeal against the Confirmation Decision.⁷⁸ Thus, the proceedings continue to move forward expeditiously.

43. The Pre-Trial Judge has also taken note of the Kilaj Defence’s submissions that the time Mr Kilaj has spent in custody is likely to exceed any sentence he would

⁷¹ See *supra* para. 37.

⁷² See Disclosure Package Nos 11, 17, 19 and 21; SPO Response, para. 8. See also KSC-BC-2023-12, F00100, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#), 20 December 2024, public, paras 45, 104(c), (e) (setting the deadline for the disclosure of such material to 17 March 2025); F00226, Specialist Prosecutor, *Prosecution Submissions Pursuant to F00100* (“SPO Update on Investigation”), 17 March 2025, confidential, para. 16 (seeking leave to disclose two (2) outstanding items under Rule 102(1)(b) of the Rules).

⁷³ See Disclosure Package Nos 10, 18 and 23.

⁷⁴ KSC-BC-2023-12, F00173, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information and Witness Contacts*, 11 February 2025, confidential. A public redacted version was issued on 11 March 2025, [F00173/RED](#).

⁷⁵ See KSC-BC-2023-12, F00185, Specialist Prosecutor, [Prosecution Rule 102\(3\) Notice](#), 17 February 2025, public, with Annex 1, confidential.

⁷⁶ See Disclosure Package Nos 13-16, 20, 22; SPO Response, para. 8.

⁷⁷ SPO Update on Investigation, paras 2-15.

⁷⁸ KSC-BC-2023-12, IA002/F00012, Court of Appeals Panel, *Decision on the Specialist Prosecutor’s Office’s Appeal Against the Decision on the Confirmation of the Indictment*, 3 April 2025, confidential. A public redacted version was issued the same day, [IA002/F00012/RED](#).

receive, if convicted.⁷⁹ In this regard, the Pre-Trial Judge finds that the parallel the Kilaj Defence attempts to draw with the sentences imposed on Messrs Sabit Januzi and Ismet Bahtijari as part of their plea agreements is inapposite. Additionally, the determination of a sentence depends on multiple factors, to be considered and balanced on a case-by-case basis.⁸⁰ Furthermore, any reliance on Mr Kilaj's future eligibility for commutation of an eventual sentence, if any, is highly speculative. As noted above, an assessment of proportionality 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.⁸¹

44. The Pre-Trial Judge has dully considered the additional time Mr Kilaj has spent in detention since the First Review Decision, but finds that – when weighed against the remaining factors set out above – his detention remains proportionate.

45. 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.

46. 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.

⁷⁹ See *supra* para. 7. See also Defence Submissions, paras 25-29.

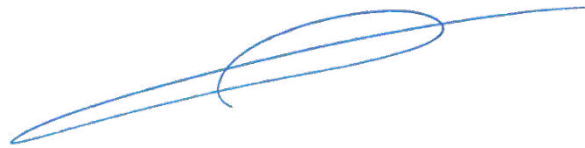
⁸⁰ See KSC-BC-2023-10, F00693/RED, Trial Panel I, [Public Redacted Version of Reasons for the Decision on the Plea Agreements](#), 27 February 2025, para. 69 *et seq.*

⁸¹ See *supra* para. 40.

V. DISPOSITION

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

- a. **ORDERS** Mr Kilaj's continued detention;
- b. **ORDERS** the SPO to file a public redacted version of F00234 (SPO Response), or to request its reclassification as public, by **Thursday, 10 April 2025**;
- c. **ORDERS** Mr Kilaj, if he so wishes, to file submissions on the next review of detention by **Monday, 5 May 2025**, with response and reply following the timeline set out in Rule 76 of the Rules; and
- d. **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 **Wednesday, 14 May 2025**, and Mr Kilaj, if he so wishes, to file his response by **Wednesday, 21 May 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Monday, 7 April 2025

At The Hague, the Netherlands.