

**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

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**Language:** English

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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 order of the Pre-Trial Judge ("PTJ") of 7 April 2025.<sup>1</sup>

2. Since the Second Review Decision there has been a material change of circumstance: the Specialist Prosecutor's Office ("SPO", "Prosecution") has now closed its case in Case 6.<sup>2</sup> The two offences with which Mr Kilaj is charged relate exclusively to alleged criminal acts concerning witnesses or evidence in Case 6. In the Second Review Decision, the PTJ recalled and adopted her previous findings of Mr Kilaj's "demonstrated willingness to violate court orders and to intervene in proceedings *to which he is not a Party*".<sup>3</sup> This was the primary factor justifying her finding of an unmanageable risk of Mr Kilaj obstructing the progress of the proceedings and committing (further) offences. That factor, however, is no longer present. There are no more witnesses for the SPO to call in Case 6. There are no more SPO witnesses or SPO evidence in Case 6 with which Mr Kilaj could interfere, even if he had such an intention (which is vehemently denied).

3. Further, regarding SPO witnesses in Case 12, the Prosecution has indicated that it will rely on at least three witnesses, one of whom is [REDACTED] ("Witness 7").

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<sup>1</sup> Second Decision on Review of Detention, KSC-BC-2023-12/F00248, 7 April 2025 ("Second Review Decision"), Disposition para. 41(c)

<sup>2</sup> *Specialist Prosecutor v. Hashim Thaçi et al.*, Prosecution notice pursuant to Rule 129, KSC-BC-2020-06/F03121, 15 April 2025

<sup>3</sup> Second Review Decision, para. 23; Decision on Request for Arrest Warrants and Related Matters, KSC-BC-2023-12/F00037, 29 November 2024, strictly confidential and *ex parte* (reclassified as confidential on 6 December 2024; public redacted version filed on 19 December 2024) ("Arrest Warrant Decision"), paras 61-62 (added emphasis)

The SPO has not disclosed the identities of its other witnesses, but for the reasons set out below, it would be unrealistic to believe any would be civilian witnesses called in support of the SPO's case against Mr Kilaj specifically.<sup>4</sup>

4. There are now no articulable grounds to believe that Mr Kilaj will – or indeed could – obstruct the progress of criminal proceedings, whether in Case 6 or Case 12, or commit (further) offences. Against this background of a material change of circumstances by which two out of the three statutory grounds for continued detention under Article 41(6)(b) of the Law have evaporated away, it is respectfully submitted that the Pre-Trial Judge should revisit the question of the reasonableness and proportionality of her findings about the risk of flight, and the availability of conditions that will adequately assuage any residual concerns she may have about that risk.

5. Moreover, by the time the PTJ delivers her next decision on review of detention, Mr Kilaj – a man entitled to the presumption of innocence – will have spent over a year in pre-trial detention, plus nearly seven months with his liberty seriously curtailed on conditional release in Kosovo. The more time Mr Kilaj spends in pre-trial detention, the greater the chance this time, plus the time spent subject to onerous conditions on provisional release, will exceed any sentence of imprisonment if convicted on Counts 14 and 15 of the Confirmed Indictment.

6. Continued detention is neither reasonable nor proportionate within the meaning of Rule 56(2) of the Rules.

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<sup>4</sup> By civilian witnesses, the Defence means non-Prosecution or KSC staff, and non-technical or expert witnesses.

## II. PROCEDURAL HISTORY

7. On 2 November 2023, Mr Kilaj was arrested pursuant to an order of the Prosecution.<sup>5</sup> The next day, he was transferred to the SC Detention Facilities in The Hague,<sup>6</sup> and the SPO submitted a request for Mr Kilaj's continued detention.<sup>7</sup>

8. On 4 November 2023, Mr Kilaj had his first appearance hearing.<sup>8</sup> On 6 November 2023, the former Single Judge ordered Mr Kilaj's continued detention,<sup>9</sup> and issued reasons thereto on 9 November 2023.<sup>10</sup>

9. 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>11</sup>

10. On 5 January 2024, and again on 5 March 2024, the PTJ ordered Mr Kilaj's continued detention.<sup>12</sup>

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<sup>5</sup> Urgent Rule 52(1) Notification of Arrest of Isni Kilaj, KSC-BC-2018-01/F00489, 2 November 2023, public

<sup>6</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>7</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)

<sup>8</sup> KSC-BC-2018-01, Transcript, First Appearance, 4 November 2023

<sup>9</sup> Decision on Continued Detention, KSC-BC-2018-01/F00499, 6 November 2023, public

<sup>10</sup> Reasons for Continued Detention, KSC-BC-2018-01/F00503, 9 November 2023, confidential (public redacted version issued on 13 November 2023)

<sup>11</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>12</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)

11. 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>13</sup>

12. 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>14</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>15</sup>

13. On 3 May 2024, after having considered the Parties' submissions<sup>16</sup> on his continued detention, the PTJ ordered Mr Kilaj's release in Kosovo ("Release Decision").<sup>17</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>18</sup>

14. On 27 June 2024, the SPO filed the third version of its proposed indictment against Mr Kilaj and his co-Accused for confirmation.<sup>19</sup>

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<sup>13</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>14</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>15</sup> Prosecution Submissions Pursuant to Order F00011, KSC-BC-2023-12/F00014, 2 May 2024, strictly confidential and *ex parte*

<sup>16</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>17</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>18</sup> Notification of Isni Kilaj's Transfer to Kosovo, KSC-BC-2018-01/F00670, 15 May 2024, public

<sup>19</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*

15. 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>20</sup>

16. 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>21</sup>

17. 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>22</sup> On the same day, the PTJ issued the Arrest Warrant Decision.

18. On 2 December 2024, the SPO filed the Confirmed Indictment as ordered.<sup>23</sup>

19. 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.

20. On 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>

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<sup>20</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>21</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>22</sup> Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036, 29 November 2024, strictly confidential and *ex parte* ("Confirmation Decision")

<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")

21. On 19 December 2024, Mr Kilaj appealed the First Detention Decision.<sup>28</sup>
22. On 28 January 2025, the Court of Appeals Panel rejected the appeal and upheld the First Detention Decision.<sup>29</sup>
23. On 7 February 2025, the PTJ delivered the First Review Decision.<sup>30</sup>
24. On 7 April 2025, the PTJ delivered the Second Review Decision.

### III. CLASSIFICATION

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

### IV. SUBMISSIONS

26. The Defence focusses its submissions on (a) the material change of circumstances arising from the close of the Prosecution's case in Case 6 which neutralises any articulable grounds to believe that Mr Kilaj presents a risk of obstructing the progress of proceedings, or of committing (further) offences; (b) the impact of the material change of circumstances on the risk of flight; and (c) 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.

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<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



*(a) The close of the Prosecution's case in Case 6 neutralises any articulable grounds to believe that Mr Kilaj presents a risk of obstructing the progress of proceedings, or of committing (further) offences*

27. The PTJ has previously found that Mr Kilaj's "demonstrated willingness to violate court orders and to intervene in proceedings *to which he is not a Party*" is a primary factor for concluding that he represents a risk of obstructing the progress of proceedings, or of committing (further) offences.<sup>32</sup>

28. Now that the Prosecution has closed its case, there are no further witnesses in Case 6 that could be interfered with, even if Mr Kilaj ever had any intention of doing so.

29. At the International Criminal Tribunal for the former Yugoslavia, for example, a Trial Chamber found that the close of the Prosecution's case could be an important factor to be taken into account when determining provisional release:

The Trial Chamber further notes that the Prosecution's case is closed with no Defence case, which further diminishes any risk that witnesses, victims or other persons are interfered with.<sup>33</sup>

30. Lest it be suggested that Mr Kilaj could interfere with witnesses that Victims' Counsel may want to call in Case 6, it should be noted that no list of such witnesses has been served on the *Thaçi et al.* Accused and that Victims' Counsel has provided notice of two expert witnesses only.<sup>34</sup> In any event, the qualitative nature of witnesses called as part of the victims' case is quite different to that of fact-based witnesses called by the SPO upon whose evidence the Trial Chamber in Case 6 will arrive at its judgment. There is simply no basis to believe that there is a sufficiently real possibility Mr Kilaj would interfere in any way in the victims' case now that the Prosecution's case is over.

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<sup>32</sup> Second Review Decision, para. 23; Arrest Warrant Decision, paras 61-62 (added emphasis)

<sup>33</sup> ICTY, *Prosecutor v. Ramush Haradinaj et al.*, IT-04-84-T, Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 14 December 2007, para. 19

<sup>34</sup> KSC-BC-2020-06, Transcript, Status Conference, 23 April 2025, Victims' Counsel submissions



31. There is no basis for suggesting he could “destroy, hide, change or forge” evidence, or witnesses he could influence<sup>35</sup> that would have any bearing on the corpus of Prosecution evidence in Case 6. Any suggestion he may involve himself in the forgery of defence evidence for the Accused in Case 6 would have to be substantiated so as to amount to a sufficiently real possibility. It cannot be substantiated.

32. Similarly, there is no rational basis for suggesting Mr Kilaj could repeat a criminal offence, complete an attempted crime or commit a crime he has threatened to commit,<sup>36</sup> given the Prosecution case in Case 6 has ended. Not only would there be no point in completing the alleged attempted offence of obstruction, it is doubtful it would even be possible as a matter of law since [REDACTED].

33. In sum, there is no longer any justifiable rationale to maintain Mr Kilaj in detention in order to protect Prosecution witnesses in Case 6.

34. Insofar as the purported need to protect Prosecution witnesses in Case 12 is concerned, the PTJ is respectfully reminded that the Prosecution has not filed a witness list. It has not disclosed the identities of the “at least three” witnesses it has indicated it will rely on,<sup>37</sup> other than that one witness is Witness 7, [REDACTED]. [REDACTED]. The Prosecution has never advanced argument that [REDACTED] could in any way be influenced by Mr Kilaj. This is unsurprising, perhaps, given the inherent absurdity of such a suggestion.

35. The only other two civilian witnesses that the Defence can conceive the Prosecution calling in support of its case against Mr Kilaj specifically are [REDACTED] (Witness 4), and [REDACTED] (Witness 3). However, there are two compelling reasons to believe that neither of these two men would be relied on by the Prosecution. Firstly, the SPO has stated in the clearest terms that the charges in the

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<sup>35</sup> Article 41(6)(b)(ii)

<sup>36</sup> Article 41(6)(b)(iii)

<sup>37</sup> Public redacted version of ‘Prosecution submissions for First Status Conference’, KSC-BC-2023-12/F00079/RED, 16 December 2024 (confidential original filed on 12 December 2024), para. 11

Confirmed Indictment “are not premised upon KILAJ having met with Witness 4.”<sup>38</sup> Logically, the same must hold true for Witness 3. This being the case, any evidence from Witnesses 3 and 4 would be irrelevant to the Prosecution’s case (and therefore, arguably, inadmissible).

36. Secondly, as underscored in the Defence’s most recent submissions on review of detention,<sup>39</sup> disclosure of an SPO Official Note of an interview with Witness 4 on [REDACTED] revealed that this witness had not been in contact with Mr Kilaj [REDACTED], and that nobody had contacted him to talk about his experiences [REDACTED], or to attempt to interfere with his testimony.<sup>40</sup> Given that evidence, and notwithstanding its *prima facie* lack of relevance, it would be unrealistic to imagine the Prosecution calling Witness 4 in order to establish evidence of contact or attempted contact.

37. The above begs the question: in respect of which witnesses in Case 12 is there a sufficiently real possibility of Mr Kilaj interfering? The Prosecution has never provided a clear explanation. The reason why no clear explanation has been forthcoming is because it could never survive scrutiny.

38. Moreover, there are no longer articulable grounds to believe Mr Kilaj would obstruct the proceedings against him in Case 12. There is no basis for suggesting he would or indeed could “destroy, hide, change or forge” evidence against him in Case 12 since the critical evidence relied upon by the Prosecution against him is already in its possession. The Prosecution has the audio recording and transcript of the visit to Mr Thaçi of 6 October 2023. The Prosecution has Mr Kilaj’s mobile phones and hard drives and laptop computer. The Prosecution has the documentary evidence seized

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<sup>38</sup> Prosecution response to ‘Kilaj submissions on review of detention’, KSC-BC-2023-12/F00234, 21 March 2025, para. 10, citing to Confirmation Decision, paras 205-206

<sup>39</sup> Kilaj submissions on review of detention, KSC-BC-2023-12/F00208, 10 March 2025, confidential (public redacted version filed on 11 March 2025), paras 34 and 35

<sup>40</sup> 119146-119147 (ENG)

from his home on the day of his arrest. The Defence asks rhetorically, “What else does the SPO believe exists but has not seized? What evidence does the SPO realistically fear Mr Kilaj would ‘destroy, hide, change or forge’ were he to be granted conditional release? Which witness or witnesses could Mr Kilaj realistically influence that would have any bearing on the corpus of Prosecution evidence in Case 12?”

39. The answer to each of these questions is “None.”

40. The PTJ made the following finding at paragraph 62 of the Arrest Warrant Decision:

In the Pre-Trial Judge’s view, there is a risk that Mr Kilaj may obstruct and interfere with the proceedings by, for example, (i) approaching potential witnesses in his case, [REDACTED], who were the subjects of the obstructive plans plotted with Mr Thaçi during his visit in the SC Detention Facilities on 6 October 2023 in relation to the proceedings in Case 06, and/or (ii) tampering with and/or hiding evidence which the SPO may rely on during this trial.

41. This finding was at the heart of the PTJ’s decision to issue an arrest warrant against Mr Kilaj and to maintain him in detention ever since. It is respectfully submitted that this finding must now be revisited. A proper re-evaluation, in light of the material change of circumstances, can only reveal that it is no longer tenable and that, consequently, there are no longer any articulable grounds to believe Mr Kilaj would engage in the obstruction of proceedings or the commission of (further) offences.

*(b) The risk of flight basis for Mr Kilaj continued detention should now also be re-evaluated*

42. Since there are no longer articulable grounds to believe Mr Kilaj would engage in the obstruction of proceedings or the commission of (further) offences, the only remaining ground for ordering Mr Kilaj’s continued detention is the risk of flight. The basis for continued detention has holistically and materially changed, necessitating a re-evaluation of the risk of flight.

43. The PTJ has found that the risk of flight is founded on his “concrete incentives to abscond” given “(i) the gravity of the specific offences with which he is charged, which go beyond what he initially foresaw; (ii) the evidence presented by the SPO in support; and (iii) the fact that the prospect of a potential sentence of a long imprisonment is now concrete.”<sup>41</sup> It is noteworthy that there is no evidence of Mr Kilaj considering or making preparations to evade arrest, either prior to November 2023<sup>42</sup> or – far more importantly – prior to December 2024. He was cooperative with the Prosecution and Kosovan authorities in November 2023 and in December 2024 during his periods of detention and transfers. The PTJ has made no finding of a risk of flight other than a risk based on the gravity of the alleged offences and the length of any sentence of imprisonment.

44. This finding, however, is wholly at odds with the approach of Trial Panel II in Case 6. In respect of every one of the four Accused in Case 6 – all of whom face multiple charges of substantive crimes against humanity and war crimes, and all whom face the prospect of sentences of life imprisonment – Trial Panel II disagreed with the Prosecution’s submissions that they represent a risk of absconding.<sup>43</sup> Most notably, the Trial Panel rejected the SPO’s arguments that the Case 6 Accused represented a flight risk based on the gravity of their alleged offences (against which Mr Kilaj’s alleged offences pale into insignificance) and the prospect of extremely

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<sup>41</sup> Arrest Warrant Decision, para. 57

<sup>42</sup> It is recognised, of course, that Mr Kilaj was not on notice that he was risk of being arrested prior to November 2023

<sup>43</sup> Case 6, Public Redacted Version of Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01170/RED, 19 December 2022, paras 28-29; Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F03106, 11 April 2025, paras 14-15; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01171, 19 December 2022, paras 24-25; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F03107, 11 April 2025, paras 16-17; Public Redacted Version of Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01213/RED, 17 January 2023, paras 19-20; Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F03008, 13 March 2025, paras 13-14; Public Redacted Version of Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01212/RED, 17 January 2023, paras 18-19; Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F03005, 13 March 2025, paras 13-14

heavy sentences. Further, the Trial Panel considered it a relevant factor that there were no indications that any of the Case 6 Accused considered or made preparations to evade arrest. The parallel with Mr Kilaj's behaviour and cooperation with the conditions of his release prior to his re-arrest in December 2024 speaks for itself.

45. In addition, it must be recalled that Trial Panel II specifically found as carrying "limited weight" the SPO's argument that an Accused's (increased) knowledge of the charges against him may create an incentive to abscond.

46. Even if the PTJ is not bound by decisions of Trial Panel II, it would be a striking and incomprehensible departure from the flight risk findings in Case 6 were the PTJ to continue to conclude that the gravity of Mr Kilaj's alleged offending and the prospect of a long – but, compared to the Case 6 Accused, far shorter – sentence of imprisonment if convicted, without more, represented a sufficiently real possibility of flight. It is respectfully submitted that such a strikingly inconsistent finding would be wrong in law.

47. Mr Kilaj has no intention of absconding. The PTJ need not simply take that assertion at face value: during his nearly seven months enjoying conditional release, Mr Kilaj remained in Kosovo, in contact with the police as ordered, and in contact with the KSC when required, most notably when he properly sought a variation of his release conditions to travel to Albania. He could have absconded had that been his intention. But he did not.

*(c) 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*

48. The Defence recognises that the PTJ considered and rejected this argument in the Second Review Decision. However, we are now two months further on since that decision. It is submitted that every month that passes increases the strength of the argument.

49. 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 June 2025, Mr Kilaj will have spent another six months in pre-trial detention. This period of 12½ 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.

50. 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, 12½ months represents two-thirds of a sentence of nearly 18¾ 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.

51. 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 witness with a view to interfere with their cooperation with the Prosecution.

52. 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>44</sup> Messrs Januzi and Bahtijari were each sentenced, for this more serious package of offences, to a single sentence of two years' imprisonment.<sup>45</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.

53. The PTJ found in the Second Review Decision that the parallel drawn between Mr Kilaj's situation and the sentences passed in the case of Messrs Januzi and Bahtijari was inapposite.<sup>46</sup> That finding, however, amounted to a bald conclusion, based on no clear reasoning. It is, of course, acknowledged that Messrs Januzi and Bahtijari pleaded guilty, and that their sentences accordingly reflected a degree of credit. However, weighed against that factor is the fact that they both fell to be sentenced for offences that were significantly more serious than those that Mr Kilaj faces. Intimidation under Article 387 of the KCC carries a sentence range – two to ten years' imprisonment – that is double the range of obstruction. The Defence respectfully maintains its submission that there is a very real chance 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 sentence of imprisonment if convicted on Counts 14 and 15. This is so, even if he ultimately benefits from no commutation of sentence at the two-thirds mark.

54. This militates in favour of a finding by the PTJ that continued detention is no longer reasonable or proportionate within the meaning of Rule 56(2) of the Rules,

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<sup>44</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>45</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)

<sup>46</sup> Second Review Decision, para. 43



notwithstanding any finding that may be made that proceedings in this case are moving forward expeditiously.

55. The risks enumerated in Article 41(6)(b) have reduced significantly. It is submitted that any residual risks 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.

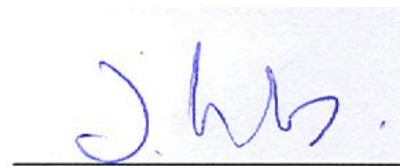
## V. CONCLUSION

56. 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.



**Iain Edwards**

**Counsel for Isni Kilaj**



**Joe Holmes**

**Co-Counsel for Isni Kilaj**

5 May 2025

Abidjan, Côte d'Ivoire

**Word count: 4,815**