



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

**Date:** 5 June 2025

**Language:** English

**Classification:** Public

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**Third Decision on Review of Detention of Isni Kilaj**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> 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,<sup>2</sup> pursuant to a decision and arrest warrant issued *proprio motu* by the Pre-Trial Judge,<sup>3</sup> and further to the confirmation of an indictment against him, Hashim Thaçi, Fadil Fazliu, Bashkim Smakaj and Hajredin Kuçi ("Confirmation Decision").<sup>4</sup>
2. On 9 December 2024, at the initial appearance of Mr Kilaj,<sup>5</sup> the Pre-Trial Judge ordered his continued detention ("Decision on Detention").<sup>6</sup>

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

<sup>2</sup> KSC-BC-2023-12, F00043, Registrar, [Notification of Arrest of Isni Kilaj Pursuant to Rule 55\(4\)](#), 5 December 2024, public.

<sup>3</sup> 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](#).

<sup>4</sup> 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](#). See also KSC-BC-2023-12, F00260, Pre-Trial Judge, [Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions](#), 14 April 2025, public.

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup>
4. On 7 February 2025, the Pre-Trial Judge ordered Mr Kilaj's continued detention.<sup>8</sup>
5. On 7 April 2025, the Pre-Trial Judge ordered Mr Kilaj's continued detention ("Second Review Decision").<sup>9</sup>
6. On 5 May 2025, the Defence for Mr Kilaj ("Kilaj Defence") filed its submissions on the periodic review of Mr Kilaj's detention ("Defence Submissions").<sup>10</sup>
7. On 14 May 2025, the Specialist Prosecutor's Office ("SPO") responded to the Defence Submissions.<sup>11</sup> The Kilaj Defence replied on 19 May 2025.<sup>12</sup>

## II. SUBMISSIONS

### A. DEFENCE SUBMISSIONS

8. The Kilaj Defence requests that Mr Kilaj be released subject to conditions.<sup>13</sup> In support, the Kilaj Defence submits that the close of the SPO's case in the case of *The Specialist Prosecutor v. Thaçi et al.* (KSC-BC-2020-06) ("Case 06") is a material change in circumstances, which neutralises any risk that Mr Kilaj may obstruct the progress

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<sup>7</sup> 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.

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

<sup>9</sup> KSC-BC-2023-12, F00248, Pre-Trial Judge, [Second Decision on Review of Detention of Isni Kilaj](#), 7 April 2025, public.

<sup>10</sup> KSC-BC-2023-12, F00280, Kilaj Defence, *Kilaj Submissions on Review of Detention*, 5 May 2025, confidential. A public redacted version was filed on 7 May 2025, F00280/RED.

<sup>11</sup> KSC-BC-2023-12, F00302, Specialist Prosecutor, *Prosecution Response to "Kilaj Submissions on Review of Detention"* ("SPO Response"), 14 May 2025, confidential.

<sup>12</sup> KSC-BC-2023-12, F00307, Kilaj Defence, *Reply to Prosecution Response to "Kilaj Submissions on Review of Detention"* ("Defence Reply"), 19 May 2025, public.

<sup>13</sup> Defence Submissions, para. 56. *See also* Defence Reply, para. 11.

of criminal proceedings or commit (further) offences.<sup>14</sup> In light of this material change in circumstances, the Kilaj Defence argues that: (i) any residual risk of flight can be managed through the imposition of strict conditions for his release;<sup>15</sup> and (ii) Mr Kilaj's continued detention is no longer reasonable or proportionate within the meaning of Rule 56(2) of the Rules, irrespective of the progress of the proceedings.<sup>16</sup>

9. As regards the risks of obstructing the progress of proceedings or committing (further) offences, the Kilaj Defence asserts that: (i) with the close of the SPO's case, there is no longer any justifiable rationale to maintain Mr Kilaj in detention in order to protect Case 06 witnesses, considering that there are no further witnesses to be called by the SPO, and thus no witnesses or evidence with which Mr Kilaj could interfere;<sup>17</sup> and (ii) there is no sufficiently real possibility of Mr Kilaj interfering with witnesses in the present case, as the SPO has not disclosed the identities of witnesses and the critical evidence relied upon by the SPO is already in its possession.<sup>18</sup>

10. As regards conditional release, the Kilaj Defence asserts that Mr Kilaj has no intention of absconding and that he has already demonstrated his ability and willingness to abide by the letter to any imposed conditions.<sup>19</sup>

11. As regards the proportionality of Mr Kilaj's continued detention, the Kilaj Defence submits that the total time Mr Kilaj has spent in pre-trial detention (a period of 12.5 months by the time of the present review) likely exceeds any sentence that may be imposed, should he be convicted at trial.<sup>20</sup> While acknowledging that the Pre-Trial Judge considered and dismissed these same arguments in the Second

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<sup>14</sup> Defence Submissions, paras 2, 26-41.

<sup>15</sup> Defence Submissions, paras 4, 26, 42-47, 55. *See also* Defence Reply, para. 2.

<sup>16</sup> Defence Submissions, paras 6, 54.

<sup>17</sup> Defence Submissions, paras 26-33. *See also* Defence Reply, para. 7.

<sup>18</sup> Defence Submissions, paras 34-38. *See also* Defence Reply, paras 9-10.

<sup>19</sup> Defence Submissions, paras 43-44, 47, 55.

<sup>20</sup> Defence Submissions, paras 5, 48-53.

Review Decision, the Kilaj Defence asserts that every passing month strengthens the argument.<sup>21</sup>

B. SPO RESPONSE

12. The SPO responds that Mr Kilaj's continued detention remains necessary and proportionate.<sup>22</sup> In particular, the SPO asserts that none of the issues raised by the Kilaj Defence constitute a meaningful change in circumstances detracting from the necessity of his continued detention, and there has been no contrary intervening information or development since the Second Review Decision impacting the Pre-Trial Judge's previous findings.<sup>23</sup> To the contrary, the SPO avers that the risks under Article 41(6)(b) of the Law remain clear and present with the advancement of the pre-trial stage of the proceedings, which continues to move forward expeditiously.<sup>24</sup> In particular, the SPO submits that, since the Second Review Decision: (i) the SPO has filed its second notice pursuant to Rule 102(3) of the Rules, and has continued to disclose material; (ii) remaining investigative steps are progressing efficiently; and (iii) preliminary motions have been filed by Specialist Counsel.<sup>25</sup> In this regard, the SPO adds that Mr Kilaj continues to gain increased insight into the evidence against him through the ongoing disclosure process.<sup>26</sup>

13. In response to the Kilaj Defence's argument that the closure of the SPO's case in Case 06 is a material change in circumstances which neutralises the risks that Mr Kilaj may obstruct the progress of criminal proceedings or commit (further) offences, the SPO submits that such argument ignores: (i) the multitude of factors assessed by the Pre-Trial Judge that are still relevant to a finding that Mr Kilaj may obstruct the proceedings; (ii) that the proceedings in Case 06 remain ongoing until

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<sup>21</sup> Defence Submissions, para. 48.

<sup>22</sup> SPO Response, paras 1, 9.

<sup>23</sup> SPO Response, paras 1, 3.

<sup>24</sup> SPO Response, paras 3, 7-8.

<sup>25</sup> SPO Response, para. 8.

<sup>26</sup> SPO Response, para. 8.

the closing of the case under Rule 136 of the Rules; and (iii) the risk of obstruction is assessed not only in relation to Case 06, but also the present case.<sup>27</sup> Moreover, the SPO asserts that the Kilaj Defence's submissions have no impact on previous findings regarding the risk of committing further crimes.<sup>28</sup>

14. As regards the risk of flight, the SPO responds that the previously identified incentives to abscond remain relevant and have not been rebutted, namely the gravity of the charged offences, the supporting evidence presented by the SPO, and the prospect of a potentially long sentence of imprisonment.<sup>29</sup>

15. As regards proportionality, the SPO submits that the Kilaj Defence again distorts the legal test by forecasting what a potential sentence could be, based on inapposite cases.<sup>30</sup> In this regard, the SPO further asserts that the fact Mr Kilaj has been detained for approximately twelve and a half months does not, in and of itself, mitigate in favour of his immediate conditional release.<sup>31</sup>

16. Lastly, as regards conditions of release, the SPO submits that the assurances provided by the Kilaj Defence are insufficient to overcome the existing risks, which can only be effectively managed at the SC Detention Facilities.<sup>32</sup>

### III. APPLICABLE LAW

17. 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

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<sup>27</sup> SPO Response, para. 4.

<sup>28</sup> SPO Response, para. 4.

<sup>29</sup> SPO Response, para. 5.

<sup>30</sup> SPO Response, para. 6.

<sup>31</sup> SPO Response, para. 6.

<sup>32</sup> SPO Response, para. 7.

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.

18. 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.

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

20. 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

21. The standard governing the review of detention on remand has been laid out extensively in earlier decisions and is hereby incorporated by reference.<sup>33</sup> The Pre-Trial Judge will apply this standard to the present decision.

##### B. GROUNDED SUSPICION

22. 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.<sup>34</sup> 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.<sup>35</sup> The Pre-Trial Judge notes that there have been no developments in the case negating these findings.

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

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<sup>33</sup> See [Second Review Decision](#), paras 14-15 (general requirements), 16 (grounded suspicion), 21-24 (necessity of detention), 35 (conditional release), 40 (proportionality), and references cited therein; [First Review Decision](#), paras 11-12 (general requirements), 13 (grounded suspicion), 16-19 (necessity of detention), 31 (conditional release), 37 (proportionality), and references cited therein.

<sup>34</sup> Confirmation Decision, para. 313(d).

<sup>35</sup> See Confirmation Decision, para. 43. See also [Decision on Arrest](#), para. 43; [Second Review Decision](#), para. 17; [First Review Decision](#), para. 14. See similarly, KSC-2020-04, F00075/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#), 10 September 2021, public, para. 22; F00224/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Review of Detention of Pjetër Shala](#), 22 June 2022, public, para. 24.



suspicion that Mr Kilaj has committed offences within the jurisdiction of the SC, as set forth under Article 41(6)(a) of the Law.<sup>36</sup>

### C. NECESSITY OF DETENTION

#### 1. Risk of Flight

24. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge takes note of the considerations favourable to Mr Kilaj, including his age, good character,<sup>37</sup> 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.<sup>38</sup>

25. However, while noting that the Kilaj Defence fails to articulate how the closure of the SPO's presentation of evidence in Case 06 impacts the assessment of the risk of flight with regard to Mr Kilaj, the Pre-Trial Judge finds that, in any case, all considerations set out in the Second 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;<sup>39</sup> and (b) he has the means to flee and opportunity to evade justice.<sup>40</sup> The Pre-Trial Judge is also attentive to the fact that Mr Kilaj continues to gain increased

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<sup>36</sup> See similarly, [Second Review Decision](#), para. 20; [First Review Decision](#), para. 15; Decision on Detention in the Initial Appearance Transcript, p. 123, lines 14-18.

<sup>37</sup> See Defence Reply, para. 4.

<sup>38</sup> See [Second Review Decision](#), para. 26. See also [First Review Decision](#), para. 21; KSC-BC-2018-01, F00658/COR/RED, Single Judge, [Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj](#) ("Kilaj Conditional Release Decision"), 3 May 2024 (date of public redacted corrected version 15 May 2024), public.

<sup>39</sup> [Second Review Decision](#), para. 25. See also [First Review Decision](#), para. 20; [Decision on Arrest](#), paras 56-57.

<sup>40</sup> [Second Review Decision](#), para. 25. For example, the Pre-Trial Judge notes that Mr Kilaj proposes a bail in the amount of €40.000, without any information allowing to assess his financial situation. See *infra* para. 37.

insight into the evidence underpinning the charges through the ongoing disclosure process.<sup>41</sup>

26. The Pre-Trial Judge further pays heed to the fact that, as acknowledged by the Defence, Mr Kilaj has a national profile in Kosovo,<sup>42</sup> suggesting that he may have the ability to mobilise support for the purpose of fleeing.

27. Having weighed all of the above considerations as a whole, the Pre-Trial Judge remains of the view that the factors favourable to Mr Kilaj insufficiently mitigate the risk of flight, particularly now that concrete charges have been confirmed against him.<sup>43</sup>

28. Lastly, as regards the Kilaj Defence's argument that a finding that Mr Kilaj presents a flight risk is at odds with judicial decisions by Trial Panel II in Case 06,<sup>44</sup> the Pre-Trial Judge reiterates that her assessment of Mr Kilaj's flight risk (and other risks) is made independently from the assessment undertaken by the competent Panel in Case 06, informed by the specific circumstances of the present case.<sup>45</sup>

29. 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**

30. As regards the risk of obstructing the progress of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge finds that all considerations set

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<sup>41</sup> The Pre-Trial Judge notes that, since the Second Review Decision, the SPO has made additional disclosures pursuant to Rule 102(1)(b) of the Rules. *See, for example*, Disclosure Package Nos 24, 27, 28, 30, 34, 37-38 and 43.

<sup>42</sup> Defence Reply, para. 4.

<sup>43</sup> [Second Review Decision](#), para. 26. *See also* [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.

<sup>44</sup> *See* Defence Submissions, paras 43-46.

<sup>45</sup> *See also* KSC-BC-2023-12, F00165, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi*, 7 February 2025, public, para. 21.

out in the Second 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;<sup>46</sup> (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.<sup>47</sup> The Pre-Trial Judge considers that the ongoing disclosure process<sup>48</sup> further elevates the risk that he may obstruct the proceedings.

31. The Pre-Trial Judge is not persuaded by the Kilaj Defence's argument that the close of the SPO's case in Case 06 "neutralises" or otherwise extinguishes the risks of obstruction or committing (further) offences.<sup>49</sup> In this respect, the Pre-Trial Judge considers that the risk of obstruction does not cease to exist with the closing of the SPO's case in chief in Case 06,<sup>50</sup> as: (i) proceedings in Case 06 remain ongoing and the Trial Panel may hear further evidence from the participating victims, defence witnesses and rebuttal witnesses, including by witnesses who may have already testified;<sup>51</sup> (ii) a Trial Panel may, under exceptional circumstances, hear additional evidence after the closing of the case under Rule 136 of the Rules;<sup>52</sup> (iii) the risk of

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<sup>46</sup> [Second Review Decision](#), para. 28. See also [First Review Decision](#), para. 23; Decision on Detention in the Initial Appearance Transcript, p. 123, lines 3-7; [Decision on Arrest](#), paras 61-62.

<sup>47</sup> [Second Review Decision](#), para. 28; [First Review Decision](#), para. 23; Decision on Detention in the Initial Appearance Transcript, p. 123, lines 3-7; [Decision on Arrest](#), paras 61-62.

<sup>48</sup> See *supra* para. 25.

<sup>49</sup> See *supra* paras 8-9.

<sup>50</sup> See KSC-BC-2020-06, F03121, Specialist Prosecutor, [Prosecution Notice Pursuant to Rule 129](#), 15 April 2025, public.

<sup>51</sup> See similarly the approach taken in KSC-BC-2020-04, F00663/RED, Trial Panel I, *Public Redacted Version of Decision on the Thirteenth Review of Detention of Pjetër Shala*, 20 September 2023, public, para. 18; KSC-BC-2020-05, F00355/RED, Trial Panel I, *Public Redacted Version of Ninth Decision on Review of Detention*, 21 March 2022, public, para. 19.

<sup>52</sup> See, for example, KSC-BC-2020-04, F00838/RED, Trial Panel I, *Public Redacted Version of Decision on the Seventeenth Review of Detention of Pjetër Shala*, 17 May 2024, public, para. 24; F00812/RED, Trial Panel I, *Public Redacted Version of Decision on the Sixteenth Review of Detention of Pjetër Shala*, 18 March 2024, public, para. 26. See also similarly, ICC, *The Prosecutor v. Bemba et al.*, ICC-01/05-01/13-612, Pre-Trial Chamber II, [Decision on the First Review of Jean-Jacques Mangenda Kabongo's Detention Pursuant to Article 60\(3\) of the Statute](#), 5 August 2014, public, paras 17-18; ICC-01/05-01/13-538, Pre-

obstruction is assessed not only in relation to the proceedings in Case 06, but also the present case, with respect to which (while noting that some evidence has been seized and is in the possession of the SPO)<sup>53</sup> Mr Kilaj has sufficient knowledge of the identity of potential witnesses, as discussed in the Confirmation Decision;<sup>54</sup> and, importantly, (iv) the risk of interference is not limited to witnesses who are yet to testify, but also concerns witnesses who have already testified and may be retaliated against or incentivised to recant, thereby threatening the integrity of the ongoing trial in Case 06 and future trial proceedings in the present case.

32. Lastly, the Pre-Trial Judge still 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.<sup>55</sup> In this context, the Pre-Trial Judge considers that the risk of collusion for the purpose of obstructing the proceedings remains particularly high,<sup>56</sup> especially in light of Mr Kilaj's national profile in Kosovo, as referenced above.<sup>57</sup>

33. 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**

34. 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

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Trial Chamber II, [Decision on the First Review of Fidèle Babala Wandu's Detention Pursuant to Article 60\(3\) of the Statute](#), 4 July 2014, public, paras 12-13.

<sup>53</sup> See *supra* para. 9.

<sup>54</sup> The Pre-Trial Judge recalls that the assessment involves acceptance of the possibility, not the inevitability of a future occurrence. See [Second Review Decision](#), para. 22.

<sup>55</sup> [Second Review Decision](#), para. 30; [First Review Decision](#), para. 25; [Decision on Arrest](#), para. 63.

<sup>56</sup> See [Second Review Decision](#), para. 29.

<sup>57</sup> See *supra* para. 26.

offences, the factors underpinning the former are of relevance to the assessment of the latter in the present circumstances.<sup>58</sup> In this regard, the Pre-Trial Judge notes that the relevant factors to be considered are the same as those outlined in paragraphs 30-32 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,<sup>59</sup> including in relation to witnesses who have provided or may provide evidence in Case 06 and/or the present case.<sup>60</sup>

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

#### 4. Conclusion

36. 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

37. 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,<sup>61</sup> frequent reporting to the Kosovo police,

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<sup>58</sup> [Second Review Decision](#), para. 32; [First Review Decision](#), para. 27; [Decision on Arrest](#), para. 22.

<sup>59</sup> See similarly [Second Review Decision](#), para. 32; [First Review Decision](#), para. 27; Decision on Detention in Initial Appearance Transcript, p. 123, lines 3-7; [Decision on Arrest](#), para. 65.

<sup>60</sup> See *supra* para. 31.

<sup>61</sup> The Pre-Trial Judge notes that Mr Kilaj proposes a payment of security in the amount of €40.000, without providing any information that would enable her to assess his financial situation and, consequently, the appropriate amount of any bail. See Defence Submissions, para. 55.

and restrictions on communications and movement, could sufficiently mitigate the existing risks.<sup>62</sup>

38. Contrary to the Kilaj Defence's submissions,<sup>63</sup> 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,<sup>64</sup> could mitigate, at this stage, the existing risks, in particular that the Accused will obstruct the progress of SC proceedings or commit further offences.<sup>65</sup> 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.

39. 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.<sup>66</sup> In this regard, the Pre-Trial Judge recalls that the Registrar and the Panel, who have unrestricted access to confidential information concerning

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<sup>62</sup> See [Second Review Decision](#), paras 36-39; [First Review Decision](#), paras 32-36; Decision on Detention in the Initial Appearance Transcript, p. 123, line 22 to p. 124, line 1.

<sup>63</sup> Defence Submissions, paras 4, 55.

<sup>64</sup> 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.

<sup>65</sup> In this regard, it is recalled that, while having found the continued existence of risks, the Single Judge granted Mr Kilaj conditional release 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.

<sup>66</sup> [Second Review Decision](#), para. 38; [First Review Decision](#), para. 35. 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](#), 27 October 2021, public, para. 68.

witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.<sup>67</sup>

40. Therefore, in light of the above, the Pre-Trial Judge concludes that the conditions for Mr Kilaj's release previously proposed by the Kilaj Defence, 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.

#### E. PROPORTIONALITY OF DETENTION

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,<sup>68</sup> which carry a possible sentence of up to five (5) years and six (6) months, respectively; and (iii) the risks under Article 41(6)(b) of the Law (in particular, the risk of obstruction and commission of further offences) cannot be mitigated by any proposed or additional conditions for release.<sup>69</sup>

42. The Pre-Trial Judge also takes into consideration that, since the Second Review Decision: (i) the SPO has (largely) completed the disclosure of evidence in its possession pursuant to Rule 102(1)(b) of the Rules<sup>70</sup> and made further disclosures pursuant to Rule 103 of the Rules;<sup>71</sup> (ii) the SPO has filed its second notice pursuant

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<sup>67</sup> [Second Review Decision](#), para. 38; [First Review Decision](#), para. 34. Similarly, 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.

<sup>68</sup> KSC-BC-2023-12, F00264/A02, Specialist Prosecutor, [Public Redacted Amended Confirmed Indictment](#), 16 April 2025, public, para. 48.

<sup>69</sup> See *supra* para. 40.

<sup>70</sup> See Disclosure Package Nos 24, 27-28, 30, 34, 37-38 and 43. 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*, 17 March 2025, confidential, para. 16; F00256, Pre-Trial Judge, *Decision Authorizing Additional Disclosure under Rule 102(1)(b) of the Rules*, 11 April 2025, public.

<sup>71</sup> See Disclosure Package Nos 26, 29, 33, 41 and 45.



to Rule 102(3) of the Rules<sup>72</sup> and disclosed a number of items, as requested by the Defence;<sup>73</sup> (iii) remaining investigative steps are progressing steadily;<sup>74</sup> (iv) the SPO has submitted the amended Indictment<sup>75</sup> following confirmation of the amended charges against Mr Thaçi;<sup>76</sup> and (v) the Defence teams have submitted preliminary motions.<sup>77</sup> Thus, the Pre-Trial Judge finds that the proceedings continue to move forward expeditiously, bringing the case one step closer to its transmission to the Trial Panel.

43. The Pre-Trial Judge also takes note of the Kilaj Defence's submissions that the time Mr Kilaj has spent in pre-trial detention is likely to exceed any sentence he would receive, if convicted.<sup>78</sup> In this regard, the Pre-Trial Judge observes that the

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<sup>72</sup> See KSC-BC-2023-12, F00265, Specialist Prosecutor, *Prosecution's Second Rule 102(3) Notice*, 17 April 2025, public, with Annex 1, confidential.

<sup>73</sup> See Disclosure Package Nos 25, 31-32, 35-36, 39-40 and 44.

<sup>74</sup> See KSC-BC-2023-12, F00254, Pre-Trial Judge, *Decision on Prosecution Request for Production of Material*, 10 April 2025, confidential; F00266, Pre-Trial Judge, *Decision on Prosecution Request for Production and Related Request*, 22 April 2025, confidential, with Annex 1, strictly confidential and *ex parte*; F00284, Pre-Trial Judge, *Decision Appointing Independent Counsel*, 7 May 2025, confidential; F00291, Registrar, *Fifth Registry Submissions Related to the Execution of Request for Assistance F00039*, 8 May 2025, confidential; F00296, Registrar, *Sixth Registry Submissions Related to the Execution of Request for Assistance F00039*, confidential, with Annex 1, confidential; F00299, Registrar, *Notification of Assignment of Independent Counsel*, 13 May 2025, confidential, with Annex 1, confidential; F00304, Registrar, *Registry Notification of Start of Stage 1 Execution Pursuant to Order F00221*, 14 May 2025, confidential.

<sup>75</sup> See KSC-BC-2023-12, F00264, Specialist Prosecutor, [Submission of Amended Confirmed Indictment](#), 16 April 2025, public, with Annex 1, confidential, and Annex 2, public.

<sup>76</sup> See KSC-BC-2023-12, F00260, Pre-Trial Judge, [Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions](#), 14 April 2025, public.

<sup>77</sup> See KSC-BC-2023-12, F00285, Specialist Counsel for Hashim Thaçi ("Thaçi Defence"), *Thaçi Defence Preliminary Motion Requesting Severance of the Indictment and Adjournment of Proceedings Concerning Mr Thaçi*, 7 May 2025, public, with Annex 1, public; F00286, Specialist Counsel for Bashkim Smakaj, Mr Kilaj, Fadil Fazliu ("Fazliu Defence") and Hajredin Kuçi, *Joint Defence Preliminary Motion Pursuant to Rule 97 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers*, 7 May 2025, public; F00288, Thaçi Defence, *Thaçi Defence Motion on Defects in the Indictment*, 8 May 2025, public; F00289, Fazliu Defence, *Fazliu Defence Challenge to the Form of the Indictment*, 8 May 2025, public; F00290, Thaçi Defence, *Thaçi Defence Preliminary Motion on Jurisdiction*, confidential and *ex parte*, with Annex 1, confidential and *ex parte* (a public redacted version of the main filing and the Annex were filed on 12 May 2025, F00290/RED and F00290/A01/RED, respectively). See also KSC-BC-2023-12, F00306, Pre-Trial Judge, *Decision on "Prosecution Request for Extension of Time on Preliminary Motions Responses"*, 15 May 2025, public.

<sup>78</sup> See *supra* para. 11. See also Defence Submissions, paras 5, 48-54.

Kilaj Defence repeats arguments dismissed as speculative and inapposite in the Second Review Decision.<sup>79</sup> The Pre-Trial Judge reiterates that 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.<sup>80</sup>

44. The Pre-Trial Judge has duly considered the additional time Mr Kilaj has spent in detention since the Second Review Decision, but finds that – when weighed against the remaining factors set out in paragraphs 41 and 42 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.

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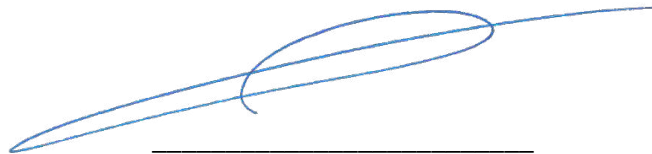
<sup>79</sup> See [Second Review Decision](#), para. 43.

<sup>80</sup> See [Second Review Decision](#), para. 40. See also KSC-BC-2023-10, F00325, Pre-Trial Judge, *Third Decision on Review of Detention of Haxhi Shala*, 5 June 2024, public, para. 47.

## V. DISPOSITION

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

- a. **ORDERS** Mr Kilaj's continued detention;
- b. **ORDERS** Mr Kilaj, if he so wishes, to file submissions on the next review of detention by **Friday, 27 June 2025**, with response and reply following the timeline set out in Rule 76 of the Rules;
- c. **ORDERS** the SPO, should Mr Kilaj decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Kilaj's detention by **Monday, 7 July 2025**, and Mr Kilaj, if he so wishes, to file his response by **Monday, 14 July 2025**; and
- d. **INSTRUCTS** the Registrar to reclassify F00302 (SPO Response) as public, by **Tuesday, 10 June 2025**.



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**Judge Marjorie Masselot**  
**Pre-Trial Judge**

Dated this Thursday, 5 June 2025  
At The Hague, the Netherlands.