



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2023-12/IA004

Before: A Panel of the Court of Appeals Chamber
Judge Michèle Picard
Judge Emilio Gatti
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 1 September 2025

Original language: English

Classification: Public

Decision on Isni Kilaj's Appeal Against Third Decision on Review of Detention

Specialist Prosecutor's Office:

Kimberly P. West

Counsel for Hashim Thaçi:

Sophie Menegon

Counsel for Bashkim Smakaj:

Jonathan Elystan Rees

Counsel for Isni Kilaj:

Iain Edwards

Counsel for Fadil Fazliu:

David Young

Counsel for Hajredin Kuçi:

Alexander Admiraal

THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 19 June 2025 by Mr Isni Kilaj (“Appeal” and “Kilaj” or “Accused”, respectively),² against the “Third Decision on Review of Detention of Isni Kilaj” (“Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 30 June 2025 that the Appeal should be rejected (“Response”).⁴ Kilaj replied on 7 July 2025 (“Reply”).⁵

I. BACKGROUND

1. On 2 November 2023, Kilaj was arrested in Kosovo pursuant to an order issued by the SPO⁶ and transferred to the Detention Facilities of the Specialist Chambers (“Detention Facilities”) in The Hague, the Netherlands, on 3 November 2023.⁷

¹ IA004/F00002, Decision Assigning a Court of Appeals Panel, 23 June 2025 (confidential, reclassified as public on 22 July 2025).

² IA004/F00001/RED, Public Redacted Version of “Kilaj Appeal Against Third Decision on Review of Detention of Isni Kilaj (F00324)”, 1 July 2025 (confidential version filed on 19 June 2025) (“Appeal”).

³ F00324, Third Decision on Review of Detention of Isni Kilaj, 5 June 2025 (“Impugned Decision”).

⁴ IA004/F00003, Prosecution response to ‘Kilaj Appeal Against Third Decision on Review of Detention of Isni Kilaj (F00324)’, 30 June 2025 (confidential) (“Response”).

⁵ IA004/F00004, Kilaj Reply to Prosecution Response to “Appeal Against Third Decision on Review of Detention of Isni Kilaj (F00324)”, 7 July 2025 (confidential) (“Reply”).

⁶ INV/F00039, URGENT Rule 52(1) notification of arrest of Isni KILAJ, 2 November 2023 (strictly confidential and *ex parte*, reclassified as public on 9 November 2023; INV/F00042/RED/A01/RED, Public Redacted Version of ANNEX 1 to Prosecution report on arrest of Isni KILAJ, 8 November 2023 (strictly confidential and *ex parte* version filed on 3 November 2023, reclassified as confidential on 3 November 2023).

⁷ INV/F00045/RED, Public Redacted Version of “Report on the Transfer of Isni Kilaj to the Detention Facilities, with strictly confidential and *ex parte* Annexes 1-2” (F00495), 8 November 2023 (strictly confidential and *ex parte* version filed on 3 November 2023); INV/F00043, Notification of Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers, 3 November 2023 (strictly confidential, marked as *ex parte* on 27 January 2025, reclassified as public on 4 March 2025).

2. On 6 November 2023, the Single Judge ordered Kilaj's continued detention ("Case 18-01 First Detention Decision").⁸ The Single Judge further reviewed and ordered the continuation of Kilaj's detention on 5 January 2024 ("Case 18-01 Second Detention Decision")⁹ and on 5 March 2024.¹⁰ The First Detention Decision and the Second Detention Decision were both upheld by the Court of Appeals Panel ("Case 18-01 First Appeal Decision on Detention"¹¹ and "Case 18-01 Second Appeal Decision on Detention",¹² respectively).

3. On 15 December 2023, the SPO submitted for confirmation before the Pre-Trial Judge an indictment against several individuals including Kilaj,¹³ and on 11 March 2024, a revised indictment ("Revised Indictment").¹⁴

4. On 2 May 2024, the SPO requested, *inter alia*, the suspension of the Pre-Trial Judge's assessment of the Revised Indictment until the filing of additional supporting

⁸ INV/F00049, Decision on Continued Detention, 6 November 2023 ("Decision on Continued Detention"). The Single Judge issued the reasons for that decision on 9 November 2023. See INV/F00053/RED, Public Redacted Version of Reasons for Continued Detention, 13 November 2023 (confidential version filed on 9 November 2023) ("Reasons for Continued Detention"). The Appeals Panel will refer collectively to the Decision on Continued Detention and the Reasons for Continued Decision as "Case 18-01 First Detention Decision".

⁹ INV/F00068/RED, Public Redacted Version of Decision on Review of Detention of Isni Kilaj, 18 January 2024 (confidential version filed on 5 January 2024) ("Case 18-01 Second Detention Decision").

¹⁰ INV/F00098/RED, Public Redacted Version of Decision on Review of Detention of Isni Kilaj, 11 March 2024 (confidential version filed on 5 March 2024) ("Case 18-01 Third Detention Decision").

¹¹ INV/F00250/RED, Public Redacted Version of Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, 11 January 2024 (confidential version filed on 11 January 2024) ("Case 18-01 First Appeal Decision on Detention").

¹² INV/F00256/RED, Public Redacted Version of Decision on Isni Kilaj's Appeal Against Decision on Review of Detention, 26 February 2024 (confidential version filed on 26 February 2024) ("Case 18-01 Second Appeal Decision on Detention").

¹³ F00002, Submission of Indictment for confirmation and related requests, 15 December 2023 (strictly confidential and *ex parte*, reclassified as confidential on 13 March 2025).

¹⁴ F00007, Submission of revised Indictment for confirmation, 11 March 2024 (strictly confidential and *ex parte*, reclassified as confidential on 13 March 2025); F00007/A01, Annex 1 to Submission of revised Indictment for confirmation, 11 March 2024 (strictly confidential and *ex parte*, reclassified as confidential on 13 March 2025). See also F00004, Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules, 22 February 2024 (strictly confidential and *ex parte*, reclassified as confidential on 13 March 2025).

material and the filing of an amended indictment (“SPO Request for Leave and Suspension”).¹⁵

5. On 3 May 2024, the Single Judge ordered Kilaj’s release in Kosovo, subject to strict conditions, having found his continued detention unreasonable, pending the SPO Request for Leave and Suspension, and thus pending the submission of a further amended indictment against Kilaj (“Case 18-01 Release Decision”).¹⁶ The Case 18-01 Release Decision was upheld by the Appeals Panel on 13 May 2024,¹⁷ and Kilaj was transferred to Kosovo and released from the Specialist Chambers’ custody on 15 May 2024.¹⁸

6. On 20 June 2024, the Pre-Trial Judge rejected the SPO Request for Leave and Suspension.¹⁹

7. On 28 June 2024, the SPO submitted for confirmation an amended indictment against Mr Hashim Thaçi, Mr Bashkim Smakaj, Kilaj, Mr Fadil Fazliu, and Mr Hajredin Kuçi (collectively, the “Five Accused”).²⁰ On 12 November 2024,

¹⁵ F00014, Prosecution submissions pursuant to Order F00011, 2 May 2024 (strictly confidential and *ex parte*, reclassified as confidential on 13 March 2025). The Panel notes that on the same day, the SPO also formally informed the Single Judge of its request and intention to file an amended indictment. See INV/F00126, Prosecution supplemental notice, 2 May 2024 (confidential, marked as *ex parte* on 27 January 2025, reclassified as public on 8 May 2025). See also INV/F00115, Prosecution notice, 19 April 2024 (confidential, reclassified as public on 5 June 2024).

¹⁶ INV/F00129/COR/RED, Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj, 15 May 2024 (uncorrected confidential version filed on 3 May 2024, corrected confidential version filed 15 May 2024) (“Case 18-01 Release Decision”), paras 64-65, 70(a), (c).

¹⁷ INV/F00273/RED, Public Redacted Version of Decision on the Specialist Prosecutor’s Office’s Appeal Against Decision on Isni Kilaj’s Review of Detention, 15 May 2024 (confidential version filed on 13 May 2024) (“Case 18-01 Appeal Decision on Release”).

¹⁸ INV/F00274, Notification of Isni Kilaj’s Transfer to Kosovo, 15 May 2024 (confidential, reclassified as public on 7 August 2024).

¹⁹ F00016, Decision on Prosecution Requests for Leave to Present Additional Material and for Suspension of Examination of the Indictment, 20 June 2024 (strictly confidential and *ex parte*, reclassified as public on 13 March 2025).

²⁰ F00017, Submission of Amended Indictment for confirmation, 28 June 2024 (strictly confidential and *ex parte*, reclassified as confidential on 13 March 2025); F00017/A01, Annex to Submission of Amended Indictment for confirmation, 28 June 2024 (strictly confidential and *ex parte*, reclassified as confidential on 13 March 2025).

pursuant to an order of the Pre-Trial Judge, the SPO submitted for confirmation a further amended indictment.²¹

8. On 29 November 2024, the Pre-Trial Judge issued the Confirmation Decision, confirming – in part – the charges against the Five Accused.²² In particular, the Pre-Trial Judge confirmed the charges against Kilaj for attempting to obstruct, by common action of a group, official persons, including SPO prosecutors and investigators in performing official duties, punishable under Articles 17, 21, 33, 35 and 40(2) and (5) of the Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) (“KCC”), and Articles 15(2) and 16(3) of the Law; and for contempt of court, punishable under Articles 21, 33, and 393 of the KCC, and Articles 15(2) and 16(3) of the Law.²³

9. On the same day, upon the SPO’s request,²⁴ the Pre-Trial Judge terminated Kilaj’s conditional release in Kosovo, issued an arrest warrant and ordered his transfer to the Detention Facilities.²⁵

²¹ F00028/RED, public redacted Version of ‘Submission of Further Amended Indictment for confirmation with strictly confidential and *ex parte* Annexes 1-2’, 4 February 2025 (strictly confidential and *ex parte* version filed on 12 November 2024, reclassified as confidential on 13 January 2025); F00028/A01, Annex 1 to Submission of Further Amended Indictment for confirmation, 12 November 2024 (strictly confidential and *ex parte*, reclassified as confidential on 13 January 2025).

²² F00036/RED, Public Redacted Version of Decision on the Confirmation of the Indictment, 12 February 2025 (strictly confidential and *ex parte* version filed on 29 November 2024, reclassified as confidential on 13 December 2024) (“Confirmation Decision”).

²³ Confirmation Decision, para. 313(d). See also Impugned Decision, para. 22.

²⁴ F00023/RED, Public redacted version of ‘Prosecution submissions pursuant to F00022 with strictly confidential and *ex parte* Annexes 1-5’, 13 December 2024 (strictly confidential and *ex parte* version filed on 17 October 2024, reclassified as confidential on 6 December 2024). See also F00022/RED, Public Redacted Version of Order for Submissions, 17 March 2025 (strictly confidential and *ex parte* version filed on 8 October 2024, reclassified as confidential on 13 March 2025).

²⁵ F00037/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Related Matters, 19 December 2024 (strictly confidential and *ex parte* version filed on 29 November 2024, reclassified as confidential on 6 December 2024), para. 68; F00037/A03, Arrest Warrant for Isni Kilaj, 29 November 2024 (strictly confidential and *ex parte*).

10. On 2 December 2024, the SPO filed the indictment as confirmed.²⁶
11. On 5 December 2024, Kilaj was arrested in Kosovo and, on 6 December 2024, transferred to the Detention Facilities.²⁷
12. On 9 December 2024, at the initial appearance of Kilaj,²⁸ the Pre-Trial Judge ordered Kilaj's continued detention ("Decision on Detention").²⁹ On 28 January 2025, the Court of Appeals Panel denied Kilaj's appeal against the Decision on Detention ("Appeal Decision on Continued Detention").³⁰
13. The Pre-Trial Judge subsequently reviewed and extended Kilaj's detention on a bi-monthly basis until this stage.³¹
14. On 16 April 2025, following the Pre-Trial Judge's decision amending the Confirmation Decision, the SPO filed the amended confirmed indictment ("Amended Confirmed Indictment").³²

²⁶ F00055, Submission of public redacted version of Confirmed Indictment, 6 December 2024; F00055/A01, Annex 1 to Submission of public redacted version of Confirmed Indictment, 6 December 2024 ("Confirmed Indictment"). See also F00040, Submission of Confirmed Indictment, 2 December 2024 (strictly confidential and *ex parte*, reclassified as strictly confidential on 3 December 2024); F00040/A01, Annex 1 to Submission of Confirmed Indictment, 2 December 2024 (strictly confidential and *ex parte*, reclassified as strictly confidential on 3 December 2024).

²⁷ F00067/RED, Public Redacted Version of Report on the Arrest and Transfer of Isni Kilaj to the Detention Facilities, 10 January 2025 (strictly confidential and *ex parte* version filed on 8 December 2024, reclassified as confidential and *ex parte* on 17 December 2024); F00056, Notification of Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers, 6 December 2024 (strictly confidential and *ex parte*, reclassified as public on 17 December 2024).

²⁸ Transcript, 9 December 2024, pp. 85-125 ("Initial Appearance Transcript").

²⁹ Initial Appearance Transcript, pp. 120-124.

³⁰ IA001/F00005, Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, 28 January 2025 ("Appeal Decision on Continued Detention").

³¹ F00162, Decision on Review of Detention of Isni Kilaj, 7 February 2025 ("First Review Decision"); F00248, Second Decision on Review of Detention of Isni Kilaj, 7 April 2025 ("Second Review Decision").

³² F00264, Submission of Amended Confirmed Indictment, 16 April 2025; F00264/A02, Annex 2 to Submission of Amended Confirmed Indictment, 16 April 2025. See also F00260, Decision Amending the "Decision on the Confirmation of the Indictment" and Setting a Date for the Submission of Preliminary Motions, 14 April 2025.

15. On 5 June 2025, after having received submissions from the Parties,³³ the Pre-Trial Judge issued the Impugned Decision, ordering Kilaj's continued detention on the basis that, *inter alia*, there is a grounded suspicion that Kilaj has committed crimes within the subject-matter jurisdiction of the Specialist Chambers and that the risks that Kilaj will obstruct the progress of the Specialist Chambers proceedings or commit further offences continue to exist.³⁴ The Pre-Trial Judge further found that neither the conditional interim release proposed by Kilaj, nor any additional reasonable conditions imposed by the Pre-Trial Judge, could sufficiently mitigate the risk of obstructing the progress of the Specialist Chambers proceedings or the risk of committing further crimes.³⁵

16. On 27 June 2025, pursuant to the Pre-Trial Judge's order,³⁶ Kilaj advised that he did not waive his right to the bi-monthly review of his detention, as scheduled, until the Appeals Panel issues a decision on his appeal.³⁷ On 5 August 2025, the Pre-Trial Judge issued a new decision on Kilaj's review of detention.³⁸

³³ F00280/RED, Public redacted version of "Kilaj submissions on review of detention", 7 May 2025 (confidential version filed on 5 May 2025) ("Defence Submissions before the Pre-Trial Judge"); F00302, Prosecution response to 'Kilaj submissions on review of detention', 14 May 2025 (confidential, reclassified as public on 5 June 2025); F00307, Reply to Prosecution response to 'Kilaj submissions on review of detention', 19 May 2025.

³⁴ Impugned Decision, paras 23, 29, 33, 35, 36.

³⁵ Impugned Decision, paras 37-38, 40. Kilaj proposed a payment of security in the amount of EUR 40.000. See Defence Submissions before the Pre-Trial Judge, para. 55. Kilaj has also previously proposed this bail amount, as well as frequent reporting to the Kosovo Police and restrictions on communications and movement. See also Second Review Decision, paras 36-39; First Review Decision, paras 32-36; Initial Appearance Transcript, pp. 123-124; Case 18-01 Release Decision, paras 51, 64-66.

³⁶ F00348, Order in Relation to the Upcoming Detention Review of Isni Kilaj, 25 June 2025, para. 5.

³⁷ F00353, Submission pursuant to "Order in Relation to the Upcoming Detention Review of Isni Kilaj" (F00348), 27 June 2025.

³⁸ F00403, Fourth Decision on Review of Detention of Isni Kilaj, 5 August 2025.

II. STANDARD OF REVIEW

17. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.³⁹

III. PUBLIC FILINGS

18. The Appeals Panel notes that the Impugned Decision was filed publicly. While Kilaj initially filed the Appeal as confidential, a public redacted version of the Appeal was subsequently filed on 1 July 2025. The Response and the Reply were filed as confidential pursuant to Rule 82(4) of the Rules but the Parties indicated that these filings could be reclassified as public as they do not contain any confidential information.⁴⁰ The Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel.⁴¹ The Panel therefore orders the Response and the Reply to be reclassified as public.

IV. DISCUSSION

A. ALLEGED FAILURE TO CORRECTLY APPLY THE APPROPRIATE STANDARD FOR PRE-TRIAL DETENTION (GROUND 1)

1. Submissions of the Parties

19. Kilaj argues that the Pre-Trial Judge adopted a “flawed and inadequate methodology to the assessment of the relevant circumstances and their application to

³⁹ KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, 9 December 2020 (“*Gucati* Appeal Decision”), paras 4-14. See also Appeal Decision on Continued Detention, paras 15-17.

⁴⁰ Response, para. 32; Reply, para. 2.

⁴¹ See e.g. KSC-BC-2020-06, IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) (“*Veseli* First Appeal Decision on Detention”), paras 8-9. See also KSC-CA-2022-01,

the appropriate threshold tests for pre-trial detention”.⁴² Specifically, according to Kilaj, the Pre-Trial Judge “failed to: (i) apply the presumption in favour of liberty; (ii) conduct a fresh and contemporaneous examination of the circumstances; and (iii) make specific, evidence-based findings”.⁴³

20. In support of his argument that the Pre-Trial Judge failed to apply the presumption in favour of liberty, Kilaj argues that while pre-trial detention is an exception to the right to liberty, based on the outcomes of provisional release decisions at the Specialist Chambers, the “exception has become the rule” since the vast majority of accused are remanded in pre-trial detention as a matter of course.⁴⁴ Kilaj recalls that the Specialist Chambers are bound by international human rights instruments, such as the European Convention on Human Rights (“ECHR”) that operates a presumption in favour of pre-trial release.⁴⁵

21. Kilaj further argues that the Pre-Trial Judge was required to conduct a “fresh [or *de novo*] assessment” of the applicability of the grounds for withholding release.⁴⁶ However, in his view, the Pre-Trial Judge failed to make such an assessment and instead relied on findings made in earlier decisions to erroneously find that “the factors favourable to Mr Kilaj insufficiently mitigate the risk” in question.⁴⁷ Kilaj argues that this finding, which was “repeated, cut-and-paste fashion, in relation to the other grounds”, unfairly places the burden of proving the absence of risk on the Accused.⁴⁸ Kilaj further argues that, contrary to the approach established by the European Court of Human Rights (“ECtHR”) requiring a “fresh examination” of the

F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

⁴² Appeal, para. 36. See also Appeal, para. 50.

⁴³ Appeal, para. 36.

⁴⁴ Appeal, paras 37-38.

⁴⁵ Appeal, para. 39.

⁴⁶ Appeal, para. 40. See also Reply, paras 3-4, 10.

⁴⁷ Appeal, para. 41. See also Appeal, para. 42.

⁴⁸ Appeal, para. 43.

circumstances warranting continued detention, the Pre-Trial Judge erroneously limited her assessment to whether any “new circumstances” would contradict her previous findings.⁴⁹

22. Finally, Kilaj submits that the Pre-Trial Judge relied on “abstract and stereotyped findings” to deny provisional release.⁵⁰ In support of his assertion, Kilaj submits that, in relation to the risk of flight, the Pre-Trial Judge placed weight on “the gravity of the offences”, Kilaj’s “knowledge of the evidence presented by the SPO” and “the prospect of a potentially significant sentence” without discussing the underlying evidence upon which those findings were made or making any reference to the specific “factual matrix underlying the charges” Kilaj faces.⁵¹

23. The SPO responds that Kilaj’s submissions misrepresent the Impugned Decision,⁵² and his reference to the ECtHR’s jurisprudence is inapposite and “untenable” in light of the Pre-Trial Judge’s grounded findings.⁵³

24. First, the SPO responds that, as consistently held by the Court of Appeals Chamber, the Pre-Trial Judge was not required to make findings on the factors already decided upon in an earlier ruling; rather, what was important was that she satisfied herself that the relevant factors continued to exist at the time of her review.⁵⁴

25. Second, the SPO responds that the factors relied upon in the Impugned Decision are both concrete and individualised.⁵⁵ The SPO argues that Kilaj only makes specific submissions in relation to the factors underpinning the risk of flight and that

⁴⁹ Appeal, paras 44-46. See also Reply, para. 10.

⁵⁰ Appeal, paras 47-50.

⁵¹ Appeal, para. 47.

⁵² Response, para. 6.

⁵³ Response, para. 11.

⁵⁴ Response, para. 8. See also Response, paras 7, 10.

⁵⁵ Response, para. 9.

even the factors he challenges such as the nature of the charges or the significance of the sentence are both concrete and specific to Kilaj.⁵⁶

26. The SPO further responds that (i) Kilaj's submissions regarding a shifting of the burden are meritless;⁵⁷ (ii) his claim that the Pre-Trial Judge failed to apply the presumption of liberty is unsupported;⁵⁸ and (iii) Kilaj overall fails to demonstrate any errors.⁵⁹

27. In Reply, regarding whether the Pre-Trial Judge was required to conduct her assessment *de novo*, Kilaj submits that while certain findings are unlikely to change with the passage of time, others, such as the risk of interfering with evidence, required a contemporaneous assessment that the Pre-Trial Judge failed to conduct.⁶⁰ Relying on jurisprudence from the Court of Appeals Chamber, Kilaj further replies that referring to past determinations of "static" conditions is permissible but "subject to the overarching, paramount and 'crucial' question" that is "whether at the time of the review decision, grounds for continued detention still exist".⁶¹

2. Assessment of the Court of Appeals Panel

28. At the outset the Panel observes that, in support of Kilaj's general allegation that the Pre-Trial Judge failed to apply the presumption in favour of pre-trial release, Kilaj impugns the outcome of provisional release decisions at the Specialist Chambers rather than presenting specific arguments related to his own detention.⁶² The Panel notes that Kilaj's unsupported contention fails to demonstrate that the Pre-Trial Judge erred in her assessment. The Panel recalls that arguments which do not have the potential to cause the impugned decision to be reversed or revised may be

⁵⁶ Response, para. 10.

⁵⁷ Response, para. 12.

⁵⁸ Response, para. 13.

⁵⁹ Response, para. 14.

⁶⁰ Reply, paras 5-7, 15-16.

⁶¹ Reply, paras 8-9.

⁶² See Appeal, paras 38-39, 50.

immediately dismissed by the Panel and need not be considered on the merits.⁶³ Accordingly, the Panel dismisses Kilaj's argument in that respect.

29. Turning to Kilaj's assertion that the Pre-Trial Judge failed to conduct a *de novo* assessment of the circumstances warranting continued detention,⁶⁴ Kilaj refers specifically to the Pre-Trial Judge's assessment of the risk of flight.⁶⁵ The Court of Appeals Chamber previously established that:

The competent panel has an obligation to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law. The competent panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the competent panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.⁶⁶

30. In this regard, the Panel also recalls that the duty to determine whether the circumstances underpinning detention "still exist"⁶⁷ is not a light one. It imposes on the competent panel the task to, *proprio motu*, assess whether it is still satisfied that, at the time of the review and considering the specific circumstances of the case when the review takes place, the detention of the accused remains warranted.⁶⁸

⁶³ See e.g. KSC-CA-2024-03, F00069/RED, Public Redacted Version of Appeal Judgment, 14 July 2025 (confidential version filed on 14 July 2025), para. 42.

⁶⁴ See Appeal, paras 40-46. See also Reply, paras 3-4, 10.

⁶⁵ See Appeal, paras 41-43, referring to Impugned Decision, paras 27, 30, 34. In the Reply, Kilaj further challenges the Pre-Trial Judge's assessment of the risk of interference with evidence in this case. See Reply, paras 5-7. The Panel has addressed these arguments together with other arguments raised by Kilaj under Ground 3 of the Appeal. See below, paras 66-84.

⁶⁶ KSC-BC-2020-07, IA002/F00005, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, 9 February 2021, para. 55; KSC-BC-2020-04, IA003/F00005/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, 11 February 2022 (confidential version filed on 11 February 2022) ("*Shala* Second Appeal Decision on Detention"), paras 16, 18.

⁶⁷ *Shala* Second Appeal Decision on Detention, para. 17. See also Article 41(10) of the Law: "whether reasons for detention on remand still exist".

⁶⁸ *Shala* Second Appeal Decision on Detention, para. 17.

31. The Court of Appeals Chamber has previously found that although the automatic review every two-months under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred in the case, such a change can nonetheless be determinative and shall be taken into consideration if raised before the Panel or *proprio motu*.⁶⁹ The Appeals Panel further considers that a panel may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.⁷⁰ Additionally, the Panel recalls that the Pre-Trial Judge should not be expected to entertain submissions that merely repeat arguments that have already been addressed in his or her previous decisions.⁷¹

32. Regarding the Pre-Trial Judge's specific finding that "the factors favorable to Mr Kilaj insufficiently mitigate the risk of flight",⁷² the Panel is of the view that this wording is consistent with the standard applied at the Specialist Chambers according to which an accused can only be detained if lesser measures would *be insufficient to mitigate the risks* of flight, obstruction or commission of further crimes.⁷³ In support of this finding, the Pre-Trial Judge took into consideration numerous factors and made explicit reference to the arguments raised by Kilaj,⁷⁴ but nonetheless found that the

⁶⁹ See e.g. *Shala* Second Appeal Decision on Detention, para. 18; KSC-BC-2020-06, IA008/F0004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("*Veseli* Second Appeal Decision on Detention"), para. 15; KSC-BC-2020-06, IA010/F00008/RED Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021 (confidential version filed on 27 October 2021) ("*Thaçi* Second Appeal Decision on Detention"), para. 19.

⁷⁰ See *Shala* Second Appeal Decision on Detention, para. 18; KSC-BC-2020-06, IA034/F00005/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Request for Provisional Release, 13 August 2025 (confidential version filed on 13 August 2025) ("*Veseli* Fourth Appeal Decision on Detention"), para. 34. See similarly ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-992-Red, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention", 19 July 2017, para. 39.

⁷¹ See e.g. *Shala* Second Appeal Decision on Detention, para. 18; *Veseli* Second Appeal Decision on Detention, para. 16; *Thaçi* Second Appeal Decision on Detention, para. 20.

⁷² Impugned Decision, para. 27. See also Appeal, para. 43.

⁷³ See Second Appeal Decision on Detention, para. 17 (emphasis added). See also Case 18-01 Appeal Decision on Release, para. 18.

⁷⁴ Impugned Decision, para. 24.

considerations set out in the Second Review Decision were still relevant, particularly now that concrete charges have been confirmed against Kilaj.⁷⁵ The Court of Appeals Panel finds that the Pre-Trial Judge fulfilled her duty as she satisfied herself that, at the time of the review decision, the risk of flight in relation to Kilaj continued to exist.

33. In the Panel's view, the fact that the Pre-Trial Judge repeated this finding in relation to other grounds does not indicate that she failed to apply the presumption in favour of pre-trial release.⁷⁶ In light of the foregoing, the Panel is satisfied that the Pre-Trial Judge applied the correct standard in line with the practice of the ECtHR.⁷⁷

34. Kilaj presents no other concrete arguments than those addressed above in support of the allegation that the Pre-Trial Judge referred to findings made in earlier decisions without conducting a "proper analysis".⁷⁸ As for the ECtHR judgment relied upon by Kilaj, the Panel notes that in the context of the *Vadym Melnyk v. Ukraine* Judgment, the ECtHR found that the practice consisting of using a standard template to extend pre-trial detention was in breach of Article 5 of the ECHR.⁷⁹ The ECtHR noted specifically that the local courts and the national court of appeal "limited themselves to repeating a number of grounds for detention in an abstract and stereotyped way, without giving any factual elements and reasons why they considered those grounds still relevant to the applicant's case".⁸⁰ The Panel finds that

⁷⁵ Impugned Decision, para. 27. The Panel recalls that other courts have also considered that the fact the charges were confirmed would increase the flight risk. See e.g. ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-826, Review of the "Decision on the Application for the Interim Release of Thomas Lubanga Dyilo", 14 February 2007, p. 6.

⁷⁶ See Impugned Decision, paras 30, 34. Contra Appeal, paras 41, 43.

⁷⁷ See e.g. ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 222 (finding that the reasoning must be based on specific substantiated risks).

⁷⁸ See Appeal, paras 48-50. See above, paras 29-31.

⁷⁹ See Appeal, para. 49, referring to ECtHR, *Vadym Melnyk v. Ukraine*, nos. 62209/17 and 50933/18, Judgment, 15 September 2022 ("*Vadym Melnyk v. Ukraine* Judgment"), para. 111. The Panel notes that this judgment was delivered on 15 September 2022 rather than on 15 September 2023 as referred to in the Appeal.

⁸⁰ *Vadym Melnyk v. Ukraine* Judgment, para. 111.

Kilaj fails to demonstrate that this ECtHR case and the present case reflect analogous circumstances and will not entertain this argument further.

35. Turning to the argument that the Pre-Trial Judge failed to make specific, evidence-based findings,⁸¹ the Panel notes that Kilaj takes issue with the Pre-Trial Judge's reference to the gravity of the offences, the potential significance of the sentence and the fact that Kilaj now has knowledge of the evidence to be presented by the SPO.⁸² Contrary to Kilaj's assertion, the Panel sees no error in the Pre-Trial Judge's decision to take these factors into consideration in support of her assessment that the risk of flight continues to exist.

36. The Panel stresses that the question posed by Article 41(6)(b) of the Law is whether the SPO presented *specific reasoning based on evidence* supporting the belief of a sufficiently real possibility that (one or more of) the risks under Article 41(6)(b)(i)-(iii) of the Law exist.⁸³ This does not however mean, as suggested by Kilaj, that the Pre-Trial Judge had to discuss the "underlying evidence upon which those findings are made" or "the factual matrix underlying the charges Mr Kilaj actually faces."⁸⁴ In that regard, the Panel recalls that the quality and strength of the SPO's case and evidence are matters to be discussed at trial and that the present decision on detention

⁸¹ See Appeal, paras 1, 51-58.

⁸² See Appeal, para. 47.

⁸³ See Appeal Decision on Continued Detention, para. 39 (emphasis added); KSC-BC-2020-06, IA007/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), para. 21 (emphasis in original); KSC-BC-2020-06, IA033/F00006, Decision on Rexhep Selimi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, 13 August 2025 ("*Selimi Fifth Appeal Decision on Detention*"), para. 28. See also KSC-CC-PR-2017-01, F00004, 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, 26 April 2017, para. 115 (where the Constitutional Court Chamber emphasised the importance of specific reasoning and concrete grounds which are required to be relied upon by any Panel in its decisions authorising detention on remand for a prolonged period of time).

⁸⁴ Contra Appeal, para. 47.

is not an appropriate forum to address this argument.⁸⁵ Neither the Pre-Trial Judge nor the Court of Appeals Panel can be expected to examine the merits of the case and the overall evidence submitted by the SPO in preparation for the trial.⁸⁶

37. As a further argument, the Panel understands that Kilaj implies that the Pre-Trial Judge should have explained why the contempt charges he is facing are particularly grave compared to “other justiciable offences”.⁸⁷ In the context of a previous case involving offences against the administration of justice, the Court of Appeals Chamber noted that, although the public interest in protecting the integrity of proceedings through effective prosecution of offences against the administration of justice should not be underestimated, such offences are not as grave as the core crimes under Articles 13 and 14 of the Law.⁸⁸ That being said, Kilaj fails to provide any reason as to why the Pre-Trial Judge should have compared the gravity of the offences charged before the Specialist Chambers generally.⁸⁹ The Panel finds that the Pre-Trial Judge committed no error in referring to “the gravity of the offences with which [Kilaj] is charged”⁹⁰ and correctly focused on the gravity of the charges in this instance.

⁸⁵ Appeal Decision on Continued Detention, para. 41. See also *Thaçi* Second Appeal Decision on Detention, para. 40; *Veseli* Second Appeal Decision on Detention, para. 23.

⁸⁶ See e.g. *Veseli* Second Appeal Decision on Detention, para. 23; KSC-BC-2020-07, IA007/F00004 and IA008/F00004, Consolidated Decision on Nasim Haradinaj’s Appeals Against Decisions on Review of Detention, 6 April 2022 (“*Haradinaj* Consolidated Appeal Decision on Detention”), para. 31.

⁸⁷ See Appeal, para. 47.

⁸⁸ See *Gucati* Appeal Decision, para. 71.

⁸⁹ The Panel further notes that Kilaj refers to the jurisprudence of the International Criminal Court (“ICC”) in support of his assertion that the ICC has considered in analogous circumstances that an accused’s responsibility for contempt charges, and “not for any of the crimes under article 5 of the Statute”, militated in favour of his request for interim release. See Appeal, para. 47, fn. 50, referring to ICC, *Prosecutor v. Gicheru*, ICC-01/09-01/20-90-Red2, Public Redacted Version of ‘Decision on Mr Gicheru’s Request for Interim Release’, 29 January 2021, ICC-01/09-01/20-90-Conf, 29 January 2021 (“*Gicheru* Decision on Detention”), para. 44. The Panel however points out that, contrary to Kilaj’s assertion, his situation is not analogous to Gicheru’s. In that regard, the Panel recalls that, in the *Gicheru* Decision on Detention, the ICC Pre-Trial Chamber found that the fact that Gicheru was charged with contempt charges “militate[d] in favour of [his] request for interim release “in the specific circumstances of this case, namely a person having voluntarily surrendered himself and the Prosecutor not opposing his request for interim release”. See *Gicheru* Decision on Detention, para. 44 (emphasis added).

⁹⁰ Impugned Decision, para. 25.

38. As a result, the Court of Appeals Panel finds that Kilaj has failed to show that the Pre-Trial Judge erred in her application of the standard to her review of Kilaj's continued detention. Kilaj's first ground of appeal is therefore dismissed.

B. ALLEGED ERROR IN ASSESSING THE RELEVANCE OF THE LENGTH OF THE SENTENCE
LIKELY TO BE IMPOSED (GROUND 2)

1. Submissions of the Parties

39. Recalling that any justification for pre-trial detention always requires a fact-specific assessment,⁹¹ Kilaj argues that the Pre-Trial Judge erroneously dismissed his submissions concerning the probability that his pre-trial detention would exceed any likely sentence as "speculative and inapposite", in the context of the assessment of the overall reasonableness of extending pre-trial detention under Rule 56(2) of the Rules.⁹²

40. Kilaj argues that there is a "clear relationship between a likely overall sentence and justification for pre-trial detention through which reasonableness and proportionality of that pre-trial detention must be assessed".⁹³ According to Kilaj, "where the period of pre-trial detention exceeds the statutory maximum sentence imposable, international human rights law findings make it clear that an Accused should be released".⁹⁴

41. Kilaj submits that, at the date of the filing of the Appeal, he has spent 392 days in pre-trial detention.⁹⁵ Given the length of his pre-trial detention so far and given that the highest sentence he faces is a maximum of five years of imprisonment for

⁹¹ Appeal, para. 54, referring to ECtHR, *Buzadji v. The Republic of Moldova*, no. 23755/07, Judgment, 5 July 2016 ("*Buzadji Judgment*"), para. 90.

⁹² Appeal, paras 51, 56.

⁹³ Appeal, para. 54. See also Reply, paras 11-12.

⁹⁴ Appeal, para. 53, referring to Human Rights Committee, CCPR/C/GC/35, para. 38. See also Appeal, para. 52; Reply, paras 11-12.

⁹⁵ Appeal, para. 55. See also Appeal, para. 22.

Count 15, it was incumbent upon the Pre-Trial Judge to examine the facts and the likely sentence.⁹⁶

42. Kilaj further argues that the Pre-Trial Judge engaged in double standards as she, on the one hand, made a finding on the likely length of the sentence in relation to her assessment of the risk of flight, but, on the other hand, refused to do the same in assessing the reasonableness of the length of pre-trial detention.⁹⁷ Kilaj submits that such an “unfair differential treatment of the facts” has been criticised by the ECtHR.⁹⁸

43. The SPO responds that Kilaj mischaracterises the Impugned Decision and that the Pre-Trial Judge duly considered the additional time Kilaj had spent in detention since the Second Review Decision.⁹⁹ The SPO adds that such an approach has been upheld by the Court of Appeals Chamber in light of the periodic review of the necessity of continued detention.¹⁰⁰

44. In addition, the SPO argues that Kilaj ignores the fact that the proportionality of pre-trial detention shall not be assessed against its expected length but against the risks under Article 41(6)(b) of the Law together with other factors and that, in this context, the Pre-Trial Judge correctly found that an assessment of proportionality could only be based on the circumstances at the time of review, and not on what may or may not occur in the foreseeable future.¹⁰¹

45. The SPO submits that none of the authorities Kilaj cites support his position and further recalls that Kilaj has spent approximately thirteen months in detention while facing a potential sentence of up to five years and six months.¹⁰²

⁹⁶ Appeal, para. 55.

⁹⁷ Appeal, para. 57.

⁹⁸ Appeal, para. 58, referring to *Buzadji* Judgment, para. 112.

⁹⁹ Response, para. 15. See also Response, para. 18.

¹⁰⁰ Response, para. 15.

¹⁰¹ Response, para. 16.

¹⁰² Response, para. 17.

2. Assessment of the Court of Appeals Panel

46. At the outset, the Appeals Panel recalls that a panel has a general obligation to ensure that the time spent in detention is reasonable, in accordance with Article 29(2) of the Constitution and Article 5(3) of the ECHR.¹⁰³

47. The Panel further recalls that Rule 56(2) of the Rules takes up the idea of proportionality “by prohibiting detention ‘for an unreasonable period prior to the opening of the case’”.¹⁰⁴ The length of time spent in detention pending trial is a factor that needs to be considered along with the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.¹⁰⁵ Panels must apply a proportionality test when conducting a review of the reasonableness of a person’s detention. Namely, they must consider whether a person's detention on remand is strictly necessary to mitigate the risks under Article 41(6)(b) of the Law or whether other, less stringent, measures could be sufficient for that purpose.¹⁰⁶ The Panel also recalls that the SPO carries the burden of establishing that detention is necessary and that its length remains reasonable.¹⁰⁷

48. The Panel notes that the Pre-Trial Judge considered the following factors to reach her conclusion that the time Kilaj has spent in pre-trial detention thus far is not

¹⁰³ KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020, para. 63. See also *Veseli* Fourth Appeal Decision on Detention, para. 103.

¹⁰⁴ KSC-BC-2020-04, IA001/F00005/RED, Public Redacted Version of Decision on Pjetër Shala’s Appeal Against Decision on Provisional Release, 20 August 2021 (confidential version filed on 20 August 2021) (“*Shala* First Appeal Decision on Detention”), para. 48.

¹⁰⁵ See e.g. KSC-BC-2020-06, IA003/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi’s Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) (“*Selimi* First Appeal Decision on Detention”), para. 79 and jurisprudence cited therein; KSC-BC-2020-06, IA014/F00008/RED, Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 31 March 2022 (confidential version filed on 31 March 2022), para. 61.

¹⁰⁶ Case 18-01 Appeal Decision on Release, para. 18. See also *Veseli* Fourth Appeal Decision on Detention, para. 104; *Gucati* Appeal Decision, para. 72.

¹⁰⁷ Case 18-01 Appeal Decision on Release, para. 18. See also *Gucati* Appeal Decision, paras 72-73.

unreasonable: (i) Kilaj was detained from 2 November 2023 to 15 May 2024 and again since his arrest on 5 December 2024; (ii) Kilaj is charged with offences of obstruction and contempt of court which carry a possible sentence of imprisonment of up to five years and six months, respectively; (iii) the risks under Article 41(6)(b) of the Law cannot be mitigated by any less restrictive measures than detention; and (iv) the proceedings continue to move forward expeditiously since the Second Review Decision, bringing the case “one step closer” to its transmission to the Trial Panel.¹⁰⁸

49. The Panel recalls that the nature of the offence as well as the severity of the penalty faced are important factors to consider when deciding whether detention is necessary in the circumstances of a specific case.¹⁰⁹ The Panel further agrees with Kilaj that the reasonableness of an accused person’s continued detention cannot be assessed in the abstract but must be assessed on the facts of each case and according to its special features.¹¹⁰ In that regard, the Panel notes that the Pre-Trial Judge expressly referred to the maximum sentences Kilaj may face in the present case, if convicted.¹¹¹ However, contrary to what Kilaj asserts,¹¹² the Panel considers that the lower panel is not required to address the “likely” sentence an accused may face since considerations as to potential factors in case of a conviction and sentence should not form part of a decision on interim release.¹¹³ The Panel further agrees with the Pre-Trial Judge that

¹⁰⁸ See Impugned Decision, paras 41-42, 46.

¹⁰⁹ *Gucati* Appeal Decision, para. 72.

¹¹⁰ See Appeal, para. 54. See e.g. *Veseli* Fourth Appeal Decision on Detention, para. 104; *Buzadji* Judgment, para. 90.

¹¹¹ See Impugned Decision, para. 41.

¹¹² See Appeal, para. 54. See also Reply, paras 11-12.

¹¹³ See ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-992-Red, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled “Decision on Mr Gbagbo’s Detention”, 19 July 2017 (“*Gbagbo* Appeal Decision”), para. 69 (where the ICC Appeals Chamber found that the Trial Chamber was not required to already assess the concrete sentence that Mr Gbagbo might receive, “as the *concrete* sentence is only determined at the end of the trial, if and when the person is actually found guilty of a crime”) (emphasis added). In addition, the Panel notes that Kilaj brings no support for his contention that it is the “likely” sentence which needs to be considered, and further observes that this approach is not endorsed in relevant international jurisprudence. See e.g. ECtHR, *Panchenko v. Russia*, no. 45100/98, Judgment, 8 February 2005, para. 101 (referring to “the severity of the sentence faced”); ECtHR, *Becciev v. Moldova*, no. 9190/03, Judgment,

the proportionality assessment should only be based on the circumstances at the time of the review.¹¹⁴

50. In relation to Kilaj's submission that the time he spent in pre-trial detention is likely to exceed any sentence he would receive, if convicted, the Panel also notes that, as Kilaj concedes,¹¹⁵ the time he has served in pre-trial detention so far does not exceed the maximum sentence available for some of the offences he is charged with.¹¹⁶ Therefore, the present case is distinguishable from a situation where an accused would have to be released because pre-trial detention would exceed the statutory maximum sentence imposable.¹¹⁷

51. The Pre-Trial Judge found that Kilaj repeated arguments dismissed as "speculative and inapposite" in the Second Review Decision.¹¹⁸ The Panel notes that

4 October 2005, para. 58 (referring to "the severity of the sentence risked"); ECtHR, *Ilijkov v. Bulgaria*, no. 33977/96, Judgment, 26 July 2001 ("*Ilijkov v. Bulgaria* Judgment"), paras 80-81 (referring to "the severity of the sentence faced" and finding that there was "no judicial control on whether the evidence supported reasonable suspicion that the accused had committed an offence attracting a sentence of the relevant length"); *Gbagbo* Appeal Decision, para. 69 (where the ICC Appeals Chamber found that reference to the gravity of the crimes charged in the context of a decision on interim release entailed an assessment based on the particular charges in a case, namely, if the charges brought against the detained person are serious, they may result in a lengthy prison sentence in case of a conviction); ICC, *Prosecutor v. Said Abdel Kani*, ICC-01/14-01/21-318, Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled "Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions", 19 May 2022, paras 46-47 (finding that "the charges in this case, if proved, would in all likelihood result in a lengthy prison sentence"); ICTY, *Prosecutor v. Čermak and Markač*, IT-03-73-AR65.1, Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release, 2 December 2004, para. 25 (referring to "the possible severity of the sentence"); ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR65.1, AR65.2, AR65.3, Decision on Motions for Re-consideration, Clarification, Request for Release and Applications for Leave to Appeal, 8 September 2024, para. 30 (referring to "the seriousness of the crimes charged and the long sentence to be expected if convicted").

¹¹⁴ See Impugned Decision, para. 43.

¹¹⁵ See Appeal, para. 55.

¹¹⁶ See Impugned Decision, para. 41; Amended Confirmed Indictment, para. 48.

¹¹⁷ Contra Appeal, para. 53.

¹¹⁸ Impugned Decision, para. 43.

Kilaj had argued before the Pre-Trial Judge¹¹⁹ that “it is likely that any sentence will be at the lower end of the range of one to five years’ imprisonment”.¹²⁰

52. The Appeals Panel recalls that the alleged quality and strength of the SPO’s evidence in this case are irrelevant to the issue of continued detention.¹²¹ As a result, the Panel finds that the Pre-Trial Judge was not required to engage in whether it was probable that any sentence imposed on Kilaj would be at the “lower end” of the range of the imprisonment he may face, and sees no error in the Pre-Trial Judge’s rejection of Kilaj’s argument as speculative.

53. The Panel further rejects Kilaj’s argument that the Pre-Trial Judge engaged in double standards as she, on the one hand, made a finding on the likely length of the sentence in relation to her assessment of the risk of flight, but, on the other hand, refused to do the same in assessing the reasonableness of the length of the pre-trial detention.¹²² The Panel observes that, in relation to the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge listed, among the factors she took into consideration, the prospect of a potentially significant sentence in the event of conviction.¹²³ As Kilaj himself acknowledges, the severity of the sentence faced is a relevant factor in the assessment of the *risks* rendering detention necessary.¹²⁴ In the Panel’s view, there is no contradiction or double standards between this finding – based on a reading of the charges against Kilaj – and the Pre-Trial Judge’s refusal to entertain Kilaj’s speculative submissions related to the hypothetical strength of the SPO case and the likely sentence to be imposed on Kilaj if convicted.

¹¹⁹ In the context of the Second Review Detention, the Pre-Trial Judge found that any reliance on Kilaj’s “future eligibility for commutation of an eventual sentence, if any, was highly *speculative*”. See Second Review Detention, para. 43 (emphasis added).

¹²⁰ See Defence Submissions before the Pre-Trial Judge, para. 51. See also Appeal, para. 55.

¹²¹ See Appeal Decision on Continued Detention, para. 41. See also above, para. 36.

¹²² See Appeal, para. 57.

¹²³ See Impugned Decision, para. 25.

¹²⁴ See *Ilijkov v. Bulgaria* Judgment, para. 80. See Appeal, para. 52.

54. Turning to the Pre-Trial Judge's rejection of Kilaj's arguments as being "inapposite", the Panel observes that the Pre-Trial Judge already made this specific finding in the Second Review Decision with respect to the parallel Kilaj had attempted to draw with the sentences imposed in Case KSC-BC-2023-10 ("Case 10") as a result of a plea agreement.¹²⁵ The Pre-Trial Judge, when dismissing Kilaj's arguments in the Impugned Decision, found that Kilaj "repeated" arguments which had been dismissed in the Second Review Decision.¹²⁶ However, the Panel notes that if Kilaj indeed repeated the same argument in his Defence Submissions before the Pre-Trial Judge,¹²⁷ he in fact also provided additional arguments as to why in his view this comparison was not "inapposite".¹²⁸ The Panel observes that the Pre-Trial Judge did not expressly engage with these new arguments. In the Panel's view, while it would have been preferable for the Pre-Trial Judge to provide more detailed reasoning as to why she found that these arguments remained inapposite, the Panel is not convinced that the Pre-Trial Judge failed to "engage in any analysis of the questions" raised by Kilaj's submissions or erred in finding these arguments inapposite.¹²⁹

¹²⁵ In the context of the Second Review Detention, the Pre-Trial Judge found that "the parallel that Kilaj [...] attempt[ed] to draw with the sentences imposed on Messrs Sabit Januzi and Ismet Bahtijari as part of their plea agreements [wa]s *inapposite*". See Second Review Detention, para. 43 (emphasis added). See also F00208/RED, Public redacted version of Kilaj Submissions on review of detention, 11 March 2025 (confidential version filed on 10 March 2025) ("Second Review Submissions"), para. 28.

¹²⁶ See Impugned Decision, para. 43, referring to Second Review Decision, para. 43.

¹²⁷ Compare Second Review Submissions, para. 28 with Defence Submissions before the Pre-Trial Judge, para. 52.

¹²⁸ See Defence Submissions before the Pre-Trial Judge, paras 53-54. Kilaj argued that while he acknowledged that the accused in Case 10 had pleaded guilty and that their sentences "accordingly reflected a degree of credit", they were sentenced for offences that were "significantly more serious" than those he faces. See Defence Submissions before the Pre-Trial Judge, para. 53. More specifically, Kilaj stressed that Januzi and Bahtijari were each sentenced to two years of imprisonment for "a more serious package of offences", namely intimidation under Article 387 of the KCC and obstruction under Article 401(2) and (5) of the KCC, while intimidation carries a sentence range (two to 10 years of imprisonment) that is "double the range of obstruction". See Defence Submissions before the Pre-Trial Judge, paras 52-53.

¹²⁹ Contra Appeal, para. 56.

55. Finally, as to Kilaj's argument that the Pre-Trial Judge erred in "making no allowance for the passage of time",¹³⁰ the Appeals Panel observes that the Pre-Trial Judge "duly considered" the additional time Kilaj had spent in detention since the Second Review Decision.¹³¹ The Panel finds that the Pre-Trial Judge expressly took into account the passage of time when issuing the Impugned Decision and therefore rejects Kilaj's assertion.

56. Recalling that the Pre-Trial Judge weighed the proportionality of Kilaj's detention against a number of factors,¹³² the Appeals Panel is satisfied that the Pre-Trial Judge properly took into account the length of time spent in detention pending trial when considering that Kilaj's continued detention remained proportionate at this stage.

57. In light of the above, the Panel finds that Kilaj fails to demonstrate that the Pre-Trial Judge erred in her consideration of the sentence Kilaj may face and in finding that the time he has spent in pre-trial detention is not unreasonable within the meaning of Rule 56(2) of the Rules.¹³³ Kilaj's second ground of appeal is therefore dismissed.

C. ALLEGED ERRORS IN ASSESSING THE RISK OF OBSTRUCTION (GROUND 3)

1. Submissions of the Parties

58. Kilaj argues that the Pre-Trial Judge erred in her assessment of the factors relevant to the risk of obstruction, and her attribution of weight thereto.¹³⁴

¹³⁰ See Appeal, para. 51.

¹³¹ See Impugned Decision, para. 44.

¹³² See Impugned Decision, paras 41-42, 44. See also above, para. 48. The Pre-Trial Judge further emphasised that pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Kilaj's detention would be regularly reviewed, and finally concluded that the time he spent in pre-trial detention was reasonable within the meaning of Rule 56(2) of the Rules. See Impugned Decision, paras 45-46.

¹³³ Impugned Decision, para. 46.

¹³⁴ Appeal, para. 59. See also Appeal, para. 61.

59. Kilaj submits that the Pre-Trial Judge erred in relying on allegations that he interfered with witnesses in the case of the *Specialist Prosecutor v. Hashim Thaçi et al.* KSC-BC-2020-06 (“Case 06”), although there is no evidence that he ever did so. Even if there was such evidence, Kilaj argues that in light of the Pre-Trial Judge’s own observation that the ability to recall witnesses is “exceptional”, she failed to grant appropriate weight to the fact that the SPO case is closed in Case 06.¹³⁵ Relying on jurisprudence from the International Criminal Tribunal for the former Yugoslavia (“ICTY”), Kilaj argues that the Pre-Trial Judge should have acknowledged that the risk of obstruction has at least diminished.¹³⁶ Furthermore, Kilaj argues that the Pre-Trial Judge erred in relying on the climate of fear and intimidation in Kosovo against witnesses testifying before the Specialist Chambers, as creating a “particularly high” risk that Kilaj will obstruct the proceedings.¹³⁷

60. Kilaj further submits that the Pre-Trial Judge erred in finding that there is a risk that Kilaj will interfere with witnesses in his own case.¹³⁸ Kilaj argues that the SPO is yet to file its witness list and contrary to the Pre-Trial Judge’s finding, he has no knowledge of the identity of potential witnesses against him except for one. Kilaj contends that it would be “absurd” to consider that this person could be influenced by him and adds that the Pre-Trial Judge failed to explain how this could be a realistic risk.¹³⁹

61. Finally, Kilaj argues that the Pre-Trial Judge’s finding that he “demonstrated willingness to violate court orders and intervene in proceedings to which he is not a

¹³⁵ Appeal, para. 62. See also Reply, paras 13-14.

¹³⁶ Appeal, para. 63, referring to ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 14 December 2007 (“*Haradinaj et al.* Decision”), para. 19. See also Reply, para. 15. The Panel notes that Kilaj also argues that the Pre-Trial Judge needs to conduct a *de novo* assessment of the risk of obstruction. See Reply, paras 15-16. These arguments have been addressed in the context of Ground 1. See above, paras 29-31.

¹³⁷ Appeal, para. 64. See also Reply, para. 17.

¹³⁸ Appeal, para. 65.

¹³⁹ Appeal, para. 65.

party”, goes directly to a central issue in this case which is yet to be determined. Kilaj claims that, as such, this finding is wholly unwarranted.¹⁴⁰

62. The SPO responds that Kilaj merely disagrees with the Pre-Trial Judge’s reasonable conclusions and fails to acknowledge the confirmed charges against him.¹⁴¹ In relation to the closure of the SPO case in Case 06, the SPO argues that the possibility of witnesses being recalled was properly weighed in the context of the numerous factors taken into consideration by the Pre-Trial Judge.¹⁴² The SPO underlines that Trial Panel II acknowledged an ongoing risk of interference with respect to SPO witnesses but also with respect to witnesses to be called by Victims’ Counsel and potential Defence witnesses.¹⁴³ According to the SPO, obstruction efforts are not confined solely to prosecution witnesses, but could also extend to Defence witnesses, or could encompass other forms of non-witness related evidence tampering.¹⁴⁴

63. The SPO further argues that the ICTY case relied upon by Kilaj pertains to different circumstances.¹⁴⁵ As to the fact that the SPO has not yet filed a witness list, the SPO responds that the risk of obstruction is not dependent upon such a list. Rather, as identified by the Pre-Trial Judge, information gained from a confirmation decision, disclosed materials, or an accused’s own knowledge of relevant facts and circumstances can form the basis for obstruction efforts.¹⁴⁶ As to the climate of fear and witness intimidation in Kosovo, the SPO argues that the Court of Appeals Chamber has upheld this factor as a relevant “contextual consideration” and the Pre-Trial Judge properly considered it, in the context of other factors.¹⁴⁷

¹⁴⁰ Appeal, para. 66.

¹⁴¹ Response, para. 19. See also Response, para. 25.

¹⁴² Response, paras 20, 22.

¹⁴³ Response, para. 21.

¹⁴⁴ Response, para. 22.

¹⁴⁵ Response, para. 21.

¹⁴⁶ Response, para. 22.

¹⁴⁷ Response, para. 23.

64. Finally, the SPO submits that Kilaj's "unchallenged and demonstrated willingness" to engage in obstructive behaviour is indisputably relevant and was appropriately considered by the Pre-Trial Judge in relation to the risk of obstruction of the proceedings. According to the SPO, the relevance of this factor in the context of risk assessment was further upheld by the Court of Appeals Panel.¹⁴⁸

65. In the Reply, Kilaj argues that there is no evidence "whatsoever capable of founding a fear" that he would interfere with witnesses to be called by Victims' Counsel or Defence witnesses, or that he would have "anything to gain from doing so".¹⁴⁹ Furthermore, Kilaj replies that there is no evidence upon which to conclude that he may engage in other forms of non-witness related evidence tampering, and that the Pre-Trial Judge did not make such a finding.¹⁵⁰

2. Assessment of the Court of Appeals Panel

66. At the outset, the Appeals Panel recalls the applicable standard to determine whether any of the grounds under Article 41(6)(b) of the Law warrant continued detention, namely, "less than certainty, but more than a mere possibility of a risk materialising".¹⁵¹ The Panel further recalls that Article 41(6)(b) of the Law does not require the lower panel to be satisfied that the risks specified in subparagraphs (i) to (iii) will in fact occur in the event of provisional release being granted, or to be satisfied that they are substantially likely to occur.¹⁵²

67. The Panel also recalls that the assessment to be conducted by a judge pursuant to Article 41(6)(b) of the Law is a holistic assessment of the specific circumstances of the case in order to determine whether the SPO presented specific reasoning based on

¹⁴⁸ Response, para. 24.

¹⁴⁹ Reply, para. 17.

¹⁵⁰ Reply, para. 18.

¹⁵¹ See e.g. *Veseli* First Appeal Decision on Detention, para. 17; *Veseli* Fourth Appeal Decision on Detention, para. 31.

¹⁵² See e.g. *Veseli* First Appeal Decision on Detention, para. 19; *Veseli* Fourth Appeal Decision on Detention, para. 31.

evidence supporting the belief of a sufficiently real possibility that (one or more of) the risks under Article 41(6)(b)(i)-(iii) of the Law exist.¹⁵³

68. The Appeals Panel notes that in assessing the risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge considered, *inter alia*: (i) Kilaj's "demonstrated willingness" to violate court orders and intervene in proceedings to which he is not a Party, by "willingly misusing [Specialist Chambers] witness-related information in wanton disregard for [Specialist Chambers] confidentiality rules"; (ii) his knowledge of the charges against him and awareness of the evidence in support; (iii) Kilaj's access to sensitive witness-related information, once served with the Confirmed Indictment; (iv) the fact that 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; (v) Kilaj's "sufficient knowledge" of the identity of potential witnesses in the present case; (vi) the fact that the risk of interference 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; (vii) the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the Specialist Chambers; and (viii) Kilaj's national profile in Kosovo.¹⁵⁴

69. Regarding the Pre-Trial Judge's consideration of Kilaj's "demonstrated willingness" to violate court orders and intervene in proceedings to which he is not a Party,¹⁵⁵ the Panel notes that Kilaj argues that there is no evidence that he ever interfered with witnesses in Case 06,¹⁵⁶ that this matter "goes directly to a central issue

¹⁵³ See e.g. Appeal Decision on Continued Detention, para. 39; *Veseli* First Appeal Decision on Detention, para. 19; *Veseli* Fourth Appeal Decision on Detention, para. 41.

¹⁵⁴ Impugned Decision, paras 30-32. See also Impugned Decision, para. 26.

¹⁵⁵ See Impugned Decision, para. 30.

¹⁵⁶ Appeal, para. 62.

in this case which is yet to be determined”¹⁵⁷ and that in any event, the Pre-Trial Judge failed to acknowledge that the risk of obstruction in relation to witnesses in Case 06 has diminished since the SPO case is closed.¹⁵⁸

70. The Panel recalls that the standard for assessing the risks under Article 41(6)(b) of the Law does not require a demonstration that Kilaj *has* intimidated or interfered with witnesses or that he *will* do so. The Panel emphasises that in determining the necessity of detention, the question revolves around the possibility, not the inevitability, of a future occurrence,¹⁵⁹ and that Article 41(6)(b)(ii) of the Law does not require proof that obstruction has actually occurred in the past.¹⁶⁰ Accordingly, Kilaj’s suggestion that there is no evidence that he ever interfered with witnesses in Case 06,¹⁶¹ is irrelevant for the purpose of this decision.¹⁶²

71. Turning now to Kilaj’s related argument that the finding on his “demonstrated willingness” to violate court orders and intervene in proceedings to which he is not a Party is a matter which “goes directly to a central issue in this case which is yet to be determined”,¹⁶³ the Panel first recalls that the very specific nature of the confirmed charges is a relevant factor that the Pre-Trial Judge considered in the assessment of the existence of a risk of obstruction to the proceedings.¹⁶⁴ Although it was not erroneous for her to rely on the confirmed charges in this case, the Panel is of the view that the language used by the Pre-Trial Judge, namely that Kilaj “demonstrated willingness to [obstruct the proceedings]”,¹⁶⁵ may lead to some ambiguity. However, in the Panel’s view, the Pre-Trial Judge’s impugned reference should be understood

¹⁵⁷ Appeal, para. 66.

¹⁵⁸ Appeal, paras 62-63.

¹⁵⁹ See *Gucati* Appeal Decision, para. 67. See also *Veseli* First Appeal Decision on Detention, para. 19; *Veseli* Fourth Appeal Decision on Detention, para. 36.

¹⁶⁰ See *Veseli* First Appeal Decision on Detention, para. 38.

¹⁶¹ See Appeal, para. 62.

¹⁶² Appeal Decision on Continued Detention, para. 43. See also *Haradinaj* Consolidated Appeal Decision on Detention, para. 44.

¹⁶³ See Appeal, para. 66, referring to Impugned Decision, para. 25, fn. 41.

¹⁶⁴ *Haradinaj* Consolidated Appeal Decision on Detention, para. 45.

¹⁶⁵ See Impugned Decision, para. 30.

in its context and does not amount to a finding in relation to the charges in the Indictment which must be proven beyond reasonable doubt by the SPO at trial.

72. In any event, a review of other findings made in the Impugned Decision shows the Pre-Trial Judge was mindful of the applicable standard and of the requirement, under Article 41(6)(a) of the Law, to determine whether, at the time of the review decision, “a grounded suspicion that [the Accused] has committed a crime within the jurisdiction of the Specialist Chambers”, continues to exist.¹⁶⁶ In that regard, the Panel notes that the Pre-Trial Judge correctly referred elsewhere in the Impugned Decision to the “grounded suspicion” that Kilaj committed offences within the jurisdiction of the Specialist Chambers.¹⁶⁷ Accordingly, the Panel finds that it was within the Pre-Trial Judge’s discretion to rely on this factor as one factor among others in the context of her review of pre-trial detention to reach her conclusion on the existence of a risk of obstruction.

73. Turning to the impact of the closure of the SPO case in Case 06,¹⁶⁸ the Panel first notes that, contrary to Kilaj’s allegation,¹⁶⁹ the ICTY jurisprudence he relies upon does not reflect circumstances similar to his own case¹⁷⁰ and the statement quoted by Kilaj in the Appeal is misleadingly taken out of context. Notably, the Panel observes that

¹⁶⁶ See Impugned Decision, para. 22. See also Appeal Decision on Continued Detention, para. 43 (where the Panel noted that in the Decision Arrest Warrants, the Pre-Trial Judge considered that Kilaj *was alleged* to have willingly misused “[Specialist Chambers] witness-related information” and *alleged* to have displayed a “wanton disregard for [Specialist Chambers] confidentiality rules”) (emphasis added). See also e. g. *Haradinaj* Consolidated Appeal Decision on Detention, para. 28; *Thaçi* Second Appeal Decision on Detention, para. 36.

¹⁶⁷ See e.g. Impugned Decision, para. 23. See also *Gucati* Appeal Decision, para. 60 (“The Court of Appeals Panel considers that the manner in which the Single Judge refers to Gucati’s conduct must be understood in light of his analysis and eventual finding under Article 41(6) of the Law that the evidence establishes a ‘grounded suspicion’ that Gucati ‘committed a crime within the jurisdiction of the Specialist Chambers’”).

¹⁶⁸ See Appeal, paras 62-63.

¹⁶⁹ See Appeal, para. 63, referring to *Haradinaj et al.* Decision, para. 19.

¹⁷⁰ A review of the ICTY *Haradinaj et al.* Decision reflects that the accused, who had voluntarily surrendered to the ICTY, was in fact requesting a short temporary release, during the court recess and that his motion was based on humanitarian grounds. See *Haradinaj et al.* Decision, paras 1, 8, 10, 21.

the ICTY decision to grant the request of the accused, Mr Brahimaj, for temporary provisional release during a recess period was mainly based on the consideration that the prosecution's case in the accused's *own* case was closed and that no defence would be presented. In these specific circumstances, the ICTY trial chamber found that the risk of interference with witnesses, victims or other persons had "further diminishe[d]".¹⁷¹

74. In any event, the Appeals Panel recalls that there is no temporal limit to the assessment of the risk of obstruction under Article 41(6)(b)(ii) of the Law, and what matters is whether there exists a risk of obstructing the "progress of the criminal proceedings", not only the progress of the trial.¹⁷² While the Appeals Panel recalls that the risk of obstruction will likely diminish with the passing of time,¹⁷³ such risk may not always be reduced significantly, depending on the circumstances of the case.¹⁷⁴ The Panel further recalls the Court of Appeals Chamber's finding, with respect to another case before the Specialist Chambers, that the risk of obstruction may continue until the end of the trial.¹⁷⁵

75. Turning to whether there is still a risk that he obstructs the proceedings in Case 06, Kilaj argues that while the closure of the SPO's case in Case 06 "may not have

¹⁷¹ *Haradinaj et al.* Decision, para. 19.

¹⁷² *Veseli* Fourth Appeal Decision on Detention, para. 35. See also *Haradinaj* Consolidated Appeal Decision on Detention, para. 41.

¹⁷³ See e.g. *Veseli* Fourth Appeal Decision on Detention, para. 35. See also *Haradinaj* Consolidated Appeal Decision on Detention, para. 42; ECtHR, *Letellier v. France*, no. 12369/86, Judgment, 26 June 1991, para. 39; ECtHR, *W. v. Switzerland*, no. 14379/88, Judgment, 26 January 1993, para. 35; ECtHR, *Clooth v. Belgium*, no. 12718/87, Judgment, 12 December 1991, para. 43.

¹⁷⁴ *Veseli* Fourth Appeal Decision on Detention, para. 35. See also *Haradinaj* Consolidated Appeal Decision on Detention, para. 42.

¹⁷⁵ *Haradinaj* Consolidated Appeal Decision on Detention, paras 42-43. In addition, in Case 06, the Court of Appeals Chamber also upheld the Trial Panel's finding that the risk to obstruct the proceedings of the Specialist Chambers under Article 41(6)(b)(ii) of the Law continued to exist, in relation to SPO witnesses, despite the conclusion of the SPO case. See *Veseli* Fourth Appeal Decision on Detention, para. 49; *Selimi* Fifth Appeal Decision on Detention, para. 54; KSC-BC-2020-06, IA035/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, 14 August 2025 (confidential version filed on 13 August 2025), para. 34.

entirely extinguished the risk of obstruction, the [Pre-Trial Judge] should have recognised that it does necessarily diminish it”.¹⁷⁶ The Panel notes that, in the Impugned Decision, when addressing Kilaj’s argument in that respect, namely that the close of the SPO’s case extinguished the risks of obstruction in Case 06, the Pre-Trial Judge observed that such risk “does not cease to exist with the closing of the SPO’s case in chief”.¹⁷⁷

76. The Panel recalls that in determining whether any of the grounds for detention under Article 41(6)(b) of the Law exist, there is no requirement for a panel conducting a review of detention to “quantify” the risk of obstruction it identifies, rather it must satisfy itself that “there are articulable grounds to believe” that at least one of the enumerated risks under Article 41(6)(b) of the Law will materialise.¹⁷⁸

77. For these reasons, the Panel finds that the Pre-Trial Judge was not required to engage in determining whether the risk of obstruction in relation to Case 06 had diminished, as long as she satisfied herself that the risk continued to exist in line with this applicable standard. Accordingly, Kilaj’s argument is dismissed.

78. Turning to Kilaj’s contention that the Pre-Trial Judge erred in finding that there is a risk that he will interfere with witnesses in his own case, the Panel notes that Kilaj argues in particular that the SPO is yet to file its witness list and none of the witnesses are known to him, save for one.¹⁷⁹ However, the Panel recalls that the determination of the existence of risks under Article 41(6)(b) of the Law does not require an individual assessment of the specific risks and/or vulnerabilities by each particular

¹⁷⁶ See Appeal, para. 63.

¹⁷⁷ Impugned Decision, para. 31.

¹⁷⁸ See *Selimi* Fifth Appeal Decision on Detention, para. 48. See also IA007/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi’s Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 19-23.

¹⁷⁹ See Appeal, para. 65.

witness,¹⁸⁰ and the fact that an accused is not yet provided with the identities of SPO witnesses does not prevent a finding that there is a risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law.¹⁸¹

79. The Panel notes that Kilaj takes issue with the Pre-Trial Judge's finding that he has "sufficient knowledge" of the identity of potential witnesses.¹⁸² Assuming it is indeed correct that the SPO has not yet filed its witness list,¹⁸³ the Panel observes that the Pre-Trial Judge also took into consideration the fact that Kilaj has knowledge of the evidence in support of the charges against him and that he has access to sensitive witness-related information since he was served with the Confirmed Indictment.¹⁸⁴ In this regard, the Panel also notes that the Pre-Trial Judge further considered the fact that the SPO had "largely" completed the disclosure of evidence under Rule 102(1) of the Rules.¹⁸⁵ As a result, the Panel sees no error in the Pre-Trial Judge's reliance on Kilaj's knowledge of the case to conclude that there is a risk that he will interfere with witnesses in his own case.

80. The Appeals Panel is mindful that an accused's access to and increased knowledge of confidential witness-related information is not sufficient in itself to justify the denial of provisional release.¹⁸⁶, although it may be a relevant factor to

¹⁸⁰ See *Selimi* Fifth Appeal Decision on Detention, para. 27. The Panel notes Kilaj's related argument that he knows of only one SPO witness and that it would be "absurd" to consider that this person could be influenced by him. See Appeal, para. 65. Assuming that Kilaj's point is that the Pre-Trial Judge should have assessed the risk of interference in relation to this specific witness, the Panel is not convinced that she had an obligation to do so. Given that, as recalled above, the determination of the existence of risks under Article 41(6)(b) of the Law does not require an individual assessment of the specific risks and/or vulnerabilities by each particular witness, Kilaj's argument is dismissed.

¹⁸¹ See *Selimi* Fifth Appeal Decision on Detention, para. 27.

¹⁸² See Impugned Decision, para. 31.

¹⁸³ See F00395, Order Relating to the Calendar for the Remaining Pre-Trial Proceedings, 25 July 2025, paras 16, 18(c) (ordering the SPO to file, *inter alia*, its list of witnesses by 19 September 2025). See also Appeal, para. 65.

¹⁸⁴ See Impugned Decision, para. 30.

¹⁸⁵ See Impugned Decision, paras 30, 42, fn. 70. See also Impugned Decision, fn. 41.

¹⁸⁶ See e.g. *Thaçi* Second Appeal Decision on Detention, para. 38; *Veseli* Second Appeal Decision on Detention, para. 31.

determine the existence of a risk of obstruction,¹⁸⁷ and it provides an increased *ability* to obstruct the proceedings as more detailed information becomes available to the Accused.¹⁸⁸ However, in the present circumstances, and in light of the other factors relied upon by the Pre-Trial Judge that have been upheld on appeal,¹⁸⁹ the Appeals Panel finds that it was within the Pre-Trial Judge's discretion to consider the ongoing disclosure in the case and Kilaj's increased access to witness-related information as contributing to the existence of a risk of interference with witnesses in the present case.

81. Finally, the Panel finds some merit in Kilaj's assertion that the Pre-Trial Judge did not expressly discuss whether he may interfere with Defence witnesses or engage in other forms of "non-witness related evidence tampering".¹⁹⁰ Accordingly, the Panel will not entertain the SPO's submissions to that effect.¹⁹¹

82. Regarding the Pre-Trial Judge's reference to the general climate of witness interference that persists in Kosovo,¹⁹² the Panel recalls that while it is a relevant contextual factor to be taken into account in the determination of whether risks under Article 41(6)(b)(ii) of the Law exist, this factor alone is insufficient to justify continued detention.¹⁹³ However, the Panel notes that this factor was only considered as a background contextual factor by the Pre-Trial Judge.¹⁹⁴ A plain reading of the Impugned Decision shows that the Pre-Trial Judge assessed the risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law, in light of other factors recalled above,¹⁹⁵ and clearly stressed that she assessed these factors "against the backdrop" of the climate of fear and intimidation in Kosovo

¹⁸⁷ See Appeal Decision on Continued Detention, para. 44.

¹⁸⁸ See *Thaçi* Second Appeal Decision on Detention, para. 40.

¹⁸⁹ See above, paras 68, 72, 77.

¹⁹⁰ See Reply, para. 18.

¹⁹¹ See Response, para. 22.

¹⁹² See Appeal, para. 64.

¹⁹³ See e.g. *Selimi* Fifth Appeal Decision on Detention, para. 31; *Selimi* First Appeal Decision on Detention, para. 61.

¹⁹⁴ Impugned Decision, para. 32.

¹⁹⁵ See above, para. 68.

against (potential) witnesses testifying before the Specialist Chambers.¹⁹⁶ Therefore, contrary to Kilaj's assertion, the Pre-Trial Judge did not rely on this factor alone to conclude that the risk that he will obstruct the proceedings remains particularly high.¹⁹⁷

83. Furthermore, although the Panel agrees with Kilaj that the Pre-Trial Judge did not "link" this consideration to him personally,¹⁹⁸ the Panel considers that this was not required and that it was reasonable for the Pre-Trial Judge to be mindful of the climate of witness interference prevailing in Kosovo, as a contextual factor, in conducting its assessment of the risk that Kilaj would obstruct the proceedings of the Specialist Chambers.

84. Recalling the discretion of the lower panel to evaluate the circumstances militating for or against detention,¹⁹⁹ the Panel finds that it was within the discretion of the Pre-Trial Judge to consider that the risk that Kilaj obstructs the proceedings of the Specialist Chambers under Article 41(6)(b)(ii) of the Law continues to exist.²⁰⁰ Kilaj's third ground of appeal is therefore dismissed.

D. ALLEGED ERRORS IN ASSESSING THE RISK OF FLIGHT (GROUND 4)

1. Submissions of the Parties

85. Kilaj argues that the Pre-Trial Judge wrongly relied upon the continuing disclosure of SPO material to provide support for her finding that Kilaj has "an increased insight into the evidence underpinning the charges through the ongoing disclosure process".²⁰¹ Kilaj provides a list of examples of material disclosed showing, in his view, that the Pre-Trial Judge relied on a number of disclosure packages which

¹⁹⁶ Appeal, para. 64.

¹⁹⁷ Impugned Decision, para. 32.

¹⁹⁸ See Appeal, para. 64.

¹⁹⁹ See e.g. Case 18-01 Appeal Decision on Release, para. 15. See also *Gucati* Appeal Decision, para. 49.

²⁰⁰ Impugned Decision, para. 33.

²⁰¹ Appeal, para. 67, referring to Impugned Decision, para. 25, fn. 41. See also Reply, para. 19.

contain no, or no significant, evidence concerning the case against Kilaj specifically.²⁰² Accordingly, Kilaj submits that none of the material relied upon by the Pre-Trial Judge provides him with further insight into the case against him and none of it could reasonably contribute to a conclusion that he poses a risk of flight.²⁰³

86. The SPO responds that Kilaj misrepresents the Impugned Decision,²⁰⁴ and that the ongoing disclosure of SPO related material is an entirely relevant consideration in the context of assessing risks under Article 41(6) of the Law²⁰⁵ and was only one among several factors, which were weighed as a “whole” when the Pre-Trial Judge considered his risk of flight.²⁰⁶

2. Assessment of the Court of Appeals Panel

87. The Appeals Panel recalls that the conditions set forth in Article 41(6)(b) of the Law are in the alternative to one another.²⁰⁷ If one of those conditions is fulfilled, the other conditions do not have to be addressed in order for detention to be maintained. Accordingly, the errors Kilaj alleges with regard to Article 41(6)(b)(i) of the Law need not be addressed.²⁰⁸ Any findings by the Panel on these arguments would not have an impact on the outcome of the Impugned Decision, given that the Panel has found no error in the Pre-Trial Judge’s conclusion that a risk of obstruction existed under Article 41(6)(b)(ii) of the Law, making continued detention necessary.

²⁰² Appeal, para. 68; Reply, paras 19-22.

²⁰³ Appeal, para. 69. See also Reply, para. 22.

²⁰⁴ Response, paras 26, 31.

²⁰⁵ Response, para. 27. See also Response, paras 29-30.

²⁰⁶ Response, para. 29. The SPO adds that the disclosure packages cited were expressly indicated to be merely illustrative, and the SPO disclosure under Rule 102(1)(b) of the Rules remains ongoing in this case. Nonetheless, the SPO notes that, in the list of examples of material disclosed provided in the Appeal, Kilaj included an extraction from his own mobile phone, establishing his presence in The Hague during the October 2023 visit to the Detention Facilities. In the SPO’s view, this is illustrative of ongoing disclosure of material relevant to the charges in this case. See Response, paras 27-28.

²⁰⁷ See e.g. *Selimi* First Appeal Decision on Detention, para. 76; *Shala* First Appeal Decision on Detention, para. 43.

²⁰⁸ See Appeal, paras 67-69.

88. In light of the above, Kilaj's fourth ground of appeal is dismissed.

V. DISPOSITION

89. For these reasons, the Court of Appeals Panel:

DENIES the Appeal in its entirety; and

ORDERS the reclassification of the Response (IA004/F00003) and the Reply (IA004/F00004) as public, pursuant to Rule 82(5) of the Rules.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 1 September 2025

At The Hague, the Netherlands