



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Date: 3 November 2023
Language: English
Classification: Public

**Public Redacted Version of Corrected Version of
Decision on Transfer Order Pursuant to Arrest by the Specialist Prosecutor**

Specialist Prosecutor
Kimberly P. West

Registry
Fidelma Donlon

THE SINGLE JUDGE,¹ pursuant to Articles 33(2), 35(2)(h), 35(3), 38(2), 41, and 53 of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 50(1), 52, 200, and 202 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby issues this decision.

I. PROCEDURAL BACKGROUND

1. On [REDACTED], the Single Judge granted, *inter alia*, the Specialist Prosecutor's Office ("SPO") request to search the residence(s), vehicle(s) and person of Isni Kilaj ("Mr Kilaj") for the purpose of seizing evidence of an offence within the meaning of Article 15(2) of the Law ("Search and Seizure Decision").²
2. On 2 November 2023, following the execution of the Search and Seizure Decision, the SPO notified the Single Judge of the arrest of Mr Kilaj, pursuant to an order by the SPO.³
3. On the same day, the SPO submitted a request seeking the transfer of Mr Kilaj to the Specialist Chambers' ("SC") Detention Facilities in The Hague, the Netherlands ("Host State") following his arrest ("Request").⁴

II. SUBMISSIONS

4. The SPO submits that Mr Kilaj was arrested on 2 November 2023 by the SPO in Kosovo.⁵ It contends that there is a grounded suspicion that Mr Kilaj has committed, either alone or in co-perpetration with others, offences against the administration of

¹ KSCPR-2018, F00004, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² [REDACTED].

³ [REDACTED].

⁴ KSC-BC-2018-01, F00490, Specialist Prosecutor, *Urgent Request for Transfer Order*, 2 November 2023, strictly confidential and *ex parte*.

⁵ Request, para. 1.

justice within the jurisdiction of the SC under Article 15(2) of the Law, including obstructing official persons in performing official duties under Article 401 of the 2019 Kosovo Criminal Code, Code No. 06/L-074 (“KCC”) and violating the secrecy of the proceedings under Article 392 of the KCC.⁶

5. The SPO further submits that Mr Kilaj’s transfer and continued detention are necessary (i) to ensure his appearance in any subsequent proceedings; (ii) that he does not hide, destroy or tamper with evidence or obstruct the progress of the criminal proceedings; and/or (iii) to prevent Mr Kilaj from repeating, or continuing with the commission of, crimes.⁷

6. The SPO contends that during the judicially authorised search of the residence of Mr Kilaj on 2 November 2023, the SPO identified and recovered confidential witness-related material.⁸ According to the SPO, this material includes, by way of example, [REDACTED].⁹ The SPO claims that this material relates directly to SC proceedings, and to confidential information for which Mr Kilaj has no legitimate purpose and no authorisation to access.¹⁰ The SPO avers that Mr Kilaj’s possession of such information is in violation of the secrecy of proceedings, and gives rise to, at least, a grounded suspicion that such material was intended, or actually used, for purposes of interfering with the administration of justice and obstructing proceedings.¹¹

⁶ Request, para. 2.

⁷ Request, para. 2.

⁸ Request, para. 3.

⁹ Request, para. 3.

¹⁰ Request, para. 3.

¹¹ Request, para. 3.

III. APPLICABLE LAW

7. Pursuant to Article 35(3) of the Law, the police within the SPO shall have the authority and responsibility to exercise powers given to the Kosovo Police under Kosovo law.

8. Pursuant to Article 35(2) of the Law, the Specialist Prosecutor shall have the authority to conduct criminal investigations within the subject matter jurisdiction of the SC. Pursuant to Articles 35(2)(h) and 38(2) of the Law, the SPO's authority includes ordering the arrest of a person for a period of no more than forty-eight (48) hours on grounds set out at Article 41(6) of the Law and in compliance with Article 41 of the Law generally, other relevant provisions of this Law and the Rules.

9. Pursuant to Rule 52(1) of the Rules, where a person is arrested upon an arrest order issued by the Specialist Prosecutor pursuant to Article 35(2)(h) of the Law and in compliance with Article 41(6) of the Law, the Specialist Prosecutor shall immediately inform the President and the Registrar. Pursuant to Rule 52(3) of the Rules, following the arrest, the Specialist Prosecutor shall apply, without undue delay, to a Panel for an order for the transfer of the person to a detention facility of the SC. Where the Panel orders the transfer, the Registrar shall make the necessary arrangements with the competent authorities.

10. Pursuant to Rule 52(2) of the Rules, in accordance with Article 41(3) of the Law, any person arrested pursuant to this Rule shall be brought before a Panel within forty-eight (48) hours of his or her arrest. The Panel shall satisfy itself that the person has been informed of the reasons for his or her arrest as provided for in Article 41(6) of the Law, and of his or her rights under the Law and the Rules. The Panel shall decide on the continued detention or release of the person, within forty-eight (48) hours from the moment the detained person was brought before it.

11. Pursuant to Article 41(6) of the Law, the SC or the SPO shall only order the arrest and detention of a person when (a) there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that the person has threatened to commit. Pursuant to Article 41(1) and (4) of the Law, an arrest order by the SPO must be consistent with the fundamental rights provided for in Chapter II of the Constitution, and the person concerned must be informed of his or her rights under the Law with a view to exercising them before the Single Judge.

12. Pursuant to Rule 50(1) of the Rules, where a suspect or accused is being proceeded following a summons, decision or order of the SC or the Specialist Prosecutor, the Panel shall order the competent authorities to transfer the person to the SC without delay, and may include conditions for the transfer and further detention, after consulting with the Registrar.

13. Pursuant to Article 53(2) of the Law, an order by the SC shall have the same force and effect as an order issued by any other Kosovo court or judge warrant.

IV. DISCUSSION

A. JURISDICTION

14. Based on the information provided by the SPO, and without prejudice to any subsequent determinations on this matter, the Single Judge finds that the SC has jurisdiction over the offences allegedly committed, as provided in Articles 6(2) and 15(2) of the Law, as they relate to SC official proceedings and officials.¹²

B. OFFENCES ALLEGEDLY COMMITTED

15. The Single Judge recalls that in the Search and Seizure Decision, he found that there was a grounded suspicion that evidence of an offence under Article 15(2) can be found in the residence(s), vehicle(s), and/or on the person of Mr Kilaj, and that the search will result in the discovery and seizure thereof accordingly.¹³ Without prejudice to subsequent determinations on this matter, the Single Judge takes note that, in the implementation of the Search and Seizure Decision, the SPO seized a number of material, [REDACTED].¹⁴ The Single Judge further pays heed to the SPO's allegation that this material was intended, or actually used for the purposes of interfering with the administration of justice within the meaning of Articles 392 and 401 of the KCC.¹⁵

¹² See also KSC-BC-2020-07, F00057, Single Judge, *Decision on Defence Challenges*, 27 October 2020, public, paras 23-26; F00147/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Preliminary Motions*, 8 March 2021, public, paras 28-34.

¹³ Search and Seizure Decision, paras 27-30.

¹⁴ Request, para. 3.

¹⁵ Request, paras 2-3.

C. ORDER FOR TRANSFER TO SC DETENTION FACILITIES

16. For security reasons, the SPO has invoked a change of venue to the Host State pursuant to Article 3(8)(a) of the Law.¹⁶

17. In light of the existing venue change to the Host State,¹⁷ and having regard to the arrest of Mr Kilaj by order of the Specialist Prosecutor, the Single Judge finds it necessary to order the transfer of Mr Kilaj to the SC Detention Facilities in the Host State, managed by the Registrar. Mr Kilaj shall be brought before the Single Judge within forty-eight (48) hours of his arrest pursuant to Article 41(3) of the Law and Rule 52(2) of the Rules.

D. COMPLIANCE WITH FUNDAMENTAL RIGHTS

18. Insofar as appropriate measures are adopted that will protect the fundamental rights of Mr Kilaj when executing the transfer order, the Single Judge finds that nothing in the SPO's request for the transfer of Mr Kilaj to the SC Detention Facilities in the Host State is *prima facie* inconsistent with his fundamental rights as provided for in Chapter II of the Constitution. To this effect, pursuant to Article 41(4) of the Law and Rule 52(2) of the Rules, as soon as Mr Kilaj is brought before the Single Judge, he shall satisfy himself that Mr Kilaj has been informed of the reasons for his arrest, and of his rights under the Law and the Rules with a view to exercising them before the Single Judge as soon as practicable.

E. EXECUTION AND SERVICE OF THE TRANSFER ORDER

19. The Registrar shall execute the annexed order for transfer to the SC Detention Facilities in the Host State, making the necessary arrangements for the prompt transfer

¹⁶ Request, para. 5.

¹⁷ See KSCPR-2018, F00003, President, *Decision on the Specialist Prosecutor's Invocation of Change of Venue under Article 3(8)(a) of the Law*, 29 May 2018, public. In light of this decision, the SPO request invoking a change of venue is moot.

of Mr Kilaj, as foreseen in Rule 52(3) of the Rules. The Registrar may, as appropriate and necessary, disclose the transfer order for the purposes of its execution.

20. Upon arrival at the SC Detention Facilities, or in any case before Mr Kilaj's first appearance, the Registrar shall submit a report on his transfer to the SC Detention Facilities to the Single Judge, including any relevant details and information provided by the SPO.

V. FIRST APPEARANCE

21. Bearing in mind that the arrest of Mr Kilaj and his transfer to the SC Detention Facilities took place on 2 and 3 November 2023, respectively, the Single Judge finds it appropriate to schedule a hearing for the first appearance of Mr Kilaj before him on **Saturday, 4 November 2023, at 10:00 hours**, with a view to ensuring that the rights of Mr Kilaj under the Law and the Rules, and in particular under Article 41(3) of the Law and Rule 52(2) of the Rules, are respected.

22. Lastly, noting that the publicity of hearings may extend beyond the courtroom, the Single Judge authorises the taking of photographs at the start of the hearing.

VI. DISPOSITION

23. For the above reasons, the Single Judge hereby:

- (a) **GRANTS** the Request;
- (b) **DIRECTS** the SPO to consult with the Registrar regarding the necessary arrangements to be made for the transfer of Mr Kilaj, including any appropriate and necessary disclosure of the annexed transfer order, for its execution and service;
- (c) **DECIDES** that the present decision and its annex, currently classified as strictly confidential, may be communicated, or its existence be

revealed, to any competent authority of Kosovo, a (transiting) Third State, as the case may be, as well as the Host State, as necessary for the execution of the annexed transfer order;

- (d) **ORDERS** the SPO to transmit to the Registrar all available information that may be of assistance to her in the execution of the annexed transfer order and any information of relevance to assessing any risks to victims and witnesses associated with Mr Kilaj's arrest by the SPO and transfer to the SC Detention Facilities in the Host State;
- (e) **DIRECTS** the Registrar, upon arrival at the SC Detention Facilities, or in any case before the first appearance of Mr Kilaj, to submit a report on his transfer, as specified in paragraph 20 of this decision;
- (f) **DECIDES** to convene a hearing for Mr Kilaj's first appearance before the Single Judge on **Saturday, 4 November 2023, at 10h00**; and
- (g) **AUTHORISES** the Registrar to organise, at the start of the hearing, the taking of photographs for one minute and a half.



Judge Nicolas Guillou

Single Judge

Dated this Friday, 3 November 2023

At The Hague, the Netherlands.

Explanatory Note

On the cover page, Isni Kilaj has been deleted as a recipient of the decision.

In the introductory paragraph, fourth line from top, the word “order” has been replaced by the word “decision”.