



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2018-01  
**Before:** **Single Judge Panel**  
Judge Nicolas Guillou  
**Registrar:** Dr Fidelma Donlon  
**Date:** 6 November 2023  
**Language:** English  
**Classification:** **Public**

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### **Decision on Continued Detention**

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**Specialist Prosecutor**  
Kimberly P. West

**Duty Counsel**  
Iain Edwards

**Registry**  
Fidelma Donlon

**THE SINGLE JUDGE**,<sup>1</sup> pursuant to Articles 21(2), 33(2) and 41(2), (3), and (6) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 52(2) and 82(5) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby issues this decision.

## I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 2 November 2023, the Specialist Prosecutor's Office ("SPO") notified the Single Judge of the arrest of Isni Kilaj ("Mr Kilaj"), pursuant to an order by the SPO.<sup>2</sup>
2. On 3 November 2023, the Single Judge ordered, upon request of the SPO,<sup>3</sup> that Mr Kilaj be transferred to the Specialist Chambers' ("SC") Detention Facilities in The Hague, the Netherlands, following his arrest.<sup>4</sup> The Single Judge further decided to convene a public hearing for Mr Kilaj's first appearance on 4 November 2023, at 10:00 hours ("First Appearance Hearing").<sup>5</sup>
3. On the same day, Mr Kilaj was transferred to the SC Detention Facilities.<sup>6</sup>

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

<sup>2</sup> KSC-BC-2018-01, F00489, Specialist Prosecutor, *Urgent Rule 52(1) Notification of Arrest of Isni Kilaj*, 2 November 2023, strictly confidential and *ex parte*. See also F00492, Specialist Prosecutor, *Prosecution Report on Arrest of Isni Kilaj*, 3 November 2023, confidential, with Annex 1, confidential, and Annex 2, strictly confidential and *ex parte*.

<sup>3</sup> KSC-BC-2018-01, F00490, Specialist Prosecutor, *Urgent Request for Transfer Order*, 2 November 2023, confidential. A public redacted version was submitted on 3 November 2023, F00490/RED.

<sup>4</sup> KSC-BC-2018-01, F00491/COR, Single Judge, *Corrected Version of Decision on Transfer Order Pursuant to Arrest by the Specialist Prosecutor ("Decision on Transfer Order")*, 3 November 2023, confidential, with Annex 1, confidential.

<sup>5</sup> Decision on Transfer Order, para. 23(f).

<sup>6</sup> KSC-BC-2018-01, F00493, Registrar, *Notification of Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers*, 3 November 2023, strictly confidential, with Annex 1, strictly confidential; F00495, Registrar, *Report on the Transfer of Isni Kilaj to the Detention Facilities*, 3 November 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*.

4. On the same day, the SPO submitted a request for the continued detention of Mr Kilaj (“SPO Request”).<sup>7</sup>
5. On 4 November 2023, the First Appearance Hearing took place,<sup>8</sup> during which the SPO and the Defence for Mr Kilaj (“Defence”),<sup>9</sup> among other things, presented oral submissions on the SPO Request.<sup>10</sup> The Single Judge further granted the Defence’s request to have the opportunity to submit a written response to the SPO Request before the Single Judge’s ruling on that matter.<sup>11</sup>
6. On the same day, the Defence filed written submissions on the SPO Request (“Defence Response”), in which it requests that the Single Judge orders the immediate release of Mr Kilaj.<sup>12</sup>
7. On 5 November 2023, as instructed by the Single Judge,<sup>13</sup> the SPO submitted a reply to the Defence Response, in which it maintains its position that Mr Kilaj shall remain detained.<sup>14</sup>

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<sup>7</sup> KSC-BC-2018-01, F00496, Specialist Prosecutor, *Prosecution Request for Continued Detention of Isni Kilaj*, 3 November 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. Confidential redacted versions of the SPO Request and annexes were submitted on the same day, F00496/CONF/RED, F00496/CONF/RED/A01, F00496/CONF/RED/A02.

<sup>8</sup> See KSC-BC-2018-01, Transcript of hearing (“First Appearance Transcript”), 4 November 2023, confidential, pp. 163-191.

<sup>9</sup> KSC-BC-2018-01, F00494, Registrar, *Notification of Assignment of Duty Counsel to Isni Kilaj*, 3 November 2023, strictly confidential, with Annex 1, confidential. See also First Appearance Transcript, p. 171, lines 1-13.

<sup>10</sup> First Appearance Transcript, p. 171, line 14 to p. 184, line 7.

<sup>11</sup> First Appearance Transcript, p. 190, lines 4-11.

<sup>12</sup> KSC-BC-2018-01, F00497/COR, Defence, *Corrected Version of Kilaj Defence Response to “Confidential Redacted Version of ‘Prosecution Request for Continued Detention of Isni KILAJ’”*, 4 November 2023, confidential.

<sup>13</sup> First Appearance Transcript, p. 190, lines 4-12.

<sup>14</sup> KSC-BC-2018-01, F00498, Specialist Prosecutor, *Prosecution Reply to F00497*, 5 November 2023, confidential.

## II. APPLICABLE LAW

8. Pursuant to Article 41(3) of the Law and Rule 52(2) of the Rules, any person who is deprived of his or her liberty without an order from the SC shall be brought within forty-eight (48) hours in person before a Specialist Chambers Judge who shall decide on his or her detention or release not later than forty-eight (48) hours from the moment the detained person was brought before the court.

9. 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.

10. Pursuant to Article 41(2) of the Law, any person deprived of his or her liberty by arrest or detention shall be entitled to challenge the lawfulness of his or her arrest, and such challenge shall be decided speedily by the SC.

11. Pursuant to Article 21(2) of the Law, in the determination of charges against him or her, the suspect shall be entitled to a fair and public hearing, subject to Article 23 of the Law and Rule 80(1) of the Rules, and any measures ordered by the SC for the protection of victims and witnesses.

12. Pursuant to Rule 82(5) of the Rules, where the basis for reclassification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

### III. DISCUSSION

13. Having considered the submissions and arguments of the Parties, the Single Judge finds, pursuant to Article 41(6)(a) of the Law, that there is a grounded suspicion that Mr Kilaj has committed offences against the administration of justice falling under the jurisdiction of the SC, including obstructing official persons in performing official duties within the meaning of Article 401 of the 2019 Kosovo Criminal Code, Code No.06/L-074 ("KCC") and violating secrecy of proceedings under Article 392 of the KCC, and Articles 15(2) and 16(3) of Law.

14. The Single Judge further finds that there are articulable grounds to believe that the Mr Kilaj: (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; and (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that the person has threatened to commit.

15. Considering the above, the Single Judge finds it appropriate to order the continued detention of Mr Kilaj. The reasons underlying the present decision will be provided in a subsequent written decision, by Thursday, 9 November 2023, with a view to enabling Mr Kilaj to challenge the lawfulness of his arrest and detention pursuant to Article 41(2) of the Law.<sup>15</sup>

### IV. RECLASSIFICATION ORDER

16. In order to adhere to the principle of publicity of proceedings, which extends beyond hearings in the courtroom to also cover filings and any other submissions

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<sup>15</sup> KSC-BC-2020-7, IA001/F00005, Court of Appeal, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 15, 17, 19.

in a case file,<sup>16</sup> the Single Judge orders the SPO to indicate whether the following filings can be reclassified as public, and the *ex parte* marking lifted, and/or to submit confidential and public (redacted) versions of these filings, as the case may be:

- F00489 (currently classified as strictly confidential and *ex parte*);
- F00492 and F00492/A01 (currently classified as confidential);
- F00496 (without annexes) (currently classified as (strictly) confidential and *ex parte*); and
- F00498 (currently classified as confidential).

17. The Single Judge also orders the Defence to indicate whether the following filing can be reclassified as public, or to submit a public redacted version of said filing, as the case may be:

- F00497/COR (currently classified as confidential).

18. The Single Judge further orders the Registrar to indicate whether the following filings can be reclassified as public, and the *ex parte* marking lifted, and/or to submit confidential and public (redacted) versions of these filings, as the case may be:

- F00493 (without annex) (currently classified as strictly confidential);
- F00494 (without annex) (currently classified as strictly confidential); and
- F00495, F00495/A01, and F00495/A02 (currently classified as strictly confidential and *ex parte*).

19. Should the SPO, the Defence, or the Registrar wish to retain the current classification of one or all the above-mentioned filings, it/she shall specify the

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<sup>16</sup> See KSC-BC-2020-04, F00277, Pre-Trial Judge, *Order for Submissions on the Reclassification of Filings or Redacted Versions*, 17 June 2021, public, para. 5; KSC-2020-07, F00115, Pre-Trial Judge, *Order for Reclassification of Filings*, 4 February 2021, public, para. 6.

reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed.

## V. DISPOSITION

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

- a. **GRANTS** the SPO Request;
- b. **ORDERS** the continued detention of Mr Kilaj;
- c. **ORDERS** the SPO, the Defence, and the Registrar to indicate whether the filings listed in paragraphs 16-18 of the present decision, can be reclassified as public and/or confidential, and the *ex parte* marking lifted, or to submit their/her reasons for maintaining the classification thereof and submit public and/or confidential redacted version(s) thereof, as the case may be, **by Wednesday, 8 November 2023**.



**Judge Nicolas Guillou**  
**Single Judge**

Dated this Monday, 6 November 2023

At The Hague, the Netherlands.