



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** **KSC-BC-2018-01**

**Before:** **Single Judge Panel**  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 3 November 2023

**Language:** English

**Classification:** Public

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**Further Public redacted version of 'Prosecution request for continued detention of  
Isni KILAJ, with confidential annexes 1 and 2'**

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**Specialist Prosecutor's Office**

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## I. INTRODUCTION

1. Pursuant to Article 41 of the Law<sup>1</sup> and Rule 52 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of Isni KILAJ ('Kilaj'). The criteria for detention under Article 41(6) of the Law are satisfied. No conditions short of detention in the Kosovo Specialist Chamber's ('KSC') detention facilities would be sufficient to mitigate the risks posed by Kilaj.

## II. PROCEDURAL HISTORY

2. On 20 October 2023, the Single Judge found a grounded suspicion that evidence of a crime under Article 15(2) could be found in the residences, vehicles or on the person of Mr Kilaj. [REDACTED]. The Single Judge granted an SPO request for an order authorising the search and seizure of those locations.<sup>3</sup>

3. On 2 November 2023, the SPO executed the Search Order. That same day, Kilaj participated in a voluntary interview with the SPO ('Interview').<sup>4</sup> Also that day, the SPO arrested Kilaj pursuant to an arrest order issued by the Specialist Prosecutor.

4. Also on 2 November 2023, the SPO requested to the Single Judge to issue an order for the transfer of Kilaj to the detention facilities of the KSC in The Hague.<sup>5</sup>

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<sup>1</sup> Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>3</sup> KSC-BC-2018-01/F00484, para.30; KSC-BC-2018-01/F00484/A01 ('Search Order').

<sup>4</sup> The Interview was conducted on 2 November 2023, and therefore is yet to be transcribed. A copy of the recording of the interview was provided to Kilaj at its conclusion.

<sup>5</sup> Request for transfer order, KSC-BC-2018-01/F00490.

5. On 3 November 2023, the Single Judge ordered Kilaj's transfer to the KSC detention facilities in The Hague, the Netherlands.<sup>6</sup>

### III. APPLICABLE LEGAL FRAMEWORK

6. The Single Judge must be satisfied<sup>7</sup> that: (1) there is a grounded suspicion that Kilaj has committed a crime within the jurisdiction of the KSC; and (2) there are articulable grounds to believe that: (i) there is a risk of flight; (ii) Kilaj will obstruct the progress of the criminal proceedings; or (iii) the seriousness of the crime or the manner or circumstances in which it was committed and Kilaj's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offense, complete an attempted crime or commit a crime which he has threatened to commit.<sup>8</sup>

7. Once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.<sup>9</sup> The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.<sup>10</sup> The 'belief' test denotes 'an acceptance of the

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<sup>6</sup> Corrected version of Decision on Transfer Order Pursuant to Arrest by the Specialist Prosecutor, KSC-BC-2018-01/F00491COR.

<sup>7</sup> See *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005 ('Gucati Appeals Decision'), 9 December 2020, para.51.

<sup>8</sup> Article 41(6)(b)(i)-(iii).

<sup>9</sup> See *Specialist Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49; See *Specialist Prosecutor v. Thaçi et al.*, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021 ('Veseli Interim Release Appeals Decision'), para.15. See also Articles 19(1.9), 19(1.10) and 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ('KCPC').

<sup>10</sup> Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.19.

possibility, not the inevitability, of a future occurrence'.<sup>11</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>12</sup> Articulate in this context means specified in detail by reference to the relevant information or evidence.<sup>13</sup>

#### IV. SUBMISSIONS

8. During the judicially authorised search of Kilaj's residence conducted on 2 November 2023, the SPO identified and recovered confidential witness-related materials. [REDACTED].<sup>14</sup>

9. There is grounded suspicion that Kilaj has committed offences against the administration of justice within the jurisdiction of the KSC under Article 15(2). His continued detention is necessary to (i) ensure his appearance in 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 him from repeating, or continuing with the commission of, crimes.

##### A. GROUNDED SUSPICION

10. The evidence shows that Kilaj is criminally responsible for committing either alone, or in co-perpetration with others, offences including obstructing official persons in performing official duties within the meaning of Article 401(2) of the 2019 Kosovo

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<sup>11</sup> See Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, paras 13-19; *Specialist Prosecutor v. Thaçi et al.*, Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021, para.21 citing Guçati Appeals Decision, KSC-BC-2020-07/IA001/F00005, paras 63, 67.

<sup>12</sup> Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.17.

<sup>13</sup> *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01862, 16 October 2023, para.12 citing Article 19.1.30 of the KCPC 2012, Law No. 04/L-123 defining 'articulate' as: 'the party offering the information or evidence must specify in detail the information or evidence being relied upon'.

<sup>14</sup> See Annex 2 (photographs of certain of the seized materials).

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 the Law.

11. Kilaj was a founding member of the KLA in Malisheve, and commander of the Lumi unit.<sup>15</sup> His deputy was Vllaznim KRYEZIU.<sup>16</sup> Kilaj has also served as the Chairman of THAÇI's PDK party in the Malisheve municipality.<sup>17</sup>

12. Notably, Kilaj has been reported as having previously [REDACTED]. [REDACTED].<sup>18</sup> [REDACTED].<sup>19</sup> [REDACTED].

13. Moreover, it is noted that the seized materials [REDACTED], and demonstrate a deliberate and systematic intent to interfere with the administration of justice. It is apparent from the face of the materials<sup>20</sup> that they pertain to confidential witness-related

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<sup>15</sup> Annex 1: 070717-TR-ET Part 1, p.6; Isni Kilaj, Deputy Minister of the Ministry of Finance, <https://mf.rks-giv.net/desk/inc/media/386A005D-26FC-43B6-8C4B-7E4CFC0DD599.pdf> .

<sup>16</sup> Annex 1: 070717-TR-ET Part 1, p.8.

<sup>17</sup> Annex 1: 070717-TR-ET Part 1, p.4; Isni Kilaj, Deputy Minister of the Ministry of Finance, <https://mf.rks-giv.net/desk/inc/media/386A005D-26FC-43B6-8C4B-7E4CFC0DD599.pdf> . It is also noted that Kilaj's son was appointed Kosovo's Consul in Ljubljana by THAÇI only a month after Kilaj had been interviewed by the SPO in December 2019. See <https://kossev.info/the-son-of-another-kosovo-official-questioned-in-the-special-court-was-appointed-kosovo-consul/> .

<sup>18</sup> [REDACTED].

<sup>19</sup> See Annex 2 ([REDACTED]).

<sup>20</sup> See photographs at Annex 2. Given that the materials were seized on 2 November 2023, translations are not yet available. The materials are being transported for processing in accordance with standard chain of custody procedures.

matters and to proceedings before the KSC. Kilaj has no legitimate access to, and no legitimate purpose for, such materials.

14. In the Interview, Kilaj, amongst other things, confirmed several pieces of potentially incriminatory information, including that certain of the seized [REDACTED], are his.

15. Kilaj also confirmed in the Interview that [REDACTED],<sup>21</sup> [REDACTED]. Kilaj admitted [REDACTED]. [REDACTED].<sup>22</sup>

#### B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

##### *i. Risk of Flight (Article 41(6)(b)(i))*

16. Kilaj is aware that evidence potentially supporting grave charges – which could attract a term of imprisonment of up to 5 years – have been seized from his residence. Were he not to be detained, he would have the opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of the KSC. In this regard, it is noted that a Court of Appeals in Albania has recently refused an extradition request from the KSC. Moreover, Kilaj's possession of the materials in question demonstrates a blatant disregard for the laws and rules of the KSC, in particular court-ordered protective measures.

17. More generally, the prevailing climate of obstruction in connection with KLA-related criminal proceedings, both in and outside Kosovo, allow for the mobilisation of supporters to assist Kilaj in fleeing to evade justice.<sup>23</sup>

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<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> See generally 'Obstructing the Investigation – Too many Obstacles, Too Little Evidence, in Sense Agency, ICTY: The Kosovo Case, 1998-1999', available at <https://kosovo.sense-agency.com/>.

*ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))*

18. The explicit and systematic nature of materials recovered, [REDACTED], demonstrates a conscious design to obstruct KSC proceedings. Not only do these materials concern confidentially classified information, aspects of their contents cannot be found anywhere in the public domain.

19. The fact that Kilaj has demonstrated a willingness to violate court orders, and intervene in proceedings to which he is not a party, suggest that it is even more likely for him to do so in proceedings where he may be an accused.

*iii. Risk of Criminal Offences (Article 41(6)(b)(iii))*

20. The factors discussed under Article 41(6)(b)(ii) above are also relevant under this limb of the test. There exists a risk that Kilaj will repeat the offences alleged to have been committed by him.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

21. No combination of release conditions, nor any additional measures foreseen in Article 41(12), could sufficiently, and to a degree comparable to that of detention at the KSC detention facilities, mitigate the existing risks with respect to Kilaj.<sup>24</sup> Detention is the only means by which these risks can be adequately managed.

22. Kilaj has demonstrated a clear motivation and propensity to acquire unauthorised access to confidential materials. It is only through the communication monitoring framework in place at the KSC detention facilities that his communications can be

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<sup>24</sup> See *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020 06/F01720, 16 August 2023, para.30.

effectively restricted and monitored, thereby mitigating the risks of him obstructing KSC proceedings or engaging in or contributing to further crimes.<sup>25</sup>

23. The reasons that proceedings were relocated away from Kosovo,<sup>26</sup> and the procedural framework and operational practice of the KSC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims and others at risk with a view to implementing the mandate of the KSC.<sup>27</sup>

#### D. DETENTION IS PROPORTIONAL

24. Given all of the above, including the stage of proceedings, detention is both reasonable and proportional.<sup>28</sup>

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<sup>25</sup> Shala Decision, KSC-BC-2020-04/F00045/RED, para.46; *See also* Kilolo Decision, ICC-01/05-01/13-259, para.43.

<sup>26</sup> Law No. 04/L-274, pp. 8-9 (“If the SITF investigation culminates in an indictment and trial proceedings, an environment conducive to the proper administration of justice should be provided. Accordingly, a specialist court within the Kosovo court system and a specialist prosecutor’s office would be used for any trial and appellate proceedings arising from the SITF investigation. This court would have a seat in Kosovo, but sensitive proceedings, including hearing of witnesses, would take place outside of the country in view of the nature of the allegations”); Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, 15 February 2016, preamble (“Referring to the exchange of letters between the President of the Republic of Kosovo and the High Representative of the European Union for Foreign Affairs and Security Policy dated 14 April 2014, ratified by Kosovo Law No. 04/L-274 of 15 May 2014, containing the commitment of the Republic of Kosovo to establish Specialist Chambers and a Specialist Prosecutor’s Office within the Kosovo judicial system to be used for trial and appellate proceedings arising from the investigation of the Special Investigative Task Force of the Special Prosecution Office of the Republic of Kosovo related to the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011 and which may be relocated to a third State subject to the conclusion of a Host State Agreement with the Host State”), article 3 (“The Kosovo Relocated Specialist Judicial Institution shall have a seat in the Host State”).

<sup>27</sup> *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi, 26 November 2021, KSC-BC-2020-06/F00582/RED (redacted version notified 8 December 2021), para.80.

<sup>28</sup> Shala Decision, KSC-BC-2020-04/F00045/RED, para.49; Gucati Appeals Decision, KSC-BC-2020-07, IA001/F00005, paras 72-73.



V. CLASSIFICATION

25. This filing is submitted confidentially pursuant to Rule 82(4). Confidential and public redacted versions will be filed.

VI. CONCLUSION

26. For the foregoing reasons, the SPO respectfully submits that Kilaj should remain detained.

**Word count: 2633**



**Kimberly P. West**

**Specialist Prosecutor**

Friday, 3 November 2023

At The Hague, the Netherlands