

In: KSC-BC-2018-01
Specialist Prosecutor *v.* Isni Kilaj

Before: Single Judge Panel
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Duty Counsel for Isni Kilaj

Date: 11 January 2024

Language: English

Classification: Public

Kilaj Request for Status Conference

Specialist Prosecutor's Office
Kimberly P. West

Duty Counsel for Isni Kilaj
Iain Edwards

I. INTRODUCTION

1. The Defence for Mr Isni Kilaj (“Defence”, “Suspect”) respectfully requests the scheduling of a status conference as soon as practicable, ideally on a date between Wednesday, 17 and Friday, 19 January 2024.
2. The purpose of the status conference will be for the Prosecution to update the Single Judge and the Defence on the progress of its investigations into Mr Kilaj’s alleged conduct to date, and the date by which any indictment might be filed.

II. SUBMISSIONS

3. Rule 96 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chamber (“Rules”)¹ makes provision for the mandatory convening of a status conference by a Pre-Trial Judge *inter alia* “as soon as possible after the initial appearance of the Accused”. This power necessarily vests in a Pre-Trial Judge following confirmation of an indictment and after a post-confirmation initial appearance under Rule 92.
4. The Rules make no specific provision for the power of a Single Judge assigned pursuant to Article 33(2) of the Law² to order a status conference in those situations where, as here, a Suspect has been arrested under an arrest order issued by the Specialist Prosecutor pursuant to Rule 52 and there is no extant indictment. But nor do the Rules prohibit a Single Judge from ordering a status conference prior to the confirmation of an indictment so as to ensure that matters are

¹ Unless otherwise indicated, all references to “Rule(s)” are to the Rules.

² 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.

proceeding as expeditiously and diligently as possible in terms of the SPO's investigations and preparation of any indictment.³ This is an unfortunate but unintentional lacuna in the Rules. It is submitted, however, that it is both within the Single Judge's inherent jurisdiction and in the interests of good case management for him to be able to convene a status conference in the hope that it will keep SPO minds focussed.

5. The Single Judge will recall that a number of issues relating to SPO investigations were ventilated in open court during Mr Kilaj's first appearance on 4 November 2023, including:
- (i) any timeline for the submission of an indictment;⁴
 - (ii) the need to analyse materials seized during the search of Mr Kilaj's residence;⁵
 - (iii) the need to collect information from persons implicated by the seized materials;⁶
 - (iv) the need to analyse Mr Kilaj's SPO suspect interview and any further steps arising;⁷
 - (v) the need to translate collected material from Albanian into English;⁸ and
 - (vi) other items that one would ordinarily expect to be interrogated in the course of a criminal investigation.⁹

³ See Rule 96(1).

⁴ Transcript, first appearance, 4 November 2023, p. 186, lines 3-6; p. 188, lines 11-12.

⁵ Transcript, first appearance, 4 November 2023, p. 186, lines 17-19.

⁶ Transcript, first appearance, 4 November 2023, p. 186, lines 19-21.

⁷ Transcript, first appearance, 4 November 2023, p. 186, lines 21-23.

⁸ Transcript, first appearance, 4 November 2023, p. 186, line 24 – p. 187, line 3.

⁹ Transcript, first appearance, 4 November 2023, p. 187, lines 15-16.

6. Counsel for the SPO was unable to give clear answers to any of the above six points, largely because much “depends on the analysis of the material that we’ve just received... [and] given the amount that’s currently unknown.”¹⁰
7. The situation now, over two months later, is very different. The SPO must be in a better position to know when any indictment will be filed, and therefore (i) when an initial appearance might take place; (ii) when a disclosure regime might be established; and (iii) when a trial might start. Indeed, the Single Judge will recall that it was suggested that a deadline of the week of 20 November 2023 be set for the SPO to give estimates as to future deadlines.¹¹ No such deadline was set, however.
8. It is submitted that Mr Kilaj has a right to more detailed information about the timeline and any forthcoming indictment. Unlike most KSC accused who know exactly what they are charged with within hours of their arrest, no indictment had been confirmed, or even existed, when Mr Kilaj was arrested on 2 November 2023. He remains in detention, uncharged. The SPO should explain in open court where they are in their investigations and when any indictment will be filed.

III. CONCLUSION

9. For the foregoing reasons, the Defence respectfully requests the scheduling of a status conference as soon as practicable, ideally on a date between Wednesday, 17 and Friday, 19 January 2024.

¹⁰ Transcript, first appearance, 4 November 2023, p. 188, lines 13-17.

¹¹ Transcript, first appearance, 4 November 2023, p. 188, lines 6-8, 18-20.

Word count: 780

A handwritten signature in blue ink, appearing to read 'I. Edwards', written in a cursive style.

Iain Edwards

Duty Counsel for Isni Kilaj

Thursday, 11 January 2024

Abidjan, Côte d'Ivoire