



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: 5 January 2024
Language: English
Classification: Public

Public Redacted Version of Decision on Review of Detention of Isni Kilaj

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THE SINGLE JUDGE,¹ pursuant to Articles 33(2), 41(6), (10) and (12) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 57(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 20 October 2023, the Single Judge authorised, among others, the Specialist Prosecutor's Office ("SPO") 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, the SPO notified the Single Judge of the arrest of Mr Kilaj pursuant to an order by the SPO.³
3. On 3 November 2023, the Single Judge ordered, upon request of the SPO,⁴ that Mr Kilaj be transferred to the Specialist Chambers' ("SC") Detention Facilities in The Hague, the Netherlands, following his arrest.⁵ The Single Judge further decided to convene a public hearing for Mr Kilaj's first appearance on 4 November 2023, at 10h00 ("First Appearance Hearing").⁶

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

² KSC-BC-2018-01, F00484, Single Judge, *Decision Authorising Search and Seizure and Special Investigative Measures*, 20 October 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential. A confidential redacted version of the main filing was issued on 12 December 2023, F00484/CONF/RED.

³ KSC-BC-2018-01, F00489, Specialist Prosecutor, *Urgent Rule 52(1) Notification of Arrest of Isni Kilaj*, 2 November 2023, public.

⁴ 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.

⁵ 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. A public redacted version of the main filing was issued on 5 November 2023, F00491/COR/RED.

⁶ Decision on Transfer Order, para. 23(f).

4. On the same day, Mr Kilaj was transferred to the SC Detention Facilities.⁷
5. On 4 November, the First Appearance Hearing took place.⁸
6. On 6 November 2023, pursuant to a request by the SPO,⁹ the Single Judge ordered the continued detention of Mr Kilaj,¹⁰ and issued reasons thereto on 9 November 2023 (“First Detention Decision”).¹¹ The Single Judge also set deadlines for submissions for the upcoming detention review.¹²
7. On 7 December, the Defence for Mr Kilaj (“Defence”) filed submissions on Mr Kilaj’s review of detention (“Defence Submissions”).¹³
8. On 8 December 2023, the SPO submitted a notification that it intends to file a consolidated submission within the timeline set out in Rule 76 of the Rules to respond to the Defence Submissions (“SPO Notification”).¹⁴

⁷ 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*. A public redacted version of the main filing and confidential redacted versions of Annexes 1-2 were submitted on 8 November 2023, F00495/RED, F00495/RED/A01/CONF/RED, and F00495/RED/A02/CONF/RED, respectively.

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

⁹ 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, respectively. A public redacted version of the main filing was submitted on 7 November 2023, F00496/RED2.

¹⁰ KSC-BC-2018-01, F00499, Single Judge, *Decision on Continued Detention*, 6 November 2023, public, para. 15.

¹¹ KSC-BC-2018-01, F00503, Single Judge, *Reasons for Continued Detention*, 9 November 2023, confidential. A public redacted version was issued on 13 November 2023, F00503/RED.

¹² First Detention Decision, para. 66(a)-(b).

¹³ KSC-BC-2018-01, F00524, Defence, *Kilaj Submissions on Review of Detention*, 6 December 2023, confidential, with Annexes 1-3, confidential. The filing is dated on the cover page 6 December 2023.

¹⁴ KSC-BC-2018-01, F00529, Specialist Prosecutor, *Prosecution Notification Regarding F00524*, 8 December 2023, confidential.

9. On 15 December 2023, the SPO filed its submissions on the review of Mr Kilaj's detention ("SPO Submissions").¹⁵

10. On 22 December 2023, the Defence replied to the SPO Submissions ("Defence Reply").¹⁶

II. SUBMISSIONS

A. VARIATION OF TIME LIMIT

11. Having been ordered to make submissions by 5 December 2023,¹⁷ the Defence Submissions were submitted and notified on 7 December 2023. The Defence seeks, as a preliminary matter, a retroactive extension of the time limit under Rule 9(5)(a) of the Rules, or the recognition of the Defence Submissions as valid notwithstanding the expiration of the time limit set out in the First Detention Decision, pursuant to Rule 9(5)(b) of the Rules ("Variation of Time Request").¹⁸ The Defence argues that clarifications were sought from Mr Kilaj in detention on 6 December 2023 before finalising the Defence Submissions. It avers that good cause has been shown for this purpose, and that no prejudice would be caused to the SPO.¹⁹

12. The SPO responds that it does not object to the Variation of Time Request.²⁰

B. REVIEW OF DETENTION

13. The Defence submits that, since the First Detention Decision was delivered so recently, its submissions are limited to the issue of whether measures other than

¹⁵ KSC-BC-2018-01, F00538, Specialist Prosecutor, *Prosecution Submissions on Review of Detention*, 15 December 2023, confidential, with Annexes 1-2, confidential.

¹⁶ KSC-BC-2018-01, F00544, Defence, *Kilaj Reply to Prosecution Submissions on Review of Detention*, 22 December 2023, confidential.

¹⁷ First Detention Decision, para. 66(a).

¹⁸ Defence Submissions, paras 1, 7-9.

¹⁹ Defence Submissions, paras 7-9.

²⁰ SPO Notification, para. 1.

detention would sufficiently reduce the risks set out in Article 41(6)(b) of the Law.²¹ The Defence maintains that this is without prejudice to its position that (i) there is no sufficient basis to conclude that there is a grounded suspicion that Mr Kilaj has committed a crime within the jurisdiction of the SC; and (ii) there are no articulable grounds to believe that Mr Kilaj represents a flight risk, will obstruct the progress of criminal proceedings, or will commit further offences.²² The Defence proposes a number of alternative measures which it claims are sufficient to reduce the risks specified in Article 41(6)(b) of the Law, and requests that Mr Kilaj be immediately released (“Proposed Measures”).²³

14. The SPO responds that Mr Kilaj’s detention remains necessary, and requests that he remain in detention.²⁴ The SPO further claims that there has been no change in circumstances detracting from the established reasons for detention in the First Detention Decision, but on the contrary, that the basis for the grounded suspicion under Article 41(6)(a) of the Law has only strengthened since.²⁵ The SPO also maintains that, due to Mr Kilaj’s knowledge of additional evidence, the risks set forth in Article 41(6)(b) of the Law have also increased.²⁶ It adds that no modalities of conditional release are able to sufficiently mitigate the existing risks with respect to Mr Kilaj,²⁷ and that his detention is proportionate at this time.²⁸

15. The Defence replies that the SPO’s assertion that no modalities of conditional release are sufficient to mitigate the existing risks with respect to Mr Kilaj disregard the individual merits of each case.²⁹ The Defence further avers that the SPO’s claim that the Proposed Measures cannot be effectively monitored or enforced is without

²¹ Defence Submissions, para. 5.

²² Defence Submissions, para. 5; Defence Reply, para. 3.

²³ Defence Submissions, paras 6, 10-29.

²⁴ SPO Submissions, paras 2, 33.

²⁵ SPO Submissions, paras 2, 11-15.

²⁶ SPO Submissions, paras 2, 16-21.

²⁷ SPO Submissions, paras 22-30.

²⁸ SPO Submissions, para. 31.

²⁹ Defence Reply, paras 7-8.

merit,³⁰ and reiterates its request for the immediate release of Mr Kilaj with the Proposed Measures, or any other conditions that the Single Judge may consider appropriate.³¹

III. APPLICABLE LAW

A. VARIATION OF TIME LIMIT

16. Pursuant to Rule 9(5)(a)-(b) of the Rules, the Single Judge may, *proprio motu* or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel, or recognise as valid any act carried out after the expiration of the time limit.

17. Pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.

B. REVIEW OF DETENTION

18. Pursuant to Article 41(6) of the Law, the SC shall only order the arrest and detention of a person when (a) there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is at risk of flight; (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.

19. Pursuant to Article 41(12) of the Law, in addition to detention on remand, the following measures may be ordered by the SC to ensure the presence of the accused, including by video-teleconference, to prevent reoffending or to ensure successful

³⁰ Defence Reply, paras. 9-17.

³¹ Defence Reply, para. 20.

conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave his or her place of residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion. Pursuant to Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

20. Pursuant to Rule 56(2) of the Rules, the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case.

21. Pursuant to Article 41(10) of the Law, until a judgment is final or until release, upon expiry of the two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist, and render a ruling by which detention on remand is extended or terminated.

22. Pursuant to Rule 57(1) of the Rules, before the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law, the detention of a Suspect shall be reviewed by the Single Judge every two (2) months or at any time earlier upon request by the Suspect or the SPO, or *proprio motu*, where a change of circumstances since the last review has occurred. In addition to the grounds provided for in Article 41(6) of the Law, each request for an extension shall be justified by investigative measures to be taken by the SPO. The total duration of the detention under this provision shall not exceed one (1) year.

IV. DISCUSSION

A. VARIATION OF TIME LIMIT

23. Noting that the Defence Submissions, including the Variation of Time Request, were submitted and notified on 7 December 2023, two (2) days after the time limit of 5 December 2023 set by the Single Judge in the First Detention Decision, the

Single Judge finds Rule 9(5)(a) of the Rules to be inapplicable. The Single Judge will accordingly entertain the request under Rule 9(5)(b) of the Rules.

24. The Single Judge pays heed, in particular, to the Defence's assertions that, while the bulk of the Defence Submissions were ready by the 5 December 2023 deadline, additional details regarding the recognisances proffered by Mr Kilaj had to be clarified before filing could take place, and that a visit to Mr Kilaj at the SC Detention Facilities took place on 6 December 2023, following which the Defence Submissions were finalised and filed.³² The Single Judge also notes that the delay was minimal and that the SPO does not oppose the Variation of Time Request.³³

25. In light of the foregoing, the Single Judge finds that good cause has been shown, warranting the recognition as valid of the Defence Submissions.

26. The Defence is reminded to submit any future requests for extension of time sufficiently in advance, as stipulated in Rule 76 of the Rules.

B. REVIEW OF DETENTION

1. Applicable Standards for Review of Detention

27. At the outset, the Single Judge recalls that Mr Kilaj was arrested pursuant to an arrest order by the SPO,³⁴ but that his continued detention was ordered in the First Detention Decision, in accordance with Article 41(3) of the Law, and Rule 52(2) of the Rules.³⁵

28. For the purpose of the present decision, the Single Judge recalls that his obligation under Article 41(10) of the Law is to examine whether the reasons for

³² Defence Submissions, para. 7.

³³ SPO Notification, para. 1.

³⁴ KSC-BC-2018-01, F00492/A01, Specialist Prosecutor, *Annex 1 to Prosecution Report on Arrest of Isni Kilaj*, 3 November 2023, confidential. A public redacted version was submitted on 8 November 2023, F00492/RED/A01/RED.

³⁵ First Detention Decision, para. 20.

detention on remand continue to exist,³⁶ including the grounds set out in Article 41(6) of the Law, namely whether: (i) there is a grounded suspicion that the person has committed the crime(s) under Article 41(6)(a) of the Law; and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law has been fulfilled.³⁷ The duty to determine whether the circumstances underpinning detention still exist imposes on the Single Judge the task to, *proprio motu*, assess whether he is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the person remains warranted.³⁸ The two (2)-month automatic review is not strictly limited to whether or not a change of circumstances occurred, but such a change can be determinative and shall be taken into consideration if raised by a Party or *proprio motu*.³⁹ Furthermore, the Single Judge may refer to findings in previous decisions if he is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.⁴⁰ The Single Judge is neither required to make findings on the factors already decided upon in

³⁶ See, for example, KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention* ("First Haradinaj Detention Appeal"), 9 February 2021, public, para. 55.

³⁷ First Haradinaj Detention Appeal, para. 55. See also KSC-BC-2020-04, F00075/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Second Shala Detention Decision"), 10 September 2021, public, para. 19; F00224/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Sixth Shala Detention Decision"), 22 June 2022, public, para. 19.

³⁸ KSC-BC-2020-06, IA006/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention* ("Second Krasniqi Detention Appeal"), 1 October 2021, public, para. 15. See also Sixth Shala Detention Decision, para. 19. Although these standards were established in the context of reviews of detention undertaken under Rule 57(2) of the Rules, the Single Judge sees no reason to depart therefrom for the purpose of the present review.

³⁹ See Second Krasniqi Detention Appeal, para. 16. See also Sixth Shala Detention Decision, para. 19.

⁴⁰ KSC-BC-2020-04, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention* ("Second Shala Detention Appeal"), 11 February 2022, public, para. 18. See also Sixth Shala Detention Decision, para. 19.

the initial ruling on detention, nor to entertain submissions that merely repeat arguments that have already been addressed in earlier decisions.⁴¹

29. The Single Judge likewise underscores that any analysis of Mr Kilaj's detention is duly considering his presumption of innocence. This means, as a consequence, that his detention cannot be taken lightly and that the SPO bears the burden of establishing that the detention of the person is necessary.⁴² This means that the SPO must provide specific arguments and concrete evidence to establish that continued detention is necessary at the time of the review.⁴³

2. Grounded Suspicion

30. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that the detained person has committed a crime within the SC's jurisdiction. This is a condition *sine qua non* for the validity of the detained person's continued detention.⁴⁴ Suffice it to say that the facts underpinning the evidentiary threshold of "grounded suspicion"⁴⁵ need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge.⁴⁶

⁴¹ First *Haradinaj* Detention Appeal, para. 55; Second *Krasniqi* Detention Appeal, para. 17; Second *Shala* Detention Appeal, para. 18; Sixth *Shala* Detention Decision, para. 19.

⁴² See, for example, KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release* ("First *Shala* Detention Decision"), 23 June 2021, public, para. 13; KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release* ("First *Thaçi* Decision on Detention"), 22 January 2021, public, para. 19, with further references. See also ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment ("*Merabishvili v. Georgia*"), 28 November 2017, para. 234.

⁴³ Sixth *Shala* Detention Decision, para. 19.

⁴⁴ First *Shala* Detention Decision, para. 14. See also ECtHR, *Merabishvili v. Georgia*, para. 222.

⁴⁵ See Article 19(1)(1.9) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ("KCPC"). Similarly, see Article 5(1)(c) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in, *inter alia*, ECtHR, *Fox, Campbell and Hartley v. United Kingdom*, no. 1244/86; 12245/86; 12383/86, Judgment, 30 August 1990, para. 32; *Erdagöz v. Turkey*, no. 21890/93, Judgment, 22 October 1997, para. 51; *Ilgar Mammadov v. Azerbaijan*, no. 15172/12, Judgment, 22 May 2014, para. 88; *Selahattin Demirtaş (no. 2) v. Turkey*, no. 14305/17, Judgment, 22 December 2020, para. 314.

⁴⁶ ECtHR, *Merabishvili v. Georgia*, para. 184, with further references.

31. The Defence maintains its position that there is no sufficient basis to conclude that there is a grounded suspicion that Mr Kilaj has committed a crime within the jurisdiction of the SC, but does not set forth additional arguments in this regard.⁴⁷ Conversely, the SPO contends that the collection and analysis of additional evidence has only strengthened the grounded suspicion that Mr Kilaj, together with others, has committed crimes within the jurisdiction of the SC.⁴⁸

32. The Single Judge recalls that, in the First Detention Decision, he determined, under Article 41(6)(a) of the Law, that there is a grounded suspicion that Mr Kilaj has committed, alone or together with others, offences under Article 15(2) of the Law, namely those under Articles 392 (violating secrecy of proceedings) and 401 (obstructing official persons in performing official duties) of the 2019 Kosovo Criminal Code, Code No. 06/L-074.⁴⁹ These findings rest on the grounded suspicion findings in the Search and Seizure Decision, a confidential redacted version of which has since been made available to the Defence.⁵⁰

33. Specifically, the Single Judge recalls that, in the Search and Seizure Decision, he found a grounded suspicion that evidence of an offence under Article 15(2) of the Law 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.⁵¹ Notably, this finding was largely based on information resulting from [REDACTED].⁵²

34. The Single Judge further recalls that the information provided by the SPO for the purpose of the Search and Seizure Decision revealed that, [REDACTED],⁵³

⁴⁷ Defence Submissions, para. 5.

⁴⁸ SPO Submissions, para. 11.

⁴⁹ First Detention Decision, paras 24-32.

⁵⁰ *See supra*, footnote 2.

⁵¹ Search and Seizure Decision, para. 30.

⁵² Search and Seizure Decision, paras 27-29.

⁵³ Search and Seizure Decision, paras 27-29.

[REDACTED],⁵⁴ [REDACTED].⁵⁵ [REDACTED].⁵⁶ Likewise, the Single Judge notes that the seized confidential [REDACTED] material pursuant to the judicially authorised search of Mr Kilaj's residence ("Seized Material") included [REDACTED].⁵⁷

35. The Single Judge pays heed to the SPO assertion that, [REDACTED],⁵⁸[REDACTED].⁵⁹ Moreover, the Single Judge notes that [REDACTED],⁶⁰ [REDACTED].⁶¹ The Single Judge is thus persuaded that [REDACTED]. In the view of the Single Judge, this further demonstrates that Mr Kilaj [REDACTED],⁶² and reinforces the findings of the First Detention Decision that Mr Kilaj [REDACTED] may have acted jointly with others in the alleged commission of offences within the meaning of Article 15(2) of the Law.⁶³ The Single Judge is further mindful that [REDACTED],⁶⁴ [REDACTED].⁶⁵ The Single Judge is of the view that this information lends additional credence to previous findings that [REDACTED].⁶⁶

36. The Single Judge finds that the additional evidence provided by the SPO as a result of its ongoing investigation has only strengthened the basis of the First Detention Decision finding that a grounded suspicion exists that Mr Kilaj either intended to, or actually used the [REDACTED] for the purpose of interfering with

⁵⁴ SPO Submissions, para. 13.

⁵⁵ Search and Seizure Decision, paras 27-28; SPO Submissions, para. 13.

⁵⁶ [REDACTED].

⁵⁷ First Detention Decision, para. 24.

⁵⁸ SPO Submissions, para. 13; [REDACTED].

⁵⁹ SPO Submissions, para. 14; [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² SPO Submissions, para. 19. *See also* First Detention Decision, para. 28.

⁶³ First Detention Decision, paras 27, 31

⁶⁴ SPO Submissions, para. 19; [REDACTED].

⁶⁵ SPO Submissions, para. 19; [REDACTED].

⁶⁶ First Detention Decision, paras 27, 32.

the administration of justice, and that he may have been involved in the commission of an offence under Article 15(2) of the Law.⁶⁷

37. Thus, in the absence of any contrary intervening information or development concerning the grounded suspicion established in the First Detention Decision, the Single Judge finds that the requirement set forth under Article 41(6)(a) of the Law continues to be met.

3. Necessity of Detention

38. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be *articulable* in the sense that they must be specified in detail.⁶⁸ In this regard, Article 41(6)(b) of the Law echoes the principle that the continued detention of a person can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.⁶⁹ Therefore, the Panel must rely on case-specific reasoning and concrete grounds in deciding to continue detention.⁷⁰ The Single Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"⁷¹ that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the

⁶⁷ First Detention Decision, para. 32.

⁶⁸ See Article 19(1.31) of the KCPC, which defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". See also, for example, KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release* ("First Veseli Detention Appeal"), 30 April 2021, public, para. 15.

⁶⁹ KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *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 the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, public, para. 113.

⁷⁰ SCCC 26 April 2017 Judgment, para. 115; KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release* ("First Thaçi Detention Appeal"), 30 April 2021, public, para. 22. See also ECtHR, *Khudoyorov v. Russia*, no. 6847/02, Judgment ("*Khudoyorov v. Russia*"), 8 November 2005, para. 173; First *Shala* Detention Decision, para. 16.

⁷¹ See chapeau of Article 41(6)(b) of the Law.

inevitability, of a future occurrence.⁷² In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁷³ The Single Judge further observes that these grounds are in the alternative, and that the existence of one ground suffices to determine the necessity of detention.⁷⁴

39. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Single Judge recalls that, while the evaluation involves an element of discretion,⁷⁵ it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of the detained person.⁷⁶ When assessing the relevant factors, the Single Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁷⁷

40. Lastly, in relation to the grounds set forth in Article 41(6)(b)(ii)-(iii) of the Law, the Single Judge emphasises that the risks may materialise as a result of the detained person's acts or omissions, but they do not require physical execution on his or her part.⁷⁸

(a) Risk of Flight

41. The Defence avers that there are no articulable grounds to believe that Mr Kilaj presents a flight risk, but does not present any new arguments challenging the Single Judge's prior assessment as to the flight risk under Article 41(6)(b)(i) of the

⁷² First *Shala* Detention Decision, para. 16; First *Thaçi* Detention Decision, para. 20, with further references.

⁷³ First *Veseli* Detention Appeal, para. 17; First *Shala* Detention Decision, para. 16.

⁷⁴ First *Shala* Detention Decision, para. 20; First *Thaçi* Detention Decision, para. 25.

⁷⁵ First *Thaçi* Detention Decision, para. 21, with further references.

⁷⁶ See First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references; similarly, ECtHR, *Aleksanyan v. Russia*, no. 46468/06, Judgment, 22 December 2008, para. 179.

⁷⁷ First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references.

⁷⁸ First *Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

Law.⁷⁹ The Defence rather asserts, without prejudice to its position, that the Proposed Measures would sufficiently reduce the risk of flight.⁸⁰

42. The SPO responds by recalling the Single Judge's finding in the First Detention Decision that Mr Kilaj presents a moderate flight risk that is nevertheless sufficient to necessitate his continued detention, and the considerations set out in this respect, in particular Mr Kilaj's knowledge of potential serious charges and the forthcoming filing of an indictment, as well as the severity of the potential sentence.⁸¹ The SPO adds that Mr Kilaj will now be aware that [REDACTED], and that the evidence against him is much stronger than he had previously realised.⁸² The SPO submits that the risk of flight already found by the Single Judge has increased since the time of the First Detention Decision.⁸³

43. As regards the flight risk under Article 41(6)(b)(i) of the Law, the Single Judge recalls, at the outset, that in the First Detention Decision he considered that knowledge of potential serious charges and the forthcoming filing of an indictment, as well as the severity of the potential sentence, are some of the factors that have a bearing upon the assessment of the flight risk.⁸⁴ In this regard, the Single Judge also considered that Mr Kilaj is cognisant that Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") were convicted and sentenced by the SC to four years and three months of imprisonment for having, among others, violated the secrecy of proceedings and obstructed official persons from performing official duties.⁸⁵

44. Further, the Single Judge notes that Mr Kilaj has been made aware that [REDACTED], and that the evidence adduced against him exceeds what he had

⁷⁹ Defence Submissions, para. 5

⁸⁰ Defence Submissions, paras 5, 6, 20.

⁸¹ SPO Submissions, para. 16.

⁸² SPO Submissions, para. 16.

⁸³ SPO Submissions, para. 17.

⁸⁴ First Detention Decision, para 39. *See, similarly*, First Haradinaj Detention Appeal, para. 61.

⁸⁵ First Detention Decision, para 39. *See also* KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment* ("Appeal Judgment"), 2 February 2023, public, para. 442.

previously foreseen on the basis of the Seized Material. The Single Judge is not persuaded by the Defence's argument that the SPO's approach "to drip-feed evidence to the Defence that it contends supports its case" has no merit and is unfair.⁸⁶ The Single Judge notes in this regard that the disclosure of additional evidence may, in principle, enhance the flight risk, as it gives indication about the seriousness of the offence and the potential penalty in this regard. This being said, the Single Judge further recalls that the risk of Mr Kilaj absconding cannot be gauged solely on the grounds of the severity of the sentence faced.⁸⁷

45. As set out in the First Detention Decision, while favourably noting (i) Mr Kilaj's willingness to participate in a voluntary interview with the SPO on 2 November 2022, his compliance with the arrest order issued by the SPO,⁸⁸ and expressed readiness to further cooperate with the SPO and the SC, as well as (ii) Mr Kilaj's settled family life and ties with the community, the Single Judge considers that these factors only diminish, but do not eliminate the risk of flight.⁸⁹ The Single Judge remains persuaded that Mr Kilaj would, in principle, have the means and opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of the SC, such as Albania, but not only.⁹⁰ The Single Judge notes in this regard that it is the risk, not the inevitability of flight that must be assessed.

46. In light of the foregoing, the Single Judge finds that a moderate risk of flight in relation to Mr Kilaj continues to exist at present.

(b) Risk of Obstructing the Progress of SC Proceedings

⁸⁶ Defence Reply, paras 5-6.

⁸⁷ See First Detention Decision, para. 28; ECtHR, *Becciev v. Moldova*, no. 9190/03, Judgment, 4 October 2005, para. 58.

⁸⁸ See KSC-BC-2018-01, F00492, Specialist Prosecutor, *Prosecution Report on Arrest of Isni Kilaj*, 3 November 2023, confidential, paras 2-7, with Annexes 1-2, confidential. A public redacted version was filed on 8 November 2023, F00492/RED.

⁸⁹ First Detention Decision, para. 40.

⁹⁰ First Detention Decision, para. 40.

47. The Defence avers that there are no articulable grounds to believe that Mr Kilaj will obstruct the progress of the criminal proceedings, but does not present any new arguments challenging the previous assessment of the Single Judge as to the risk of obstructing the proceedings under Article 41(6)(b)(ii) of the Law.⁹¹ The Defence rather asserts, without prejudice to its position, that the Proposed Measures would sufficiently reduce the risk of obstructing the progress of the proceedings.⁹²

48. The SPO responds by recalling that, in the First Detention Decision, the Single Judge attached weight, among others, to the fact that Mr Kilaj knowingly possessed material [REDACTED] and information that cannot be found in the public domain, thereby demonstrating a willingness to violate court orders and to intervene in the proceedings.⁹³ The SPO points out that the Single Judge found the foregoing indicative of the risk that Mr Kilaj will obstruct the progress of the criminal proceedings.⁹⁴ According to the SPO, the information now available demonstrates that this risk is significantly greater, as information now available shows that Mr Kilaj not only had confidential material in his possession, [REDACTED].⁹⁵ The SPO further avers that, [REDACTED],⁹⁶ and that these circumstances reveal a concrete risk that Mr Kilaj may continue his efforts to obstruct the progress of the criminal proceedings.⁹⁷ The SPO argues that, given that Mr Kilaj is now facing potential criminal charges himself, his incentive to do so has significantly increased.⁹⁸

49. As regards the obstruction of proceedings under Article 41(6)(b)(ii) of the Law, the Single Judge recalls his considerations in the First Detention Decision and, in

⁹¹ Defence Submissions, para. 5.

⁹² Defence Submissions, paras 5, 6, 27.

⁹³ SPO Submissions, para. 18.

⁹⁴ SPO Submissions, para. 18.

⁹⁵ SPO Submissions, para. 19.

⁹⁶ SPO Submissions, para. 19.

⁹⁷ SPO Submissions, para. 20.

⁹⁸ SPO Submissions, para. 20.

particular, that Mr Kilaj's possession of the Seized Material possibly required the acts of others for the purpose of dissemination and further coordinated action.⁹⁹ The Single Judge also considered that, even knowing that the unlawful dissemination of confidential [REDACTED] material led to the conviction of Mr Gucati and Mr Haradinaj, Mr Kilaj nevertheless had the Seized Material in his possession, thus demonstrating willingness to violate court orders and to intervene in proceedings to which he is not a Party.¹⁰⁰

50. The Single Judge further pays heed to the additional details that have emerged as a result of its ongoing investigation, in particular as to [REDACTED]. Specifically, the Single Judge notes that the new information reveals that [REDACTED].¹⁰¹ In the view of the Single Judge, these details [REDACTED].¹⁰² Taking into account that Mr Kilaj now has more details about the allegations that are raised against him and the evidence in support thereof, the Single Judge is persuaded that the risk that he may obstruct proceedings in which he may be a Party is increased.

51. The Single Judge makes the aforementioned finding, bearing in mind also the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.¹⁰³ The Defence's contention that this is a mere "default and facile argument"¹⁰⁴ does not negate the relevance of this element, as previously considered by other SC Panels, for the Single Judge's current assessment. Moreover, contrary to the Defence's assertion,¹⁰⁵ this element is not attributable to Mr Kilaj

⁹⁹ First Detention Decision, para. 46.

¹⁰⁰ First Detention Decision, para. 46.

¹⁰¹ SPO Submissions, para. 19; [REDACTED].

¹⁰² SPO Submissions, para. 29.

¹⁰³ First Detention Decision, para. 47. *See also, amongst others*, KSC-BC-2023-10, F00009/RED, *Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders*, 2 October 2023, public, para. 21; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-581.

¹⁰⁴ Defence Reply, para. 8.

¹⁰⁵ Defence Reply, para. 8.

personally, but is the background against which the risk factors related to him, as analysed above, are assessed.

52. In light of the foregoing, the Single Judge finds that the risk that Mr Kilaj may obstruct the progress of criminal proceedings continues to exist.

(c) Risk of Committing Further Crimes

53. The Defence avers that there are no articulable grounds to believe that Mr Kilaj will commit any offence, but does not present any new arguments challenging the previous assessment of the Single Judge as to the risk of committing further crimes under Article 41(6)(b)(iii) of the Law.¹⁰⁶ The Defence rather maintains, without prejudice to its position, that the Proposed Measures would sufficiently reduce the risk of Mr Kilaj committing further crimes.¹⁰⁷

54. The SPO responds by recalling the considerations of the Single Judge in the First Detention Decision that the factors underpinning the risk of obstruction of criminal proceedings are also relevant to the assessment of the risk of criminal offences.¹⁰⁸ The SPO submits that these factors have increased.¹⁰⁹

55. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Single Judge continues to be of the opinion that the relevant factors to be considered are the same as those recited with respect to the obstruction of the proceedings.¹¹⁰ The Single Judge remains mindful that the existence of such a risk does not automatically translate into a risk of committing further crimes, but considers that the factors underpinning the former are of relevance to the assessment of the latter in the present case.¹¹¹ In particular, the Single Judge remains

¹⁰⁶ Defence Submissions, para. 5.

¹⁰⁷ Defence Submissions, paras 5, 6, 27.

¹⁰⁸ SPO Submissions, para. 21.

¹⁰⁹ SPO Submissions, para. 21.

¹¹⁰ First Detention Decision, para. 52.

¹¹¹ First Detention Decision, para. 52. *See* First *Shala* Detention Decision, para. 39.

persuaded that there is a risk that Mr Kilaj will repeat the offences alleged to have been committed by him.

56. In light of the foregoing, the Single Judge considers that the risk that Mr Kilaj may commit further offences continues to exist.

(d) Conclusion

57. As a result, the Single Judge finds that there are articulable grounds to believe that a moderate risk that Mr Kilaj may flee exists, and that there is a risk that he may obstruct the progress of the criminal proceedings, and commit further offences, thus necessitating Mr Kilaj's continued detention, in accordance with Article 41(6)(b) of the Law. The Single Judge will assess below whether these risks can be adequately addressed by imposing conditions in connection with the provisional release of Mr Kilaj.

4. Conditional Release

58. The Defence proposes that several measures could mitigate the risk of flight, namely that Mr Kilaj (i) live and sleep at his home address in Prishtinë/Priština, Kosovo, effectively being placed under house arrest; (ii) be subject to electronic monitoring by way of an ankle tag and/or regular and unannounced visits by the Kosovo Police and/or members of the SPO; (iii) report at least once per day at the nearest police station, which is approximately [REDACTED] kilometres away by road; (iv) surrender his passport and any other document that could be used for international travel, and undertake not to apply for a new passport or any such other document; and (v) pay a bail of EUR 30,000, which the Defence submits is a huge sum of money to Mr Kilaj and his family, [REDACTED].¹¹²

59. The Defence further advances several conditions which it contends would address the risks of Mr Kilaj obstructing the progress of the proceedings or committing further offences, namely that he (i) not use any communication device

¹¹² Defence Submissions, paras 13-20; Defence Reply, paras 16-17.

or use the internet, whether directly or indirectly, or whether himself or via another, other than to communicate with his counsel; and (ii) not contact directly or indirectly [REDACTED].¹¹³ The Defence claims that Mr Kilaj fully understands that his provisional release would be immediately revoked should he contact, directly or indirectly, [REDACTED], and that he is not prepared to take that risk.¹¹⁴ The Defence adds that the proposed EUR 30,000 bail, and the prospect of forfeiting this sum should he be found to obstruct the proceedings or commit further offences, provides further guarantees as to Mr Kilaj's behaviour.¹¹⁵ It further avers that, while the relative seriousness of the allegations formulated against Mr Kilaj should not be discounted, the SPO does not suggest that violence was ever used or threatened by Mr Kilaj, or that there is any evidence that [REDACTED], whether directly or indirectly.¹¹⁶ According to the Defence, specifically the fact that there is no evidence that Mr Kilaj in fact [REDACTED], whether directly or indirectly, during the period between [REDACTED] and 2 November 2023, when he had the time and every opportunity to do so, is a relevant factor to take into account when assessing the question of the risks posed by him.¹¹⁷

60. The SPO responds that no combination of release conditions, nor any additional measures foreseen in Article 41(12) of the Law, could sufficiently, and to a degree comparable to that of detention at the SC Detention Facilities, mitigate the existing risk with respect to Mr Kilaj.¹¹⁸ According to the SPO, detention is the only means by which these risks can be adequately managed.¹¹⁹ The SPO further avers that the starting point for evaluating house arrest in Kosovo under any conditions must be the assessment that various SC Panels have made concerning the viability of such

¹¹³ Defence Submissions, para. 23.

¹¹⁴ Defence Submissions, para. 24.

¹¹⁵ Defence Submissions, paras 25-26; Defence Reply, para. 17.

¹¹⁶ Defence Submissions, para. 28.

¹¹⁷ Defence Submissions, para. 28; Defence Reply, para. 18.

¹¹⁸ SPO Submissions, para. 23.

¹¹⁹ SPO Submissions, para. 23.

an approach generally and in context, namely that the conditions in Kosovo (i.e. climate of witness intimidation and documented corruption affecting the criminal justice sector), were what prompted the need for the change in venue to the Host State for the trial of high ranking former Kosovo Liberation Army (“KLA”) members in Kosovo.¹²⁰ It adds that, given this climate, as well as the speed and ease with which Mr Kilaj could leave the jurisdiction of Kosovo, the Proposed Measures cannot be effectively monitored and enforced, and do nothing to address the severe risks of obstructing proceedings and committing further criminal offences.¹²¹ The SPO further avers that the Defence does not explain how these conditions would be monitored or enforced, and argues that the array of communication mediums available is so varied that monitoring and enforcing any limitation of communications is impossible.¹²² According to the SPO, this could only be achieved through the communication monitoring framework in place at the SC Detention Facilities.¹²³ The SPO adds that, since [REDACTED], it is already known that he is willing to lie and mislead law enforcement for his own benefit.¹²⁴

61. The Defence replies that the SPO’s assertion that no modalities of conditional release are sufficient to mitigate the existing risks in relation to Mr Kilaj disregard the individual merits of his case, and contends that the question of risk must be approached with discernment and discrimination.¹²⁵ The Defence further argues that the SPO’s claim that the Proposed Measures cannot be effectively enforced and monitored by the Kosovo Police is without merit, in particular since (i) the SPO’s assertion that corruption continues to affect the criminal justice sector in Kosovo” relies on findings dating back two (2) years and evidence that is over three (3) years

¹²⁰ SPO Submissions, para. 26.

¹²¹ SPO Submissions, para. 27.

¹²² SPO Submissions, para. 28.

¹²³ SPO Submissions, para. 28.

¹²⁴ SPO Submissions, para. 29.

¹²⁵ Defence Reply, para. 7.

old and relates to cases involving allegations of high-level corruption and organised crime, not the actions of police monitoring bail conditions;¹²⁶ and (ii) the provisions of Article 53(2) of the Law impose an obligation on the Kosovo Police to comply with any order, decision or request issued by the SC, and the SPO has pointed to no evidence that the Kosovo Police would be unwilling or unable to effectively monitor and enforce the Proposed Measures.¹²⁷ It likewise submits that any suggestion or risk that Mr Kilaj may seek to corruptly influence anyone tasked with monitoring his compliance with the Proposed Measures, could be completely removed by the alternative solution of placing that duty in the hands of the SPO.¹²⁸

62. Regarding the risk of flight, the Single Judge recalls that he has previously found that the conditions proposed by the Defence could mitigate the risk of flight in relation to Mr Kilaj.¹²⁹ In this regard, the Single Judge positively notes Mr Kilaj's further Proposed Measures, in particular the payment of a EUR 30,000 surety, an important sum for Mr Kilaj and his family, and agrees with the Defence that the Proposed Measures will significantly address the risk of absconding in relation to Mr Kilaj.¹³⁰ The Single Judge finds that, in light of the additional Proposed Measures as well, the conditions advanced by the Defence remain adequate to mitigate the risk of flight in relation to Mr Kilaj.

63. However, as regards the risk of obstructing the progress of SC proceedings or committing further crimes, the Single Judge remains persuaded that none of the conditions put forth by the Defence could adequately restrict Mr Kilaj's ability to obstruct the progress of SC proceedings and commit further offences.¹³¹ Contrary to the Defence's assertions,¹³² the Single Judge notes that a finding that no modalities

¹²⁶ Defence Reply, paras 9-13.

¹²⁷ Defence Reply, paras 14-15.

¹²⁸ Defence Reply, para. 16,

¹²⁹ First Detention Decision, para. 59.

¹³⁰ Defence Submissions, para. 16.

¹³¹ First Detention Decision, paras 60, 62-63.

¹³² Defence Reply, para. 7.

of conditional release are sufficient to mitigate the existing risks is not a foregone conclusion, but the result of a careful assessment of the conditions for release in relation to each detained person individually, taking into account all relevant factors and circumstances. While mindful of Mr Kilaj's commitment to abide by further conditions allegedly limiting his communications, the Single Judge is not persuaded by the Defence's argument that the Proposed Measures will have the effect of preventing Mr Kilaj from meeting or speaking with [REDACTED] in person,¹³³ in particular since, by virtue of possessing the Seized Material, Mr Kilaj has knowledge of [REDACTED], as well as other confidential [REDACTED] information that pertains to SC proceedings.¹³⁴ The Single Judge is of the view that, despite assurances to the contrary, Mr Kilaj could use a device belonging to a family member to do so, or ask a family member to convey a message, whether by means of such a communications device, the internet, or orally.

64. For the foregoing reasons, the Single Judge remains convinced that, given the ongoing nature of the investigations relating to Mr Kilaj, the risk of obstructing the proceedings and committing further offences, including [REDACTED], can be effectively managed only through the communications monitoring regime available at the SC Detention Facilities.¹³⁵ The Single Judge considers in this regard that the measures in place at the SC Detention Facilities, viewed as a whole, are designed to provide assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes as much as possible.¹³⁶ As regards

¹³³ Defence Submissions, para. 23.

¹³⁴ First Detention Decision, para. 60.

¹³⁵ First Detention Decision, para. 60. *See, similarly*, First Shala Detention Decision, para. 46; KSC-BC-2020-04, IA001/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Provisional Release*, 20 August 2021, public, para. 61; KSC-BC-2020-04, F00282/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Seventh Shala Detention Decision"), 21 September 2022, public, paras 33-34.

¹³⁶ First Detention Decision, para. 61. *See also* Seventh Shala Detention Decision, para. 33.

the Defence's argument that the SPO has not indicated any evidence that the Kosovo Police would be unwilling or unable to effectively monitor and enforce the Proposed Measures,¹³⁷ the Single Judge notes that, while Article 53(2) of the Law imposes on the Kosovo Police an obligation to comply with any order, decision or request issued by the SC, the issue is not one of willingness, but of ability. In this regard, the Single Judge emphasises that, having unrestricted access to confidential information concerning witnesses and victims, the Registrar and the Panel may take action more promptly than other authorities acting under a distinct framework.¹³⁸ Furthermore, the Single Judge recalls that (i) prior rulings in Case 06 have found that the Kosovo Police does not have the capacity to implement corresponding measures that sufficiently mitigate the existing risks;¹³⁹ (ii) the very reason for establishing the SC was that criminal proceedings against former KLA members could not be conducted in Kosovo;¹⁴⁰ and (iii) the procedural framework and operational practice of the SC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims as well as others at risk with a view to implementing the mandate of the SC.¹⁴¹ The Defence proposal to ask the SPO to monitor the Proposed Measures in Kosovo equally does not overcome the aforementioned challenges.

65. While the Single Judge has taken good note of the Defence's emphasis that Mr Kilaj is prepared to undertake to forfeit the proposed EUR 30,000 bail in the event that he were to be found to have fled, obstructed or attempted to obstruct the

¹³⁷ Defence Reply, paras 14-15.

¹³⁸ First Detention Decision, para. 61. See also Seventh *Shala* Detention Decision, para. 33.

¹³⁹ See KSC-BC-2020-06, F00582/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi* ("Third *Krasniqi* Detention Decision"), 26 November 2021, public, para. 77; IA016/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, public, paras 28-36.

¹⁴⁰ Third *Krasniqi* Detention Decision, para. 80, with further references.

¹⁴¹ Third *Krasniqi* Detention Decision, para. 80, with further references.

progress of the proceedings, or committed any offence,¹⁴² the Single Judge observes that the guarantee of bail is in principle designed to ensure not the reparation of loss, but the presence of the Accused at trial.¹⁴³ In the view of the Single Judge, while bail may adequately mitigate the risk of flight, it is not sufficient to address the risks of obstructing the proceedings and committing further offences. This is so because the bail of EUR 30,000 and Mr Kilaj's apprehension to lose EUR 30,000, in case of breach of the conditions, would not overcome the challenges associated with the risk of obstruction and commission of further crimes, as described above.

66. Furthermore, the Single Judge notes that the Defence rightly emphasises that, presently, (i) the SPO does not suggest that violence was ever used by Mr Kilaj, and (ii) no evidence has been adduced that Mr Kilaj in fact [REDACTED], whether directly or indirectly between [REDACTED] and 2 November 2023, when he had the time and every opportunity to do so.¹⁴⁴ The Single Judge observes, however, that [REDACTED].¹⁴⁵ Relatedly, the Single Judge pays heed to the fact that [REDACTED], and had in his possession confidential [REDACTED] material that [REDACTED].¹⁴⁶ Lastly, the Single Judge notes that the SPO's investigation is still ongoing.

67. For the same reasons, the Single Judge considers that no *additional* reasonable conditions, imposed by the Single Judge,¹⁴⁷ are available to adequately mitigate the existing risks.

¹⁴² Defence Submissions paras 25-26; Defence Reply, para. 17.

¹⁴³ ECtHR, *Gafa v. Malta*, no. 54335/14, Judgment, 22 May 2018, para. 70.

¹⁴⁴ Defence Submissions, para. 28; Defence Reply, para. 18.

¹⁴⁵ See *supra*, para. 35.

¹⁴⁶ See *supra*, paras 34-35.

¹⁴⁷ See KSC-BC-2020-06, IA017/F00011, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, confidential, para. 51. A public redacted version was issued on the same day, IA017/F00011/RED.

68. The Single Judge accordingly finds that the Proposed Measures for Mr Kilaj's interim release are insufficient to mitigate the risk of obstructing SC proceedings or committing further crimes.

5. Proportionality of Detention

69. Lastly, the Single Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention.¹⁴⁸ Mindful of Rule 57(1) of the Rules, the Single Judge notes that the SPO has taken additional investigative steps, and provided further evidence and details on the facts at issue, [REDACTED]. The Single Judge is also attentive to the SPO's commitment during the First Appearance Hearing to work expeditiously in order to ensure that an indictment against Mr Kilaj is filed as soon as possible,¹⁴⁹ and mindful of the SPO Submissions that the filing of an indictment which will trigger the framework and calendar for pre-trial proceedings, is imminent.¹⁵⁰ Moreover, the Single Judge recalls that, pursuant to Article 41(10) of the Law and Rule 57(1) of the Rules, Mr Kilaj's detention shall be reviewed every two (2) months.

70. In light of the foregoing, the Single Judge finds that the detention of Mr Kilaj has not become unreasonable within the meaning of Rule 56(2) of the Rules.

C. CLASSIFICATION OF FILINGS

71. Lastly, the Single Judge notes that the Defence Submissions, SPO Notification, SPO Submissions and Defence Reply were filed as confidential. Having regard to the principle of publicity, the Single Judge hereby instructs the Parties in the future to likewise file, either simultaneously or within three (3) days of filing confidential submissions, public redacted versions thereof.

¹⁴⁸ KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

¹⁴⁹ First Appearance Transcript, p. 186, line 10 to p. 187, line 6 and p. 181, line 19 to p. 182, line 1.

¹⁵⁰ SPO Submissions, para. 31.

V. DISPOSITION

72. For the above-mentioned reasons, the Single Judge hereby:

- (a) **GRANTS** the Variation of Time Request;
- (b) **ORDERS** Mr Kilaj's continued detention;
- (c) **ORDERS** the Defence to file a public redacted version of the Defence Submissions and the Defence Reply by **Friday, 12 January 2024**, or to indicate that these filings may be reclassified as public;
- (d) **ORDERS** the SPO to submit a public redacted version of both the SPO Notification and the SPO Submissions by **Friday, 12 January 2024**, or to indicate that these filings may be reclassified as public;
- (e) **ORDERS** the Defence, if it wishes to do so, to file submissions on the next review of detention by **Monday, 5 February 2024**, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- (f) **ORDERS** the SPO, should the Defence decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of detention by **Monday, 12 February 2024**, with the Defence filing its response by **Thursday, 22 February 2024**, if it so wishes.



Judge Nicolas Guillou
Single Judge

Dated this Friday, 5 January 2024

At The Hague, the Netherlands