

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: 6 December 2023

Language: English

Classification: Public with Confidential Annexes 1-3

**Public further redacted version of
"Kilaj Submissions on Review of Detention"**

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I. INTRODUCTION

1. The Defence for Mr Isni Kilaj (“Defence”, “Suspect”) files these submissions on the review of continued detention, pursuant to Rule 57 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chamber (“Rules”) and the Single Judge’s order.¹ The Defence also requests a short extension of the Single Judge’s deadline of 5 December 2023 by one day, pursuant to Rule 9(5)(a), or the recognition of this filing as valid notwithstanding the expiration of the time limit, pursuant to Rule 9(5)(b).
2. On 3 November 2023, the Specialist Prosecutor’s Office (“SPO”) submitted a request for Mr Kilaj’s continued detention (“SPO Request”).² The following day, Mr Kilaj had his First Appearance Hearing, during which the SPO and the Defence made submissions on the SPO Request.³
3. Later on 4 November 2023, the Defence filed its Response to the SPO Request, applying for Mr Kilaj’s immediate release (“Defence Response”).⁴ On 5 November, the SPO filed a Reply to the Defence Response (“SPO Reply”).⁵

¹ Reasons for Continued Detention, KSC-BC-2018-01/F00503, 9 November 2023 (“Reasons”), para. 66(a).

² Prosecution Request for Continued Detention of Isni Kilaj, KSC-BC-2018-01/F00496, 3 November 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. A public redacted version of the request was filed on 7 November 2023.

³ First Appearance Transcript, pp 171-184.

⁴ Corrected Version of Kilaj Defence Response to “Confidential Redacted Version of ‘Prosecution Request for Continued Detention of Isni KILAJ’”, KSC-BC-2018-01/F00497/COR, 4 November 2023, confidential (“Defence Detention Response”). A public redacted version was filed on 8 November 2023.

⁵ Prosecution Reply to F00497, KSC-BC-2018-01/F00498, 5 November 2023, confidential (“SPO Reply”). A public redacted version was filed on 7 November 2023.

4. On 6 November 2023, the Single Judge rendered his Decision on Continued Detention;⁶ the Reasons followed on 9 November 2023.
5. Given the fact the Reasons were delivered so recently, and without prejudice to the Defence's 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 KSC;⁷ and (ii) there are no articulable grounds to believe that Mr Kilaj represents a flight risk, or will obstruct the progress of any criminal proceedings, or will commit any offences,⁸ these submissions are limited to the issue of whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.⁹
6. The Defence proposes a robust suite of measures and submits that they sufficiently reduce the risk of the Article 41(6)(b) factors occurring. Mr Kilaj, therefore, should be released.

II. SUBMISSIONS

A. VARIATION OF TIME LIMIT

7. The bulk of these submissions were ready by the deadline of Tuesday, 5 December 2023. However, it became clear as these submissions were being completed that there were details regarding the recognisances proffered by

⁶ Decision on Continued Detention, KSC-BC-2018-01/F00499, 6 November 2023.

⁷ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("Law"), Article 41(6)(a). Unless otherwise indicated, all references to "Article(s)" are to the Law.

⁸ Article 41(6)(b)(i)-(iii).

⁹ 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, KSC-CC-PR-2017-1/F00004, 26 April 2017, para. 14.

Mr Kilaj that needed to be clarified with him before filing could take place. These clarifications were obtained during a detention centre visit on 6 December that was only authorised by the Detention Management Unit on 5 December, after which the submissions were finalised and filed.

8. The Defence would contend that no prejudice arises since the Single Judge has ordered the SPO to file its own submissions on the review of detention by Monday, 11 December 2023 in the event no Defence submissions were filed by 5 December.¹⁰ Any SPO response to these Defence submissions following the timeline provided for by Rule 76 will necessarily incorporate any points that would have to be filed by next Monday. Further, the requested variation of the time limit is minimal.
9. It is submitted that good cause has been shown for a retroactive extension of the time limit under Rule 9(5)(a), or the recognition of this filing as valid notwithstanding the expiration of the time limit, pursuant to Rule 9(5)(b).

B. MEASURES ARE AVAILABLE TO SUFFICIENTLY REDUCE THE RISK OF ARTICLE 41(6)(B) FACTORS OCCURRING

10. In his Reasons, the Single Judge noted that:

the Defence merely lists some of the conditions under Article 41(12) of the Law. It does not explain how they might address the risks foreseen under Article 41(6)(b) of the Law, in particular the ground set forth in Article 41(6)(b)(ii) of the Law, given that Mr Kilaj [REDACTED].¹¹
11. The Defence now sets out in greater detail the conditions it proposes would sufficiently reduce the risk of any of the Article 41(6)(b) factors occurring,

¹⁰ Reasons, para. 66(b).

¹¹ Reasons, para. 58.

including conditions that were not suggested in the Defence Detention Response, and explains *how* these conditions would address the risks.

(i) *Risk of flight*

12. The Single Judge found that some of the conditions proposed in the Defence Detention Response could mitigate the risk of flight.¹²
13. Mr Kilaj has two homes: one in the countryside in Malisheva (as indicated at paragraph 30 of the Defence Detention Response) which, prior to his arrest, he regularly visited at the weekends, and his weekday residence at [REDACTED] Prishtina.¹³ It was the Prishtina home that was searched on 2 November 2023 pursuant to the Single Judge's decision granting the SPO search and seizure request.¹⁴ Before his arrest, Mr Kilaj lived at the Prishtina home with his wife of 40 years, his two sons, daughter-in-law and two grandsons. He will abide by a condition to live and sleep each night at the Prishtina home and (subject to a proposed reporting condition, discussed below) not to leave the home or curtilage. Mr Kilaj is in effect prepared to be placed under "house arrest".¹⁵

¹² Reasons, para. 59, referring to Defence Detention Response, para. 30.

¹³ The GPS coordinates of this house are [REDACTED]° N, [REDACTED]° E / [REDACTED]N [REDACTED]E. See Confidential Annex 1 for an aerial image of the location of the Prishtina home (from Google Maps).

¹⁴ Decision Authorising Search and Seizure and Special Investigative Measures, KSC-BC-2018-01/F00484, 20 October 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential ("Search and Seizure Decision"). This Decision has not yet been made available to the Defence. A request to that effect will be filed shortly.

¹⁵ In the Defence Detention Response, it was proposed that the Suspect live in Malisheva (*see* para. 30). However, there would be less disruption to his whole family were he to live and sleep in the Prishtina home if granted provisional release.

14. In order that this “house arrest” condition might be surveilled, Mr Kilaj proposes that he be subject to electronic monitoring by way of an ankle tag. In addition, or in the alternative, the Single Judge is invited to order that regular and unannounced visits by either the Kosovo Police and/or members of the SPO be carried out to monitor Mr Kilaj’s compliance.
15. The Defence further proposes a condition that Mr Kilaj report at least once per day to the nearest police station. The nearest police station to the Prishtina home is the Kosovo Police Headquarters at the corner of Luan Haradinaj and Rexhep streets in central Prishtina. This police station is [REDACTED] kilometres from the Prishtina home as the crow flies,¹⁶ and approximately [REDACTED] kilometres away by road. By car, the journey takes between 15 and 17 minutes in each direction.¹⁷
16. These conditions of residence, monitoring and reporting will significantly address any risk of absconding. The SPO and the Kosovan police will know where Mr Kilaj is at any time of the day or night. His continuous presence at his Prishtina home will prevent him from fleeing to another country. Any violation of these conditions will inevitably lead to the alarm swiftly being raised and, once rearrested, Mr Kilaj’s immediate recall to detention.
17. Further, the Defence reiterates that Mr Kilaj agrees to surrender his passport and any other document that could be used for international travel, and will undertake not to apply for a new passport or any other document that could be used for international travel. The Single Judge is respectfully invited to

¹⁶ See Confidential Annex 2 (from Google Maps).

¹⁷ See Confidential Annex 3 (from Google Maps).

make an order to that effect. Any breach of such an order would, Mr Kilaj fully understands, result in immediate recall to detention.

18. An additional condition, one that was not proposed in the Defence Detention Response, is the paying of a security into Court by Mr Kilaj of €30,000 (thirty thousand Euros) by way of a personal recognisance before he is released, on the understanding that this sum would be forfeited in the event Mr Kilaj were to fail to attend Court when required. This is a huge sum of money to Mr Kilaj and his family. [REDACTED]. [REDACTED]. [REDACTED]. It is being proposed, however, by way of a guarantee of how seriously he would treat his obligation to remain in contact with the authorities and not to abscond. He told Duty Counsel today, "If I had one million Euros, I would offer one million Euros. I know I would not breach any of the conditions. I know I would get the money back from the Court." In other words, Mr Kilaj is prepared to put his money where his mouth is.
19. The risk of losing €30,000 is a significant disincentive for Mr Kilaj to flee. The prospect of having €30,000 returned to him at the end of the trial process is a significant incentive for him to comply fully with the other proposed conditions attaching to his provisional release.
20. It is submitted that the conditions set out above, taken together, address any residual risk that might exist that Mr Kilaj will flee.

(ii) *Risk of obstructing the progress of proceedings or committing offences*

21. The Single Judge found that none of the conditions put forward in the Defence Detention Response “could restrict Mr Kilaj’s ability to obstruct the progress of SC proceedings and commit further offences.”¹⁸
22. The Single Judge specifically considered the possibility of Mr Kilaj using communication devices belonging to other persons, or requesting other persons to use their devices for the purposes of obstructing proceedings.¹⁹
23. To address those concerns, Mr Kilaj would abide by conditions that: (i) he not use any communication device (landline telephone, mobile telephone, email, text, fax machine) whether directly or indirectly, or whether himself or via another, other than to communicate with his counsel; (ii) he not access the internet in any way whatsoever, whether directly or indirectly, or whether himself or via another, other than to communicate with his counsel; and (iii) he not contact directly or indirectly [REDACTED]. Of course, the strict conditions proposed at paragraphs 13-16 will have the effect of preventing him from meeting or speaking with [REDACTED] in person.
24. Mr Kilaj fully understands that, were he to contact [REDACTED], whether directly or indirectly, there is every chance such contact would be reported to the SPO, that his provisional release would be immediately revoked, and that his chances of being given a second chance would be practically zero. Having

¹⁸ Reasons, para. 60.

¹⁹ Reasons, para. 60.

no idea when an indictment might be filed, let alone when a trial might take place, Mr Kilaj is not prepared to take that risk.

25. However, and in order once again to demonstrate the seriousness with which he would treat his obligation not to obstruct the progress of proceedings or commit offences, Mr Kilaj is prepared to guarantee his behaviour by way of the aforementioned recognisance of €30,000. He is prepared to undertake to forfeit this sum not only in the event he would abscond, but also in the event he were to be found to have in any way obstructed or attempted to obstruct the progress of proceedings, or committed any offence. Again, Mr Kilaj is prepared to put his money where his mouth is.
26. The Defence reiterates that the risk of losing €30,000 is a significant disincentive for Mr Kilaj to [REDACTED] or otherwise obstruct the proceedings, or commit any offence. The prospect of having €30,000 returned to him at the end of the trial process is a significant incentive for him to comply fully with *all* the proposed conditions attaching to his provisional release.
27. It is submitted that the conditions set out above, taken together, effectively mitigate any risk set out in Article 41(6)(b)(ii)-(iii). The risks are not “unmanageable”.²⁰
28. Finally, when considering these proposed conditions, the Single Judge is respectfully reminded that it is right that the relative seriousness of the allegations formulated against Mr Kilaj should not be discounted. The Defence does not suggest for a moment that allegations of [REDACTED] obstruction of justice are not serious. However, it is appropriate to note that

²⁰ *Contra* SPO Reply, para. 6.

the Prosecution does not suggest that violence was ever used or threatened by Mr Kilaj. Neither does the Prosecution suggest that there is any evidence that [REDACTED] by Mr Kilaj, whether directly or indirectly. Specifically, the fact that there is no evidence 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 had that been his intention, is a relevant factor to take into account when assessing the question of risk posed by him.

III. CONCLUSION

29. For the foregoing reasons, the Defence respectfully requests that Mr Kilaj be released immediately with the conditions set out above, and any other conditions the Single Judge might consider appropriate.

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