



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2018-01/IA005**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Emilio Gatti
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 26 February 2024

Original language: English

Classification: **Public**

**Public Redacted Version of Decision on Isni Kilaj's Appeal Against
Decision on Review of Detention**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 18 January 2024 by Mr Isni Kilaj (respectively, “Appeal” and “Kilaj”),² against the “Decision on Review of Detention of Isni Kilaj” (“Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 30 January 2024⁴ and Kilaj replied on 5 February 2024.⁵

I. BACKGROUND

1. On 2 November 2023, Kilaj was arrested in Kosovo pursuant to an arrest warrant issued by the SPO.⁶ He was transferred to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands, on 3 November 2023.⁷ On the same day, the SPO submitted a request for Kilaj’s continued detention.⁸

¹ IA005/F00002, Decision Assigning a Court of Appeals Panel, 23 January 2024 (confidential, reclassified as public on 19 February 2024).

² IA005/F00001/RED, Public redacted version of “Kilaj Appeal Against Decision on Review of Detention of Isni Kilaj”, 6 February 2024 (confidential version filed on 18 January 2024) (“Appeal”).

³ F00547/RED, Public Redacted Version of Decision on Review of Detention of Isni Kilaj, 18 January 2024 (confidential version filed on 5 January 2024 (“Impugned Decision”).

⁴ IA005/F00003, Prosecution response to ‘Kilaj Appeal Against Decision on Review of Detention of Isni Kilaj’, 30 January 2024 (confidential) (“Response”).

⁵ IA005/F00004/RED, Public redacted version of “Reply to Prosecution Response to ‘Kilaj Appeal Against Decision on Review of Detention of Isni Kilaj’”, 6 February 2024 (confidential version filed on 5 February 2024) (“Reply”).

⁶ F00489, URGENT Rule 52(1) notification of arrest of Isni KILAJ, 2 November 2023 (strictly confidential and *ex parte*, reclassified as public on 9 November 2023); F00490/RED, Public Redacted Version of ‘URGENT Request for transfer order’, 3 November 2023 (strictly confidential and *ex parte* version filed on 2 November 2023, reclassified as confidential on 3 November 2023).

⁷ F00495/RED, Public Redacted Version of “Report on the Transfer of Isni Kilaj to the Detention Facilities, with strictly confidential and *ex parte* Annexes 1-2” (F00495), 8 November 2023 (strictly confidential and *ex parte* version filed on 3 November 2023).

⁸ F00496/RED2, Further public redacted version of ‘Prosecution Request for Continued Detention of Isni KILAJ, with confidential annexes 1 and 2’, 8 November 2023 (strictly confidential and *ex parte* version filed on 3 November 2023, reclassified as confidential on 24 November 2023).

2. On 4 November 2023, Kilaj's first appearance before the Single Judge took place.⁹
3. On 6 November 2023, after having received written submissions from Kilaj and the SPO,¹⁰ the Single Judge ordered Kilaj's continued detention.¹¹ Kilaj filed an appeal against the First Detention Decision on 13 December 2023.¹²
4. On 5 January 2024, after having received submissions from the Parties,¹³ the Single Judge issued the Impugned Decision and ordered the continuation of Kilaj's detention, finding that the risks that Kilaj would abscond, obstruct the progress of Specialist Chambers proceedings or commit further offences, continued to exist.¹⁴ The Single Judge further found that the conditions Kilaj proposed for his conditional release ("Proposed Conditions"¹⁵), including his proposal to pay a bail security¹⁶ of

⁹ Transcript, 4 November 2023. During the hearing, the Single Judge also heard oral submissions on the SPO Request for Continued Detention and granted the Defence's request to submit a written response.

¹⁰ F00497/COR/RED, Public redacted version of "Corrected Version of Kilaj Defence response to 'Confidential redacted version of 'Prosecution request for continued detention of Isni KILAJ''", 8 November 2023 (confidential uncorrected version filed on 4 November 2023); F00498/RED, Public redacted version of 'Prosecution reply to F00497', 7 November 2023 (confidential version filed on 5 November 2023).

¹¹ F00499, Decision on Continued Detention, 6 November 2023; F00503/RED, Public Redacted Version of Reasons for Continued Detention, 13 November 2023 (confidential version filed on 9 November 2023) ("Reasons for Continued Detention") (collectively, "First Detention Decision").

¹² IA004/F00001/RED, Public redacted version of "Kilaj Appeal Against Decision on Continued Detention", 13 December 2023 (confidential version filed on 21 November 2023). The SPO responded on 1 December 2023 and Kilaj replied on 8 December 2023. See IA004/F00003/RED, Public redacted version of 'Prosecution response to Defence appeal against decision on continued detention', 15 January 2024 (confidential version filed on 1 December 2023); IA004/00004, Kilaj Reply to Prosecution Response to Appeal Against Decision on Continued Detention, 8 December 2023 (confidential, reclassified as public on 11 January 2024).

¹³ F00524/RED2, Public further redacted version of "Kilaj Submissions on Review of Detention", 18 January 2024 (confidential version filed on 7 December 2023); F00538/RED, Public redacted version of 'Prosecution submissions on review of detention with confidential annexes 1 and 2', 11 January 2024 (confidential version filed on 15 December 2023) ("SPO Submissions"); F00544/RED, Public redacted version of "Kilaj Reply to Prosecution Submissions on Review of Detention", 11 January 2024 (confidential version filed on 22 December 2023).

¹⁴ Impugned Decision, paras 46, 52, 56-57.

¹⁵ The Single Judge uses the term "Proposed Measures" in the Impugned Decision.

¹⁶ For ease of reference and to follow the term used in Article 41(12)(c) of Law and in the Impugned Decision, the Appeals Panel will refer for the purpose of the present Decision to the term "bail" and "bail security" as designating a sum of money provided by the suspect or accused or on his or her

EUR 30,000, would significantly and adequately address the risk of flight but that the Proposed Conditions, or any additional measures, would be insufficient to mitigate the risks of obstructing the progress of Specialist Chambers proceedings or the risk of committing further offences.¹⁷

5. On 11 January 2024, the Court of Appeals Panel denied Kilaj's appeal against the First Detention Decision.¹⁸

6. In the Appeal, Kilaj develops two grounds of appeal¹⁹ and requests that the Court of Appeals Panel grant the Appeal, reverse the Impugned Decision and order his immediate release subject to the Proposed Conditions.²⁰ The SPO responds that the Appeal fails to demonstrate any error in the Impugned Decision and should be dismissed.²¹

II. STANDARD OF REVIEW

7. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.²²

behalf for his or her surrender to custody. This also includes the term "recognisance" used by Kilaj in the Appeal.

¹⁷ Impugned Decision, paras 62-68.

¹⁸ IA004/F00006/RED, Public Redacted Version of Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, 11 January 2024 (confidential version filed on 11 January 2024) ("First Appeal Decision on Detention").

¹⁹ Appeal, paras 9-20. See also Reply, paras 7, 9.

²⁰ Appeal, paras 9, 23. See also Reply, para. 16.

²¹ Response, paras 1, 12, 15-16.

²² KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati Appeal Decision*"), paras 4-14. See also e.g. KSC-BC-2020-06, IA004/F00005/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021), paras 4-7.

III. PUBLIC FILINGS

8. The Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel.²³

9. The Panel notes that the SPO has not yet filed a public redacted version of the Response but that it does not object to its reclassification as public.²⁴ However, the Panel invites the SPO to follow the guidance provided by the redactions made in the public redacted version of the Impugned Decision and of the relevant submissions from the Parties in assessing whether the Response can be reclassified as public. The Panel thus orders the SPO to file a public redacted version of the Response, or to indicate, through a filing, whether it can be reclassified as public within ten days of receiving notification of the present Decision.

IV. DISCUSSION

A. WHETHER THE SINGLE JUDGE ERRED IN FINDING THAT THE PROPOSED BAIL CANNOT MITIGATE THE RISKS OF OBSTRUCTING THE PROCEEDINGS OR COMMITTING FURTHER OFFENCES (GROUND 1)

1. Submissions of the Parties

10. Kilaj submits that the Single Judge erred in law in finding that Kilaj's proposal to pay a EUR 30,000 security could only be taken into consideration as a factor mitigating the risk of flight, but not the risks of obstructing the proceedings or committing further offences.²⁵ In Kilaj's view, the Single Judge erred in "unreasonably

²³ First Appeal Decision on Detention, para. 9. See also KSC-BC-2020-06, IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), para. 8. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

²⁴ See Response, para. 17.

²⁵ Appeal, paras 9, 11, 17. See also Reply, paras 8-10.

distinguishing” between the disincentivising effect of a “huge sum of money” being forfeited in the event he absconds and the same disincentivising effect in the event he interferes with the proceedings or commits further offences.²⁶

11. Kilaj submits that the “sole basis” for such distinction is the Single Judge’s “reasoning” that “the guarantee of bail is in principle designed to ensure not the reparation of loss, but the presence of the Accused at trial”.²⁷ He argues that the Single Judge misapprehended the European Court of Human Rights (“ECtHR”) decision he cited in support, namely the *Gafà v. Malta* Judgment.²⁸ Kilaj also takes issue with the Single Judge’s reference to the “reparation of loss”, arguing that the Single Judge erred in equating the forfeiting of the proposed bail with the reparation of loss.²⁹

12. The SPO responds that Ground 1 misrepresents the Impugned Decision.³⁰ First, the SPO submits that the Single Judge did not hold that bail could, as a matter of law, be considered only as mitigation against the risk of flight, but merely repeated the principle, supported by uncontested ECtHR jurisprudence, that the primary purpose of bail is to safeguard the presence of an accused at trial.³¹ With respect to the Single Judge’s reference to the “reparation of loss”, the SPO submits that the Single Judge simply quoted ECtHR jurisprudence.³²

²⁶ Appeal, paras 10-11.

²⁷ Appeal, paras 12-13, referring to Impugned Decision, para. 65, referring in turn to ECtHR, *Gafà v. Malta*, no. 54335/14, Judgment, 22 May 2018 (“*Gafà v. Malta* Judgment”), para. 70.

²⁸ In particular, Kilaj submits that the ECtHR: (i) did not exclude the possibility or appropriateness of bail in order to guarantee against interference with proceedings or the commission of further offences; (ii) specifically referred to the principle of paying a bail security to guarantee against non-appearance at trial only because it was in the context of the application of Article 5(3) of the European Convention of Human Rights, which only addresses the possibility of release being conditioned by guarantees to appear for trial; and (iii) noted, without criticism, that the list of conditions of the applicant’s bail in that case included conditions that he does not contact or approach witnesses or commit a crime of a voluntary nature. See Appeal, paras 13-17; Reply, para. 8.

²⁹ Appeal, para. 18. See also Reply, para. 9. While Kilaj raises this argument under Ground 2, given that it is intrinsically related to his arguments with respect to the Single Judge’s reference to the ECtHR jurisprudence, the Appeals Panel will address this argument under Ground 1.

³⁰ Response, paras 1, 8.

³¹ Response, para. 8.

³² Response, para. 13.

13. Second, the SPO argues that, contrary to Kilaj's contention, the *Gafà v. Malta* Judgment was not "the sole basis" for the Single Judge's finding that the proposed bail was more effective against the risk of flight than the other established risks.³³ In the SPO's view, the Single Judge did not err in distinguishing between the risks and in concluding that the bail "would not overcome the challenges associated with the risk of obstruction and commission of further crimes" as he drew this distinction on the basis of a detailed assessment of the risks that could materialise if Kilaj was granted provisional release in Kosovo and whether they could be mitigated.³⁴

14. The SPO concludes that Kilaj in fact attempts to circumvent the high threshold for challenging the Single Judge's discretionary decision by "fabricating an error of law" in order to challenge a factual finding he disagrees with.³⁵

15. Kilaj replies that the Single Judge did not state that the *primary* purpose of bail is to ensure presence at trial, thereby "leaving open some tacit acceptance" that bail could have a *secondary* purpose of mitigating the risks of obstructing the proceedings and committing further offences.³⁶

2. Assessment of the Court of Appeals Panel

16. At the outset, the Panel is mindful of the fact that an indictment has not been filed yet and that the filing of an indictment is, according to the SPO, imminent.³⁷ While the possibility to detain a suspect prior to the filing of an indictment is expressly foreseen in the Specialist Chambers' legal framework,³⁸ the Panel recalls that any

³³ Response, para. 9.

³⁴ Response, paras 9-11.

³⁵ Response, para. 12. See also Response, para. 1.

³⁶ Reply, para. 9.

³⁷ Impugned Decision, para. 69, referring to SPO Submissions, para. 31.

³⁸ See Rule 57(1) of the Rules, which governs the review of detention of a suspect by a Single Judge prior to the assignment of a Pre-Trial Judge.

analysis of pre-trial detention must take the presumption of innocence as its starting point and thus that pre-trial detention cannot be maintained lightly.³⁹

17. The Panel additionally recalls that to fully comply with the constitutional standards guaranteed by Article 29 of the Kosovo Constitution, a panel must consider more lenient measures when deciding whether a person should be detained.⁴⁰ This means that an accused can only be detained if such lesser measures would be insufficient to mitigate the risks of flight, obstruction or commission of further crimes.⁴¹ The Panel further recalls the discretion of the lower panel in imposing such measures.⁴²

18. The Panel notes that Kilaj does not challenge the Single Judge's assessment of the risks under Article 41(6)(b) of the Law or of the whole set of measures Kilaj proposed in order to mitigate those risks. He challenges only the Single Judge's approach with respect to the proposed measure of bail and in particular, his finding that it could mitigate the risk of flight but not the risks of obstructing the proceedings or committing further offences.⁴³

19. First, the Appeals Panel recalls that Article 41(12) of the Law expressly foresees bail among the measures that can be ordered in lieu of detention to ensure the

³⁹ First Appeal Decision on Detention, para. 17.

⁴⁰ KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020, para. 70 and jurisprudence cited therein. See also KSC-CC-PR-2017-01, F00004, 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 Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 26 April 2017, para. 114.

⁴¹ KSC-BC-2020-06, IA017/F00011/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 5 April 2022 (confidential version filed on 5 April 2022), para. 26, referring to ECtHR, *Ilmseher v. Germany*, nos 10211/12 and 27505/14, Judgment, 4 December 2018, para. 137; ECtHR, *Stanev v. Bulgaria*, no. 36760/06, Judgment, 17 January 2012, para. 143. See also Article 184(1.3) of the Kosovo Code of Criminal Procedure, Code No. 08/L-032, 17 August 2022.

⁴² *Gucati* Appeal Decision, para. 49. See also KSC-BC-2020-06, PL001/F00008, Decision on Kadri Veseli's Request for Protection of Legality, 15 August 2022, para. 58.

⁴³ Appeal, paras 11, 14, 17; Reply, paras 8-10.

presence of the accused during proceedings, to prevent reoffending or to ensure the successful conduct of criminal proceedings, provided that it is deemed sufficient to effectively mitigate any of the risks under Article 41(6)(b) of the Law.

20. The Panel considers that Kilaj misrepresents the Impugned Decision as the Single Judge did not find that the guarantee of bail could, as a rule, only mitigate the risk of flight but never the risks of obstructing the proceedings or committing further offences.⁴⁴ The Panel sees no error in the Single Judge's observation that "the guarantee of bail is in principle designed to ensure not the reparation of loss, but the presence of the Accused at trial".⁴⁵ This principle is well established in the ECtHR jurisprudence⁴⁶ and is best interpreted to mean that the primary purpose of a bail security is to guarantee the person's appearance at trial.⁴⁷

21. While the Panel does not consider that the "reparation of loss" is of immediate relevance in the context of detention on remand and agrees with the Defence in that respect, the Panel observes that these terms come directly from the ECtHR jurisprudence which the Single Judge relied upon in his observation that bail is a measure first and foremost intended to ensure the person's presence at trial. The Panel considers that the Single Judge's reference to the jurisprudence should be read in this context.⁴⁸

22. Moreover, the Panel observes that, while the Single Judge did draw a distinction between the risks under Article 41(6)(b) of the Law, finding that "bail may

⁴⁴ Contra Appeal, para. 17; Reply, paras 8-10.

⁴⁵ Impugned Decision, para. 65, referring to *Gafà v. Malta* Judgment, para. 70.

⁴⁶ The Appeals Panel observes that the Single Judge's assertion is more accurately reflected in the following decisions than in *Gafà v. Malta* Judgment, para. 70: ECtHR, *Istomina v. Ukraine*, no. 23312/15, Judgment, 13 January 2022, para. 25; ECtHR, *Mangouras v. Spain*, no. 12050/04, Judgment, 28 September 2010, para. 78; ECtHR, *Neumeister v. Austria*, no. 1936/63, Judgment, 27 June 1968, para. 14; ECtHR, Guide on Article 5 of the European Convention on Human Rights (Right to liberty and security), para. 233.

⁴⁷ See for example England and Wales, the Bail Act, 1976, Preliminary, Section 3(5); USA, Supreme Court, *Stack v. Boyle*, 342 U.S. 1 (1951), 5 November 1951, at 2; Germany, Criminal Procedure Code (Strafprozeßordnung – StPO), Section 116. See also Response, para. 8.

⁴⁸ Contra Appeal, para. 18.

adequately mitigate the risk of flight [but] is not sufficient to address the risks of obstructing the proceedings and committing further offences”,⁴⁹ such distinction did not have for its “sole basis” the *Gafà v. Malta* Judgment.⁵⁰ In the Panel’s view, far from a foregone conclusion, this distinction was based on the Single Judge’s detailed factual assessment, in light of the specific circumstances of the present case, of the concrete “challenges associated with the risk of obstruction and commission of further crimes”.⁵¹ Furthermore, the Panel finds that Kilaj ignores the fact that (i) the Single Judge also made a distinction between the risks in his risk assessment, finding the risks of obstruction and commission of further offences to be higher than the risk of flight, which he described as “moderate”;⁵² and that (ii) the Single Judge already found, in the First Decision on Detention, prior to Kilaj’s proposal of the bail guarantee, that some of the measures proposed by the Defence “could mitigate” the risk of flight.⁵³

23. Therefore, the Panel finds no error in the Single Judge distinguishing between the different risks and finding that bail was not sufficient in the present case to mitigate the risks of obstructing the proceedings and committing further offences.⁵⁴

24. Moreover, the Appeals Panel finds that while framed as legal errors, the arguments relate primarily to the underlying factual assessment and exercise of

⁴⁹ Impugned Decision, para. 65.

⁵⁰ Contra Appeal, para. 12.

⁵¹ Impugned Decision, para. 65. In particular, the Single Judge considered that, given that Kilaj has knowledge of [REDACTED], as well as other confidential witness-related information pertaining to the Specialist Chambers proceedings, the Proposed Conditions would not prevent Kilaj from meeting or speaking with [REDACTED] in person. The Single Judge found that if released under house arrest, 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”. See Impugned Decision, paras 63-64. See also below, para. 33.

⁵² Impugned Decision, paras 46, 50, 52, 56-57. The Single Judge found that the risk that Kilaj may obstruct the progress of the criminal proceedings and the risk that he may commit further offences continue to exist, the first one having “increased”.

⁵³ Impugned Decision, para. 62; First Decision on Detention, para. 59.

⁵⁴ Impugned Decision, para. 65.

discretion of the Single Judge with which Kilaj disagrees. This falls short of establishing any error or abuse of discretion.⁵⁵

25. In light of the above, the Panel dismisses Ground 1 of the Appeal.

B. WHETHER THE SINGLE JUDGE ERRED IN FAILING TO PROVIDE REASONS FOR HIS CONCLUSION THAT THE PROPOSED BAIL WOULD NOT OVERCOME CHALLENGES ASSOCIATED WITH THE RISKS (GROUND 2)

1. Submissions of the Parties

26. Kilaj submits that the Single Judge's conclusion that 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, is "flawed on its face", "unreasoned and unexplained".⁵⁶

27. Kilaj further submits that the Single Judge failed to give weight to relevant considerations that the EUR 30,000 proposed bail significantly overcomes the challenges associated with the risk of interfering with the proceedings or committing further offences.⁵⁷ In particular, Kilaj argues that the Single Judge failed to appreciate that the prospect of losing EUR 30,000 constitutes a "serious disincentive on Mr Kilaj's mind to interfere in proceedings or commit offences".⁵⁸

28. In conclusion, Kilaj submits that, had the Single Judge not erred in his approach when assessing the proposed condition of bail, he would have concluded that the Proposed Conditions adequately meet his concern that Kilaj might use a device belonging to a family member, or ask a family member to convey a message.⁵⁹

⁵⁵ See e.g. *Gucati* Appeal Decision, para. 64.

⁵⁶ Appeal, paras 19-20; Reply, paras 11-13, referring to Impugned Decision, para. 65.

⁵⁷ Appeal, paras 9, 18, 20; Reply, paras 11-12.

⁵⁸ Appeal, para. 18; Reply, para. 12.

⁵⁹ Appeal, paras 21-22; Reply, paras 14-15. See also Appeal, para. 9.

29. The SPO responds that Ground 2 misrepresents the Impugned Decision.⁶⁰ The SPO submits that, contrary to Kilaj's assertion, the Impugned Decision did take into consideration Kilaj's prospect of losing the recognisance.⁶¹ Furthermore, the SPO responds that Kilaj's claim that the Single Judge's conclusion is unreasoned and unexplained is baseless as the Single Judge engaged in a rigorous risk assessment and identified relevant facts.⁶² In its view, Kilaj merely disagrees with the Single Judge's conclusion.⁶³

2. Assessment of the Court of Appeals Panel

30. Under Ground 2, Kilaj takes issue with the Single Judge's conclusion on the bail security, at paragraph 65 of the Impugned Decision, in which the Single Judge found that:

[W]hile 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.

31. Kilaj argues specifically that the Single Judge "failed to appreciate that it is the prospect of losing the recognisance that acts as the serious disincentive on Mr Kilaj's mind to interfere in proceedings or commit offences".⁶⁴ In this regard, the Panel notes that the Single Judge clearly referred to "Mr Kilaj's apprehension to lose EUR 30,000, in case of breach of the conditions".⁶⁵ The Panel understands that the Single Judge thereby acknowledged that the proposed bail had *some* disincentive effect on Kilaj and served as *some* mitigation in relation to the identified risks, but then concluded that

⁶⁰ Response, paras 1, 13.

⁶¹ Response, para. 14.

⁶² Response, para. 15.

⁶³ Response, para. 15. See also Response, para. 1.

⁶⁴ Appeal, para. 18.

⁶⁵ Impugned Decision, para. 65.

such a disincentive effect was not *sufficient* and “would not overcome the challenges associated with the risk of obstruction and commission of further crimes”.⁶⁶

32. Turning to Kilaj’s contention that the Single Judge’s conclusion is “unreasoned and unexplained”,⁶⁷ the Panel recalls that while a panel must provide reasoning in support of its findings on the substantive considerations relevant for a decision, it is not required to articulate every step of its reasoning and to discuss each submission, provided that it indicated with sufficient clarity the basis for its decision.⁶⁸ In the present case, the Appeals Panel does not consider that the Single Judge failed to comply with his obligation to provide a reasoned decision.

33. In the Panel’s view, Kilaj ignores the fact that the Single Judge’s conclusion necessarily ensues from the detailed assessment he conducted of the risks and of how they could be addressed by the Proposed Conditions.⁶⁹ The Single Judge found in particular that: (i) “Kilaj has knowledge of [REDACTED], as well as other confidential witness-related information pertaining to the [Specialist Chambers] proceedings”;⁷⁰ (ii) if released under house arrest, 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”;⁷¹ (iii) the Proposed Conditions would not prevent Kilaj from meeting or speaking [REDACTED] in person;⁷²

⁶⁶ Impugned Decision, para. 65. Contra Appeal, para. 18. The Panel notes that the Single Judge also acknowledged, when assessing whether the Proposed Conditions, including the bail, could adequately mitigate the risk of flight, the importance of the sum for Kilaj and his family. See Impugned Decision, para. 62.

⁶⁷ Appeal, para. 19.

⁶⁸ KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 33. See also KSC-BC-2020-06, IA001/F00005, Decision on Kadri Veseli’s Appeal Against Decision on Interim Release, 30 April 2021, para. 72; KSC-BC-2020-06, IA009/F00030, Decision on Appeals Against “Decision on Motions Challenging the Jurisdiction of the Specialist Chambers”, 23 December 2021, para. 154.

⁶⁹ The terms “as described above” in paragraph 65 of the Impugned Decision clearly refer to the assessment the Single Judge conducted in paragraphs 63 and 64, which is thereby incorporated by reference.

⁷⁰ Impugned Decision, para. 63.

⁷¹ Impugned Decision, para. 63.

⁷² Impugned Decision, para. 63.

(iv) “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 [Specialist Chambers] Detention Facilities”;⁷³ and (v) the Kosovo Police does not have the capacity to implement corresponding measures that sufficiently mitigate the existing risks.⁷⁴

34. The Panel sees no error in the way the Single Judge conducted that assessment and exercised his discretion to reach the conclusion that Kilaj’s apprehension to lose EUR 30,000 would not overcome the challenges previously identified and thus would not adequately mitigate the risks of obstruction and commission of further crimes.

35. In light of the above, the Panel is satisfied that the Single Judge did not err in finding that the Proposed Conditions, including bail, are insufficient to mitigate the identified risks. Accordingly, the Appeals Panel dismisses Ground 2 of the Appeal.

V. DISPOSITION

36. For these reasons, the Court of Appeals Panel:

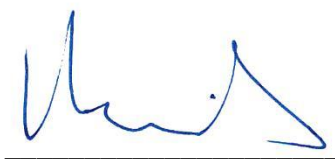
DENIES the Appeal;

ORDERS the SPO to file a public redacted version of the Response (IA005/F00003) or indicate, through a filing, whether this filing can be reclassified as public within ten days of receiving notification of the present Decision; and

INSTRUCTS the Registry to execute the reclassification of the Response upon indication by the SPO, if any, that it can be reclassified.

⁷³ Impugned Decision, para. 64.

⁷⁴ Impugned Decision, para. 64.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 26 February 2024

At The Hague, the Netherlands