

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: 22 February 2024

Language: English

Classification: Public

**Public redacted version of “Kilaj Response to
Prosecution Submissions on Review of Detention”**

Specialist Prosecutor’s Office
Kimberly P. West

Duty Counsel for Isni Kilaj
Iain Edwards

I. INTRODUCTION

1. The Defence for Mr Isni Kilaj (“Defence”, “Suspect”) hereby responds to the Prosecution’s submissions on review of detention¹ pursuant to Article 41(6) and (10) of the Law,² Rule 57 of the Rules,³ and the Single Judge’s order.⁴
2. The procedural history is set out in the SPO Submissions, and is incorporated by reference.

II. SUBMISSIONS

3. The SPO repeats its previous submissions that (i) there is a grounded suspicion that Mr Kilaj has committed a crime within the jurisdiction of the KSC, and (ii) there are articulable grounds to believe that there is a risk of flight, or a risk that Mr Kilaj will obstruct the proceedings, or that he will commit (further) offences. The SPO also argues that there are no “modalities of conditional release” that could sufficiently mitigate the alleged risks.
4. Firstly, the Defence does not concede the reasonableness or correctness of the SPO’s Submissions. However, it should be noted that Mr Kilaj appealed the

¹ Prosecution submissions on review of detention, KSC-BC-2018-01/F00575, 12 February 2024, confidential (“SPO Submissions”).

² Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (“Law”), Unless otherwise indicated, all references to “Article(s)” are to the Law.

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chamber (“Rules”). Unless otherwise indicated, all references to “Rule(s)” are to the Rules.

⁴ Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00547, 5 January 2024, confidential (“Decision”), para. 72(f). A public redacted version was notified on 18 January 2024.

Decision on 18 January 2024.⁵ That appeal has been fully briefed⁶ and a ruling from the Panel of the Court of Appeals Chamber is pending. If the Court of Appeals Chamber allows the appeal and holds that Mr Kilaj should be provisionally released following the deposit of a suitable recognisance with the KSC, the SPO Submissions will become moot and the Single Judge will no longer be obliged to decide on the review of detention.

5. Secondly, the SPO submits that the “Initial Detention Decision found a grounded suspicion that KILAJ has committed offences under Article 15(2) of the Law.”⁷ The Defence is mindful that no indictment has yet been confirmed, [REDACTED].⁸ The Defence therefore does not have a precise idea of the offences [REDACTED]. Notwithstanding this uncertainty, the Defence submits that, taking the Prosecution’s case at its highest and proceeding on the basis that [REDACTED] no evidence has been adduced to support allegations that the Suspect ever *in fact* revealed, or attempted to reveal, secret information in a manner proscribed by Article 392 of the Kosovo Criminal Code of 2019. Nor is there any evidence that the Suspect ever participated in a group of persons which by common action *in fact* obstructed or attempted to obstruct an official person in performing official duties in a manner proscribed by Article 401(2) of the Kosovo Criminal Code of 2019.

6. [REDACTED]. [REDACTED].

⁵ Kilaj Appeal Against Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/IA005/F00001, 18 January 2024, confidential. A public redacted version was notified on 6 February 2024.

⁶ Prosecution response to ‘Kilaj Appeal Against Decision on Review of Detention of Isni Kilaj’, KSC-BC-2018-01/IA005/F00003, 30 January 2024, confidential; Reply to Prosecution response to ‘Kilaj Appeal Against Decision on Review of Detention of Isni Kilaj’, KSC-BC-2018-01/IA005/F00004, 5 February 2024, confidential (public redacted version filed on 6 February 2024).

⁷ SPO Submissions, para. 13, citing Decision on Continued Detention, KSC-BC-2018-01/F00499, 6 November 2023 (“Initial Detention Decision”), para. 13, and Reasons for Continued Detention, KSC-BC-2018-01/F00503, 9 November 2023 (“Initial Detention Reasons”), paras 22-32.

⁸ [REDACTED].

7. Thirdly, the Defence takes issue with two unfounded and speculative points raised in paragraph 22 of the SPO Submissions. First, the Prosecution argues that the “proposed cash bail” would not amount to a significant disincentive for Mr Kilaj to obstruct proceedings since violations of any conditions of provisional release would be difficult to detect. The SPO’s logic is flawed. The point ignores the reality that there is always a risk that an attempt to obstruct proceedings [REDACTED], will be reported [REDACTED] to the Prosecution. Assuming, *arguendo*, that Mr Kilaj had any interest [REDACTED], he could not know whether or not [REDACTED] would immediately report [REDACTED]. It is precisely because Mr Kilaj would run the risk of losing €30,000 in these circumstances that he would be disincentivised from taking the risk in the first place.
8. Second, the SPO raises for the first time an argument that “it is likely that any cash bail amount could be covered by associates whose interests are closely aligned in this instance”. This submission is nothing more than unevidenced and speculative innuendo. The SPO has pointed to no evidence that Mr Kilaj, personally, has associates whose interests are so closely aligned with his. The SPO has adduced no evidence that Mr Kilaj has associates who are able, or willing, to forfeit €30,000 in the event he were to violate conditions of provisional release. And there is no evidence that Mr Kilaj would not feel sufficiently indebted to anyone who lost €30,000 on account of his actions so as to act to disincentivise him from breaching his release conditions.
9. More seriously, this argument is unworthy of an officer of the court.⁹ It demonstrates the reckless, prejudicial and discriminatory hostility of the

⁹ In French, *auxiliaire de justice*.

Prosecution against Mr Kilaj as a former member of the KLA. The Prosecution does not even exercise a minimal degree of caution by suggesting that it is *possible* Mr Kilaj's bail might be covered by a third party. It turns the presumption of innocence on its head. The Single Judge can safely disregard the argument in its entirety.

10. Finally, [REDACTED]. This is to be contrasted with: (i) [REDACTED];¹⁰ (ii) [REDACTED];¹¹ and (iii) [REDACTED].¹²
11. The Defence takes this opportunity to respectfully invite the Single Judge to [REDACTED] without delay.
12. It is submitted that if there are [REDACTED], this must render Mr Kilaj's continued detention less proportionate.

Respectfully submitted.

Word count: 1,417



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¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

Thursday, 22 February 2024

The Hague, The Netherlands