

1 Monday, 9 December 2024

2 [Open session]

3 [Initial Appearance]

4 [The Accused Kilaj entered the courtroom]

5 --- Upon commencing at 1.00 p.m.

6 JUDGE MASSELOT: Good afternoon and welcome, everyone, to this
7 Initial Appearance hearing.

8 Madam Court Officer, could you please call the case.

9 THE COURT OFFICER: Good afternoon, Your Honour. This is file
10 KSC-BC-2023-12, The Specialist Prosecutor versus Hashim Thaci,
11 Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuci.

12 JUDGE MASSELOT: Thank you, Madam Court Officer.

13 Before we start, I would like to give the photographer the
14 opportunity to make some pictures.

15 Please proceed, Mr. Photographer.

16 Thank you, Mr. Photographer.

17 Before asking those present in the courtroom to introduce
18 themselves, I would like to remind everyone of the rules that must be
19 observed at all times in order to facilitate the smooth conduct of
20 the proceedings.

21 Please ensure that you activate your microphone before speaking
22 and that you switch it off as soon as you are finished. Talk slowly
23 and clearly as we have interpretation from and into Albanian and
24 Serbian. Wait five seconds before responding to me or a party in
25 order to allow the interpreters to finish the interpretation.

1 I would also like to remind you that certain information in this
2 case is subject to confidentiality. Confidential information shall
3 not be disclosed in open session. If any party wishes to refer to or
4 discuss any confidential information, please request to go into
5 private session.

6 Now I would like to ask the parties to introduce themselves,
7 starting with the Specialist Prosecutor's Office.

8 MR. HAFETZ: Good afternoon, Your Honour. Josh Hafetz on behalf
9 of the Specialist Prosecutor's Office. And joining us here today are
10 the Specialist Prosecutor, Kim West, seated behind me; Earl Sullivan
11 to my left; and Eleonore Coeuret behind him. Thank you.

12 JUDGE MASSELOT: Thank you.

13 Now the Defence, please.

14 MR. EDWARDS: Good afternoon, Your Honour. Iain Edwards from
15 the Bar of England and Wales.

16 JUDGE MASSELOT: Thank you, counsel.

17 For the record, I note that your client, Mr. Kilaj, is also
18 present in the courtroom.

19 And I now turn to the Registry, please.

20 MR. NILSSON: Good afternoon, Your Honour. And good afternoon,
21 colleagues. Jonas Nilsson, Deputy Registrar, and Whitney Price,
22 legal counsel, for Registry today.

23 JUDGE MASSELOT: Thank you.

24 And last, for the record, I am Marjorie Masselot,
25 Pre-Trial Judge for this case.

1 The accused is appearing today for the first time before the
2 Specialist Chambers following confirmation of the indictment against
3 him on 29 November 2024.

4 Mr. Kilaj, would you please stand up. Could you please switch
5 on your microphone, and respond to the following questions.

6 Could you please state your full name, date, and place of birth.

7 THE ACCUSED KILAJ: [Interpretation] Isni Kilaj, born in
8 Lubishte, Malisheve municipality. Date of birth, 19 December 1963.

9 JUDGE MASSELOT: And could you also please indicate your
10 citizenship or citizenships?

11 THE ACCUSED KILAJ: [Interpretation] Kosovo citizenship.

12 JUDGE MASSELOT: And your current profession, please?

13 THE ACCUSED KILAJ: [Interpretation] An economist, currently
14 unemployed.

15 JUDGE MASSELOT: Thank you, Mr. Kilaj.

16 Before we proceed any further, I have to make sure that you can
17 follow the proceedings in a language that you understand and speak.
18 Can you confirm that you understand and speak Albanian?

19 THE ACCUSED KILAJ: [Interpretation] Yes, I do.

20 JUDGE MASSELOT: Thank you, Mr. Kilaj. By this I am satisfied
21 that you can follow the proceedings in Albanian, a language that you
22 understand and speak, in accordance with Rule 92 of the Rules of
23 Procedure and Evidence.

24 If at any moment in the course of the proceedings you are not
25 receiving interpretation, please draw my attention to it immediately.

1 Mr. Kilaj, you may now be seated and switch off your microphone.

2 I will now give a short procedural history to introduce today's
3 initial hearing.

4 On 29 November 2024, in my capacity as Pre-Trial Judge, I
5 partially confirmed the indictment submitted by the
6 Specialist Prosecutor against Messrs Hashim Thaci, Bashkim Smakaj,
7 Isni Kilaj, Fadil Fazliu, and Hajredin Kuci, charging Mr. Kilaj with
8 one count of attempt to obstruct official persons in performing
9 official duties by participating in the common action of a group, and
10 one count of contempt of court.

11 I also issued an arrest warrant for Mr. Kilaj on the same day.

12 On 5 December 2024, the Specialist Prosecutor's Office arrested
13 Mr. Kilaj in Kosovo, and he was served with the arrest warrant, the
14 Confirmed Indictment, and the decision on his arrest warrant
15 translated into Albanian.

16 On 6 December 2024, Mr. Kilaj was transferred to the detention
17 facilities of the Kosovo Specialist Chambers in The Hague. That same
18 day, I issued the decision setting today's date for the Initial
19 Appearance. I recall that a request for rescheduling was actually
20 granted, and this is why we are having this hearing today.

21 Now allow me to recall the specific purpose of this Initial
22 Appearance for the benefit of Mr. Kilaj.

23 Today's hearing, Mr. Kilaj, is not a trial. No evidence will be
24 presented or debated, nor will your guilt or innocence be discussed
25 or decided.

1 The very purpose of this Initial Appearance hearing is regulated
2 by Article 39(5) of the Law and Rule 92 of the rules. According to
3 these provisions, as a Pre-Trial Judge, I shall:

4 Have the charges in the Confirmed Indictment read to the
5 accused;

6 Confirm that the accused understands the indictment;

7 Satisfy myself that the rights of the accused, in particular his
8 right to counsel, are respected;

9 Inform the accused that within 30 days of today's hearing, he
10 will be called upon to admit guilt or plead not guilty on each charge
11 set out in the indictment. If the accused wishes to do so, he may
12 also immediately admit guilt or plead not guilty.

13 And, finally, I shall set other dates as appropriate in
14 performing my functions as Pre-Trial Judge.

15 These are the matters which will be addressed in turn during
16 today's Initial Appearance. Should either party wish to discuss any
17 other matter not expressly foreseen in the context of the Initial
18 Appearance, I invite you to do so through a filing in written form.

19 First, Mr. Kilaj, may I invite you to please stand up.

20 May I ask you to confirm that you have received the Confirmed
21 Indictment in a language that you understand and speak? Please do
22 not forget - yes - to turn on your microphone.

23 THE ACCUSED KILAJ: [Interpretation] Yes.

24 JUDGE MASSELOT: Thank you, Mr. Kilaj.

25 Before Madam Court Officer reads the confirmed charges against

1 you, I wish to remind you that this is not the time to contest them
2 but simply to acknowledge your understanding thereof. You will have
3 the opportunity to challenge the charges with the assistance of your
4 counsel.

5 I will now ask Madam Court Officer to read out the charges in
6 the Confirmed Indictment as foreseen in Article 39(5) of the Law and
7 Rule 92(2)(b) of the rules.

8 THE COURT OFFICER: Thank you, Your Honour.

9 1. In the Confirmed Indictment, the Specialist Prosecutor
10 charges Mr. Isni Kilaj with:

11 Count 14: Attempting to obstruct official persons, in
12 particular SPO Prosecutors and investigators, in performing official
13 duties by participating in the common action of a group, punishable
14 under Article 401(2) and (5) of the 2019 Kosovo Criminal Code and
15 Article 15(2) of the Law; and

16 Count 15: Contempt of court, punishable under Article 393 of
17 the 2019 Kosovo Criminal Code and Article 15(2) of the Law.

18 2. These offences were committed between at least 6 October and
19 2 November 2023.

20 3. In relation to these offences there is a well-grounded
21 suspicion that Mr. Isni Kilaj is criminally responsible, pursuant to
22 Article 16(3) of the Law for:

23 a. Committing the offence of attempted obstruction of official
24 persons performing official duties under Count 14, pursuant to
25 Article 17 of the 2019 Kosovo Criminal Code;

1 b. Assisting Mr. Hashim Thaci, in the context of the group, in
2 the commission of the above of attempted obstruction of official
3 persons performing official duties under Count 14, pursuant to
4 Article 33 of the 2019 Kosovo Criminal Code;

5 c. Assisting Mr. Hashim Thaci in the commission of the offence
6 of contempt of court under Count 15, pursuant to Article 33 of the
7 2019 Kosovo Criminal Code; and

8 d. Agreeing to commit with Mr. Hashim Thaci, in the context of
9 the group, in the commission of the offence of attempted obstruction
10 of official persons performing official duties under Count 14,
11 pursuant to Article 35 of the 2019 Kosovo Criminal Code.

12 Thank you, Your Honour.

13 JUDGE MASSELOT: [Microphone not activated].

14 Thank you, Madam Court Officer.

15 Mr. Kilaj, did you understand the charges contained in the
16 Confirmed Indictment as read to you by Madam Court Officer?

17 THE ACCUSED KILAJ: [Interpretation] Yes.

18 JUDGE MASSELOT: Thank you Mr. Kilaj. You may be seated.

19 The Law on the Specialist Chambers and the Rules of Procedure
20 and Evidence guarantee you, Mr. Kilaj, a number of rights, and I will
21 read out the most important ones, especially those relevant at this
22 stage specific stage of the proceedings.

23 You shall be presumed innocent until proven guilty beyond a
24 reasonable doubt.

25 In the determination of the charges against you, you are

1 entitled to a fair and public hearing, subject to any measure ordered
2 for the protection of victims and witnesses.

3 You have the right to be notified promptly and in detail in a
4 language which you understand of the nature and cause of the charges
5 against you.

6 You have the right to have adequate time and facilities for the
7 preparation of your defence, and to communicate with the counsel of
8 your own choosing.

9 You have the right to be tried within a reasonable time.

10 You have the right to be tried in your presence and to defend
11 yourself through your counsel.

12 You have the right to have counsel assigned to you, and without
13 payment, if you do not have sufficient means to pay for it.

14 You have the right to receive the free assistance of an
15 interpreter if you cannot understand or speak the language used in
16 court.

17 You have the right not to be compelled to testify against
18 yourself or to admit guilt.

19 You have the right to remain silent, and no adverse inference
20 shall be drawn from your silence.

21 And you have the right not to be detained for an unreasonable
22 period of time prior to the opening of the case, to request review of
23 decisions on your detention, and to appeal such decisions directly
24 before the Court of Appeals.

25 Mr. Kilaj, I have read to you the most important rights that you

1 enjoy in accordance to the applicable legal framework of the
2 Specialist Chambers. Do you understand these rights?

3 THE ACCUSED KILAJ: [Interpretation] Yes.

4 JUDGE MASSELOT: Thank you, Mr. Kilaj.

5 I also wish to inform you that according to Article 21(5) of the
6 Law, you may not represent yourself because you are currently in
7 detention. Representation by Specialist Counsel is therefore
8 mandatory.

9 And I take note that you are represented by Counsel Edwards.
10 And I'm therefore satisfied that the accused is presently represented
11 by counsel.

12 I will now turn to the right of the accused to enter an
13 immediate plea, if any, in accordance with Rule 92 of the rules.

14 Mr. Kilaj, within 30 days from today, you will be called upon to
15 admit guilt or plead not guilty on the charges in the indictment. If
16 you wish to do so, you may choose to immediately admit guilt or plead
17 not guilty.

18 I would, therefore, like to ask you, Mr. Kilaj, if you have had
19 the opportunity to discuss the charges in the Confirmed Indictment
20 with your counsel, and if you are prepared to enter a plea at this
21 hearing.

22 THE ACCUSED KILAJ: [Interpretation] Yes, I will enter a plea.

23 JUDGE MASSELOT: All right. Please, you have the floor.

24 THE ACCUSED KILAJ: [Interpretation] I plead absolutely not
25 guilty.

1 JUDGE MASSELOT: This is on the record, Mr. Kilaj. And as you
2 have chosen to plead not guilty on all counts, the pre-trial
3 proceedings will continue with a view to preparing this case for
4 trial, pursuant to Rule 95 of the rules.

5 You may be seated.

6 THE ACCUSED KILAJ: [Interpretation] Thank you.

7 JUDGE MASSELOT: Let us now move to the working language of the
8 proceedings.

9 I recall that in the decision setting the date for today's
10 Initial Appearance, I invited the parties to make oral submissions at
11 today's hearing on the working language to be used in the present
12 case according to Rule 8 of the rules.

13 Could the parties indicate their preference for the record,
14 starting with the Specialist Prosecutor's Office.

15 MR. HAFETZ: We'll go with English again, Your Honour. Thank
16 you.

17 JUDGE MASSELOT: This is well noted.

18 For the Defence?

19 MR. EDWARDS: Yes. English, please.

20 JUDGE MASSELOT: Thank you. I will issue a decision on this
21 matter in due course.

22 In said decision, I also indicated that I intend to schedule the
23 first Status Conference in this case, pursuant to Rule 96 of the
24 rules, on Tuesday, 17 December 2024, at 2.00. I have also invited
25 you to provide oral submissions at today's Initial Appearance on

1 whether counsel and/or the accused intend to participate in this
2 Status Conference in person or via video-conference.

3 You have the floor, Counsel Edwards, on this matter.

4 MR. EDWARDS: Yes, thank you, Your Honour. We will both attend
5 in person.

6 JUDGE MASSELOT: Thank you, counsel.

7 I now turn to the Specialist Prosecutor as to your availability,
8 reminding that you, indeed, already - four times - mentioned that you
9 will be available, but for the record I give you the floor.

10 MR. HAFETZ: For the fifth time, Your Honour, we're available
11 and we'll be here.

12 JUDGE MASSELOT: Thank you.

13 You will receive a Scheduling Order in due course that will also
14 include the agenda. In that Scheduling Order, I will also provide
15 guidance on the requirements for attending the Status Conference via
16 video-conference in case this becomes necessary.

17 Now in relation to Mr. Kilaj's detention.

18 I recall, Mr. Kilaj, that, based on the finding of a
19 well-grounded suspicion that you committed the offences that were
20 just read to you, an arrest warrant was issued against you on
21 29 November 2024.

22 Pursuant to Article 41(6) (b) of the Law, your arrest was found
23 necessary based on the existence of articulable grounds to believe
24 that you are a flight risk, you may obstruct the progress of the
25 criminal proceedings, and you may repeat said offences. I also

1 recall that you were served upon your arrest with my reasoned
2 Decision on Request for Arrest Warrants and Related Matters,
3 translated into Albanian, together with the Confirmed Indictment.

4 Now I would like to know whether the Defence wishes to make
5 submissions on the issue of detention, and I therefore give you the
6 floor, Counsel Edwards.

7 MR. EDWARDS: Your Honour, we certainly do want to make
8 submissions on the question of detention.

9 JUDGE MASSELOT: So, please, the floor is yours.

10 MR. EDWARDS: Well, if I can start just by confirming that the
11 interpreters have a copy of my speaking notes.

12 THE INTERPRETER: We do, Your Honour.

13 MR. EDWARDS: I'm grateful.

14 Can I just, on a personal note, thank Your Honour for postponing
15 today's hearing. It made travel over the weekend much more serene.

16 Your Honour has found, in confirming the indictment against
17 Mr. Kilaj, that there's a "well-grounded suspicion" that he's
18 criminally responsible for the two counts that he faces. And so it
19 stands to reason that the less onerous test of "grounded suspicion"
20 required for ordering detention under Article 41(6) of the Law is
21 also met.

22 And I can reassure Your Honour that I'm not going to spend time
23 this afternoon by seeking to persuade Your Honour that you were wrong
24 in arriving at your "well-grounded suspicion" finding. That's not
25 the purpose of today's submissions.

1 What I am going to do, however, is to focus on how this
2 technical and rather legalistic difference between grounded and
3 well-grounded suspicions does not, in reality, amount to such an
4 appreciable difference in the mind of Mr. Kilaj such that a risk that
5 his behaviour now would change so dramatically from his proven
6 behaviour over the last seven months, since he was released back in
7 Kosovo.

8 Your Honour, Mr. Kilaj has always been a good and safe candidate
9 for conditional release. He was a good and safe candidate for
10 conditional release 13 months ago when we were last here in this room
11 on 4 November 2023. I submitted then to the then Single Judge that
12 Mr. Kilaj could be trusted with release with conditions,
13 notwithstanding the Prosecution's objections based on articulable
14 grounds to believe that there was a risk of flight, a risk of
15 obstructing the progress of proceedings, and the risk of committing
16 further offences.

17 Parenthetically, can I just say that I -- although they are
18 different, I think for the purposes of today's hearing there may be
19 common ground that the risks of committing offences is founded on the
20 same considerations as the risk of obstructing proceedings, so for
21 brevity I'm going to focus my submissions on just obstructing
22 proceedings.

23 In November of last year, the Single Judge was not prepared to
24 give Mr. Kilaj the benefit of the doubt. And, of course, in November
25 of last year, Mr. Kilaj was something of an unknown quantity. He

1 hadn't been tested. He hadn't been given the opportunity to show
2 that he could be trusted with conditional release.

3 And in the view of the Single Judge, the consequences of taking
4 that chance with an unknown quantity was preferable, was more
5 judicious, perhaps, to -- was such that it was more judicious to
6 order that Mr. Kilaj remain in custody. And that remained the case
7 until 3 May of this year.

8 For reasons which, of course, Your Honour is very familiar, the
9 Single Judge ruled that, notwithstanding existing risks, it was no
10 longer proportional or reasonable within the meaning of Rule 56(2) to
11 extend Mr. Kilaj's detention.

12 And that changed everything.

13 Despite concrete concerns that Mr. Kilaj, if released, might
14 abscond, that despite concrete concerns he might obstruct the
15 proceedings, engage in interference, he was finally, after six months
16 in detention, given a chance to prove that he could be trusted. He
17 was given a chance to prove that earlier concerns and misgivings were
18 simply misplaced, and, indeed, that they had been misplaced ever
19 since November 2023.

20 And after his release in Kosovo, Mr. Kilaj repaid that trust.
21 By his actions, he repaid that trust, not just my words as his
22 counsel, but by his actions he showed that the Single Judge had been
23 absolutely right to give him that chance.

24 At footnote 78 of Your Honour's Decision on Request for Arrest
25 Warrants and Related Matters of 29 November 2024, you note that there

1 is no information on record demonstrating that Mr. Kilaj did not
2 comply with any of the conditions imposed on him. Well, that is
3 perfectly true, but I would submit that we can put it far more
4 positively. We can give Mr. Kilaj much more credit than that.

5 All of the evidence on the record shows that he positively
6 complied with the conditions of his release. Positively complied
7 faithfully, fully, to the letter with every single one of the
8 conditions, without fail, over the last seven months. He lived and
9 slept at the address notified to the Specialist Chambers every single
10 day, without fail. He reported to his local police station once a
11 week, without fail.

12 I want to remain in public session, but I can tell you that he
13 did nothing that he was prohibited from doing.

14 He stayed within the territory of Kosovo. And Your Honour will
15 recall that when he wanted to go away to Albania for just a few days
16 with his wife, to have time away together in a place that was very
17 dear to them after the *annus horribilis* since November 2023 that they
18 had experienced, when he wanted to leave Kosovo, he did what he was
19 expected to do. He did what he had been asked -- what he had been
20 ordered to do.

21 He didn't just go to Albania recklessly, with a cavalier
22 attitude. He asked first for Your Honour's authorisation. And even
23 though disappointed by your ruling, he respected Your Honour's
24 decision.

25 Now, I don't suggest that Mr. Kilaj deserves applause for having

1 complied. He did what the Court ordered him to do, as everyone
2 should be -- as everyone should do. So I don't ask for credit as
3 such.

4 But the reason why it's important, Your Honour, is that, after
5 seven months, this Court can now no longer say that Mr. Kilaj is an
6 unknown quantity. It can no longer be said that he doesn't have a
7 track record to which he can point to say: Look, when you put your
8 trust in me, you know that I am deserving of that trust, I am worthy
9 of the faith you put in me when you grant me bail.

10 So that then now brings me to what the SPO says. They say that
11 the situation now is totally different. It is totally different now
12 to the situation as it was a week ago. And the situation is so
13 different that one can put his record of compliance to one side,
14 completely ignore it, and that the man who has proven his trust can
15 now no longer be trusted.

16 I submit that that is a quite unfair position to take.

17 In reality, I ask rhetorically, how different is the situation
18 now?

19 Well, firstly, in relation to the suggestion that -- well,
20 there's the fact of the -- the new fact of the confirmation of an
21 indictment and the start of pre-trial proceedings. I pause to say
22 that these are not standalone factors. I suggest that one flows very
23 much from the other. They are, indeed, the same as the third factor
24 pressed that Mr. Kilaj now faces a much more concrete prospect of a
25 lengthy term of imprisonment if convicted.

1 In my submission, it would be wrong to look at these three
2 things as quite separate. They're not. They all flow from the same
3 thing. There's an indictment, he's in the pre-trial stage, and he's
4 facing a trial, and at the end of the trial he's facing potentially a
5 sentence.

6 This is certainly a development, but it would be wrong, in my
7 submission, to overstate the importance of this new development.
8 Why? Because as far as Mr. Kilaj is concerned, there's nothing
9 really that new. He's been aware from the very beginning of what
10 evidence was found at and seized from his home on 2 November last
11 year. And I refer to the materials that are described in paragraph
12 22 of the public redacted version of the Confirmed Indictment.

13 And since 15 December last year, the date on which there was a
14 first version of an indictment submitted for confirmation, that was
15 also the date, coincidentally, of the SPO's first submission on
16 review of detention, filing 538 of the 2018 case number. Since
17 15 December, Mr. Kilaj and his Defence have been aware of what the
18 SPO know of the 6 October visit to Mr. Thaci. The full transcript of
19 that recording or the recording of that visit was disclosed to us.
20 And here, again, this is all public. I'm referring to paragraphs 20
21 to 21 in the Confirmed Indictment.

22 Mr. Kilaj has known now for a year what the SPO say about the
23 discussions relating to Witness 003 and Witness 004.

24 So it's artificial, I submit, to make the distinction that the
25 SPO press, the distinction that Mr. Kilaj may have thought in the

1 past that there was a chance he would not face trial, but that that
2 risk has now become more concrete. No, that's not a reflection of
3 the reality.

4 Mr. Kilaj always knew that he was going to face trial. He has
5 never harboured any doubt that the indictment against him would
6 eventually be confirmed. And it was always obvious what sort of
7 offences he would be tried for, even if the precise offence or
8 offences and their precise modes of liability only recently became
9 clarified.

10 Mr. Kilaj always knew the nature of the sentences of which he
11 was at risk and always understood that they would involve potentially
12 terms of imprisonment, even lengthy terms of imprisonment. This was
13 never a mystery. The fact that this prospect may have become more
14 concrete doesn't really change anything much at all. The prospect in
15 his mind was always clear and present.

16 He has pleaded not guilty to both charges in the indictment now.
17 We are confident that we will demonstrate that he is not criminally
18 responsible for anything. But at the risk of repeating myself, there
19 has never been any doubt that there would be a trial.

20 It's also worth highlighting, Your Honour, that every time the
21 Prosecution made submissions on the necessity of continuing detention
22 from 15 December of last year, and again on 12 February of this year,
23 and again on 15 April this year, the SPO pointed to factors that they
24 said would only increase Mr. Kilaj's incentives to abscond or to
25 obstruct the progress of proceedings, whether that be the discovery

1 of new evidence or whether that be Mr. Kilaj's knowledge of an
2 indictment or a revised indictment being submitted for confirmation.
3 That's all part of the SPO's playbook, if I can put it that way.

4 Now, of course, as time passes, developments in a case occur,
5 and especially when the investigation continues whilst a suspect is
6 in prison, in detention. Now, that's inevitable. But what the SPO
7 has inevitably instrumentalised is these developments, this drip feed
8 of: Well, there's this new evidence that we're telling you about
9 now, or there's this new factor of the indictment being submitted for
10 confirmation. The SPO have always instrumentalised these arguments
11 in order to argue that they buttress the reasons for maintaining
12 Mr. Kilaj in detention.

13 So between November 2023 and May of this year, the SPO argued
14 that the risks of flight and the risks of obstruction were getting
15 stronger and stronger and becoming more and more likely, and
16 therefore that Mr. Kilaj's incentives to abscond or to obstruct were
17 getting stronger and stronger. And yet - and yet - once he was given
18 that chance, once he was released on bail, once he was put to the
19 test, those concerns evaporated away. They ought to have evaporated
20 away.

21 The fears of the SPO, the fears of the Single Judge, it turned
22 out, never materialised. He did not abscond. He did not interfere.
23 He didn't do anything to obstruct proceedings. He kept himself to
24 himself at home with his family, living his life, getting on with it,
25 complying faithfully and completely with all conditions.

1 But now the SPO say, well, there's a Confirmed Indictment, and
2 the risks are now sufficiently great that revoking bail is the only
3 solution. That it is now justifiable to ignore his demonstrated
4 willingness to comply with release conditions. And it's that that
5 I'd like to explore for a moment.

6 In concrete terms, what has changed is this: whereas before
7 there was, in inverted commas, only grounded suspicion of Mr. Kilaj's
8 criminal responsibility as defined under Article 19 1.9 of the
9 Kosovan Criminal Procedural Code, well, now there is a well-grounded
10 suspicion as defined under Article 19 1.12.

11 Now, I'm not going to argue that the threshold for a
12 well-grounded suspicion is not higher. Of course it is. But what is
13 absurd, what is artificial, in my submission, is the suggestion that
14 Mr. Kilaj would not abscond, would not interfere in circumstances
15 where a hypothetical objective observer would be satisfied he was
16 more likely guilty than not, the test for grounded suspicion, or in
17 other words, probably guilty, 51 per cent or more guilty, based on
18 that hypothetical person having knowledge of information.

19 But now we move into the realm of well-grounded suspicion of
20 guilt. Suddenly, the SPO suggests that he would suddenly have this
21 incentive. Suddenly this incentive would blossom, an incentive to
22 abscond or interfere. That some sort of switch is flicked in his
23 mind. Moving from one threshold to a higher threshold now based on
24 possession of admissible evidence that leads an objective observer -
25 or in concrete terms, in fact, Your Honour yourself - to be satisfied

1 that he's guilty, to a standard somewhere between 51 per cent more
2 likely than not and the criminal standard of beyond reasonable doubt,
3 or intimate conviction.

4 Now, these are interesting and these are important distinctions
5 for lawyers, perhaps. But in my submission, it's quite unrealistic
6 to think that it is such a huge difference to a non-lawyer like
7 Mr. Kilaj that it would so significantly operate on his mind so that
8 he would suddenly now decide to take the huge risk of absconding from
9 Kosovo.

10 What does that mean, in reality, for a husband, a father, a
11 grandfather of nearly 60 years old?

12 That this difference between grounded suspicion and
13 well-grounded suspicion is such that he would take the risk of
14 turning his life upside down. Go into hiding for the rest of his
15 life. Become a fugitive from justice for the rest of his life. To
16 forfeit an enormous sum of money paid in by way of a security. To
17 uproot himself from his wife, from his family, from his community,
18 everything that he has built over his life, everything that he knows.
19 Or perhaps try to persuade his wife to go with him, and separate
20 herself from their family. To throw all that away. That's what the
21 SPO is asking you to accept.

22 The SPO will cite, no doubt, to jurisprudence from this Court
23 and the ICTY and other courts and try to persuade you that this
24 distinction, this threshold that changes once an indictment is
25 confirmed is as important as they say it is. But I ask you to look

1 below the surface of that jurisprudence and ask yourself what is that
2 actually going to mean to a man like Mr. Kilaj.

3 The Prosecution say that because now the threshold of
4 well-grounded suspicion has been reached, that now you think he's
5 guilty to a higher standard somewhere between the common law -- the
6 civil standard, 51 per cent, and -- somewhere between that and beyond
7 reasonable doubt. We suggest that that's quite unrealistic. And,
8 similarly, it's unrealistic to think that it would make such a
9 difference so as to operate on Mr. Kilaj's mind and now make him
10 decide that, okay, even if he doesn't abscond, that now he would take
11 the risk of obstructing the proceedings by, I don't know, contacting
12 a witness, or seeking to hide evidence or destroy evidence, when you
13 know that he has had the means and every opportunity to do exactly
14 that, if that was what he intended to do, at any time over the last
15 seven months. But he didn't.

16 Forgive me for the informality of my language, but come on.
17 Really? It's -- the Prosecution's position, what they're asking you
18 to accept is absurd. It's nonsense.

19 This cannot be the hook on which Your Honour hangs a decision to
20 remove the liberty of a man who has peacefully enjoyed conditional
21 release over the last seven months because it's an insubstantial --
22 it's a rusty old hook that is half falling out of a crumbling wall.

23 Mr. Kilaj always knew that this indictment was coming. It was
24 inevitable. The SPO says, however, it changes everything and that
25 justifies locking him up now. The Prosecution have leapt on this

1 so-called new development in order to try and persuade you to keep
2 Mr. Kilaj in prison. It's what they've always wanted. They were not
3 happy when your predecessor granted Mr. Kilaj provisional release.
4 They filed a hopeless appeal.

5 But the importance of that change is, we submit, illusory.
6 Don't attach any weight to it, Your Honour, I would respectfully
7 submit.

8 What else? Your Honour, in the decision, referred to the fact
9 that Mr. Kilaj is now aware of the gravity of the specific offences
10 with which he is now charged and which go beyond what he initially
11 foresaw. I'm afraid to say that that is simply factually incorrect.

12 Why do I say that? Mr. Kilaj always knew that he was in
13 jeopardy of a sentence on conviction of up to five years under the
14 aggravated form of Article 401(5).

15 Your Honour, I've made copies, and I've made copies also for the
16 Prosecution. I wonder if I could pass up to you a couple of
17 documents.

18 JUDGE MASSELOT: Would you provide copies also for the SPO?

19 MR. EDWARDS: Yes, of course.

20 JUDGE MASSELOT: Yes, of course then.

21 MR. EDWARDS: For Her Honour and for the SPO, please. Thank
22 you.

23 Yes, there are two documents annotated with a J in the top
24 right-hand corner for Her Honour and two annotated with S for the
25 Prosecution.

1 JUDGE MASSELOT: Yes. It's fine.

2 MR. EDWARDS: Thank you.

3 JUDGE MASSELOT: Maybe just for the record can you just present
4 those --

5 MR. EDWARDS: Yes.

6 JUDGE MASSELOT: -- two documents which are part of the record
7 of this case.

8 MR. EDWARDS: They certainly are. The first is the
9 Prosecution's first request for continued detention. It's filing 496
10 of 3 November 2023. And could I invite Your Honour to turn to
11 paragraph 16 of that filing. And the SPO says this:

12 "Kilaj is aware that evidence potentially supporting grave
13 charges - which could attract a term of imprisonment of up to five
14 years - have been seized from his residence."

15 And then the next day, 4 November of last year, during
16 Mr. Kilaj's First Appearance, the Prosecution said this in open
17 session at transcript page 174. I've highlighted it on Your Honour's
18 copy:

19 "Mr. Kilaj is a flight risk. He's facing serious allegations of
20 criminal conduct with offences carrying sentences of up to five
21 years. He has clear incentives to flee the Court's jurisdiction,
22 including to third states where a request for extradition may not be
23 accepted."

24 This argument was acknowledged by the Single Judge in his
25 decision, his first detention decision and his reasons for that

1 detention decision of 9 November 2023. This is filing 503 at
2 paragraph 36. And it's that decision that forms the foundation for
3 every other one of his subsequent detention extension decisions.

4 And I add that the SPO has never made a secret of the fact that
5 the official persons performing official duties of relevance to
6 Mr. Kilaj's Article 401 allegation were investigators, prosecutors,
7 court officials of this Court. I ask rhetorically, who else would it
8 be? Who else? What other official persons could he be charged with
9 trying to obstruct?

10 Mr. Kilaj has always known that the aggravated form of
11 Article 401 under (5) was envisaged by the SPO and the Single Judge,
12 that five years was on the card. So to say that this goes beyond
13 what he initially foresaw, therefore, is, I'm afraid, simply not
14 correct.

15 But the reality goes even further. Since the confirmation of
16 the indictment against him, Mr. Kilaj now knows exactly of what he is
17 in jeopardy. And the reality is that he's facing offences that carry
18 a lesser sentence than what he initially foresaw. He's charged with
19 attempt and with assistance as a mode of liability under Article 33.
20 Article 33 provides that a person assisting shall be punished more
21 leniently than the direct perpetrator in the offence.

22 So right away we see that the maximum of five years cannot
23 reasonably be available to the Trial Panel even if Mr. Kilaj is
24 convicted. And the same goes if he was convicted of agreeing to
25 assist under Article 35.

1 Furthermore, even if Mr. Kilaj is aware that these offences can
2 carry sentences of imprisonment, even reasonably lengthy sentences of
3 imprisonment, his awareness of the sentences handed down to
4 Messrs Gucati and Haradinaj that Your Honour made a reference to only
5 go to serve that he is looking at significantly less of a sentence
6 than the four years and three months that they received.

7 Gucati and Haradinaj were convicted of five counts, including
8 much more serious offences of obstructing by way of serious threats
9 under Article 401(1), as leaders or organisers of groups under
10 Article 401(3), with intimidation under Article 387, and under the
11 aggravating versions of violating the secrecy of proceedings under
12 Article 392. That's why they got four years and three months. In a
13 completely different class of situation to Mr. Kilaj. They're all so
14 much more serious than the offences with which Mr. Kilaj now knows he
15 is charged.

16 And, indeed, I'd go further that the second of the two counts
17 with which he is now charged - contempt under Article 393 - is less
18 serious than the second count of violating the secrecy of
19 proceedings, which is what he was originally suspected of. Article
20 393, contempt, that carries a maximum of six months. It's a less
21 serious charge than what he was earlier facing. And, of course,
22 under the aggravated form of Article 392, that carries a maximum of
23 five years. Plus the fact he's already served six months, and that
24 would be taken into account, wouldn't it?

25 So to summarise, Your Honour, what he is charged with in the

1 Confirmed Indictment has provided clarity and certainty that he is in
2 less jeopardy now than what was initially believed, with likely
3 shorter sentences of imprisonment.

4 This does not provide a more concrete incentive to abscond, as
5 the Prosecution suggest. He may always have had that incentive, but
6 the confirmation decision does not in real terms change anything.

7 On the contrary, Mr. Kilaj should benefit from his proven
8 demonstration that even though he may have had an incentive or
9 motive, and means, and opportunity, since his release, he has not, in
10 fact, absconded, he has not interfered, he has not obstructed.

11 It was previously found that his knowledge of the existence of
12 an indictment against him and the prospect of facing criminal charges
13 made the risks of his obstructing proceedings particularly high. And
14 yet, he was released. And those risks never materialised.

15 And I submit that this is an extremely important factor to take
16 fully into account. This is not a factor that can just cheerfully be
17 swept under the rug. Because the SPO keeps banging the same drum,
18 keeps playing the same broken record, and argues that he's a man who
19 cannot be trusted because there's evidence demonstrating his
20 willingness to misuse Specialist Chambers information and that, to
21 use their rather emotive terminology, he has demonstrated a wanton
22 disregard for confidentiality rules.

23 So his past disregard for SPO rules, that can be placed in the
24 scales by the Prosecution, sure.

25 I then place on the Defence side of the scales the fact that for

1 the last seven months he has complied with Specialist Chambers rules.
2 He has shown a perfect willingness and a perfect ability to fully
3 comply with the rules. He hasn't put a foot wrong.

4 If there was a hint that he had obstructed anything at all,
5 obstructed the process, if he'd done anything wrong, if he'd tried to
6 interfere in any way at all, I suggest you would have known about it.

7 You can and you must, I would submit, Your Honour, weigh in the
8 scales that more recent behaviour of compliance because I suggest
9 that it provides -- it goes a long way to counterbalancing anything
10 the SPO say about his disregard for rules in the past.

11 The fact that he was given the chance and the fact that he has
12 complied so faithfully is something that I would suggest this
13 institution should be encouraged by, should be pleased to see.

14 Very briefly, I would submit, it can't be ignored that what he's
15 actually charged with in the Confirmed Indictment is not actually
16 directly obstructing. He may be charged with attempt, with
17 assisting, with conspiracy, with agreement, but not actually
18 obstructing himself. Had there been any evidence that he had
19 obstructed over the last seven months, you'd know about it.

20 And there simply is no basis to believe that the situation has
21 changed now, that suddenly there are greater risks simply because the
22 indictment has been confirmed and that he is now facing trial.

23 Your Honour may be of the view -- in fact, in Your Honour's
24 decision you said that compliance with the rules in the past does not
25 equate to the elimination of risk. Well, I agree, of course. But,

1 Your Honour, risk can never be entirely eliminated when a person is
2 on conditional release. The Single Judge, when granting him release,
3 acknowledged that there is always a risk.

4 But really the question is: Are you prepared to put some trust
5 in Mr. Kilaj? The Single Judge was, and that trust was rewarded.

6 As far as the suggestion that he may tamper or hide any evidence
7 is also rather curious. The Prosecution does not say that he has
8 tampered with evidence or hidden any evidence since granted bail.
9 The Prosecution don't even suggest what evidence is at risk of being
10 tampered with or being hidden. Because there is none. The
11 Prosecution have it all.

12 I don't ask Your Honour to place your trust -- to give Mr. Kilaj
13 a chance unconditionally. I urge you to find that he is a good
14 candidate for bail and to impose precisely the same conditions that
15 were imposed by the Single Judge back in May and with which Mr. Kilaj
16 has fully complied.

17 Indeed, it's open to Your Honour, of course, to impose further
18 conditions if Your Honour were to be of the view that developments
19 over the last couple of weeks have made a difference. You may order
20 Mr. Kilaj to report to his local police station more than once a
21 week. You may order Mr. Kilaj not to travel beyond a certain radius
22 of his home in Malisheve, for example. You may even order Mr. Kilaj
23 not to use any communication device other than to communicate with
24 his counsel. Although, you may think that that's unduly onerous and,
25 frankly, not very practical.

1 What I can tell Your Honour, having spoken with Mr. Kilaj's
2 family, is that they can increase the financial security to pay into
3 Court from €30.000 to €40.000. It won't be easy. Mr. Kilaj is not a
4 rich man. His family is not a rich family. But the family and the
5 extended family are prepared to dig deep, to make sacrifices, to
6 scrape together such an enormous amount of money. They're willing to
7 make those sacrifices because they trust Mr. Kilaj.

8 Knowledge on the part of Mr. Kilaj that such a huge amount of
9 money would be lost if he were to abscond or, indeed, to be found to
10 have obstructed the proceedings, knowledge of such a loss would act
11 as a huge disincentive on Mr. Kilaj now going forward, just as it has
12 done in the past.

13 And I'd like to end on this point, Your Honour. It was always
14 envisaged by the Single Judge that Mr. Kilaj could keep his liberty
15 after confirmation of the indictment. That was envisaged. And
16 that's why the condition was imposed on him to attend any future
17 hearing required by the Court and to inform the Registrar of any
18 address in the Host State.

19 Your Honour, had he been given the opportunity to travel to
20 The Netherlands to appear before you pursuant to a summons, he would
21 have done. Had you given him the chance to prove his willingness to
22 do what he was ordered to do, he would have done it, and he would
23 have done it cheerfully. He wasn't given that chance, as it turns
24 out.

25 And the events of the last few days have shaken him. They've

1 shaken his family. He and everyone in his family were always
2 resigned to the fact that there would be a trial. They're prepared
3 for that, and they're more than prepared to allow the wheels of
4 justice to turn. But what was, frankly, rather unexpected is that he
5 would be arrested, that his conditional release would be revoked, and
6 that he would be maintained in detention whilst waiting for that
7 trial.

8 He's horrified by the prospect of spending a second birthday,
9 next week, locked up, a second Christmas, a second new year away from
10 his family.

11 The last few days back in The Hague in detention have been a
12 horrible reminder of him what would happen if he were to put a foot
13 wrong in the future. But since May, he never has put a foot wrong.
14 He was given that chance. He proved he was worthy of that trust.
15 And we simply ask you to give him that chance again, to trust him,
16 because he's deserving of it.

17 Your Honour, those are my submissions, unless you have any
18 questions for me.

19 JUDGE MASSELOT: I have no questions at this specific moment.
20 Thank you, counsel.

21 And I would give the floor to the Specialist Prosecutor.

22 MR. HAFETZ: Thank you, Your Honour.

23 I'm going to just briefly respond to a few of the points that
24 counsel has made.

25 The ground truth is that Mr. Kilaj, as he sits here today, based

1 on the quantum of proof that's been gathered already and the charges
2 that Your Honour has confirmed, the ground truth is he presents a
3 clear and present danger to the functioning of this institution. I'm
4 not going to elaborate on every finding Your Honour made. I don't
5 think we need to do that.

6 Paragraphs 56 through 68 of Your Honour's decision in F0037 are
7 well reasoned, they're well articulated, and they're supported by the
8 facts. Nearly everything that counsel just articulated is covered
9 by, articulated by, and disposed of in Your Honour's decision. So
10 I'm not going to go on at length unless Your Honour has specific
11 points that you believe should be clarified for you before we move
12 on, but a couple of things to point out.

13 The repeated assertion, something like over ten times just now,
14 that Mr. Kilaj has known, or in his subjective mind has been
15 expecting, or whatever the mental formulation of it is, has known
16 that there would be these charges against him is just meaningless for
17 what we're talking about today.

18 Until now, there have been no confirmed charges.

19 We stand here today in a place that has rules. And the rule is
20 Your Honour or a Pre-Trial Judge must confirm a charge before it
21 becomes a charge. So if we remember back to November of 2023 when
22 Mr. Kilaj was arrested and stood here in this room and was
23 represented by Mr. Edwards saying that none of the evidence the SPO
24 was presenting then merited his detention or merited any charges
25 because they were all innocent explanations. Well, he couldn't

1 possibly have known he was going to be charged then because, in his
2 mind, there was nothing to charge. Did nothing wrong.

3 We're in a different place now legally and practically. He
4 knows there are significant charges against him. He knows he now
5 faces confirmed charges of detention. That's the operative fact.

6 The other point I want to just make clear, and Your Honour has
7 already dealt with this, but just to emphasise: Mr. Kilaj wasn't
8 released on the idea that he could be trusted or should be given a
9 chance to be trusted. He was released, over our objection, that's
10 correct, he was released because of the delay in the proceedings and
11 because of the proportionality issue of how long he might foreseeably
12 be detained prior to trial. That's gone. We're in a different state
13 now. Your Honour has confirmed charges against him, and we're on the
14 road to getting Mr. Kilaj and his co-accused a trial.

15 We agree that trial should be swift. That's the goal. That's
16 what the rules are for and what they dictate and necessitate. But
17 that was the only reason he was released. That's gone now. It
18 wasn't to give him a chance. It wasn't to be nice. That's the
19 reason. And that reason, as Your Honour points out in her decision,
20 has been removed.

21 Mr. Kilaj has demonstrated - not our words, but now Your
22 Honour's words in the decision - a wanton disregard for the rules of
23 this institution. That has grown significantly since he last stood
24 here. Not addressed by counsel, and that's all right. But
25 Mr. Kilaj's possession of material, of confidential witness-related

1 material in this case is, frankly, staggering. He cannot be trusted
2 out on his own, alone, with the new material he is going to get and
3 with the material he already had. He cannot be.

4 The concept that was noted several times about there's a
5 confusion, apparent confusion about why anyone would suggest, the SPO
6 or in Your Honour's decision, that Mr. Kilaj poses a risk of future
7 obstruction is somewhat belied by the fact that when the SPO searched
8 his house there was a trash bag full of torn up SPO confidential
9 witness statements in the bag, which is noted in our filings.

10 Mr. Kilaj presents a clear risk of flight, a clear risk of
11 obstruction in these proceedings. And I submit he presents a danger
12 still to other ongoing proceedings in this institution which is
13 backed up by the quantum of evidence that has been recovered from him
14 already, which shows not just that he previously attempted to
15 obstruct the proceedings here, but that he has zero regard for this
16 place's rules, its regulations, or its desire and mandate to function
17 under the law. None.

18 So, Your Honour, I have nothing else to add now other than any
19 questions you have. But to be clear, your decision has already dealt
20 with this effectively, and the submissions we've made make clear that
21 under all three factors - not one, not two of them, all three of
22 them - Mr. Kilaj's detention is necessary. Thank you.

23 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

24 Does the Defence want to take the floor?

25 MR. EDWARDS: Extremely briefly.

1 Yes, Your Honour has made a decision. Yes, Your Honour has
2 found that there are reasons to maintain Mr. Kilaj in custody. But
3 you made that decision without having had the benefit of Defence
4 submissions on the point, and that's why we're here.

5 My learned friend suggests that when he -- when Mr. Kilaj stood
6 here in November of last year, he said, "There's an innocent
7 explanation for why I have what I have," and that would have been a
8 reason for him to think that there would be no trial. That's
9 complete nonsense. A defendant who is arrested and brought to court
10 may well say at his first appearance, "Well, I hit the man in
11 self-defence," or "I didn't intend to permanently deprive the person
12 of the thing I'm accused of stealing." A person may say in court, "I
13 have a defence." That doesn't mean there's not going to be a trial.

14 And, thirdly, my learned friend, again, returns to the late
15 motif that Mr. Kilaj cannot be trusted because he was in possession
16 of so much confidential material. What he is not charged with,
17 because they cannot charge him with it, is that he then did anything
18 with it. Please don't forget that, Your Honour. He may have been in
19 possession of evidence that he wasn't entitled to, but if it just
20 sits there on a computer and doesn't go anywhere, you have to take
21 that into account when deciding how dangerous Mr. Kilaj is.

22 That's all I had to say in response.

23 JUDGE MASSELOT: Thank you, counsel.

24 We will have a break, of course, during which I will consider
25 those submissions, and I will issue an oral order on this issue

1 today.

2 Before that, I would like to know if there is any other issue
3 that the parties would like to raise?

4 MR. EDWARDS: I don't know if it's crossed Your Honour's desk,
5 but I can tell you that just yesterday I filed a withdrawal of my
6 application for a date for the confirmation or a target date for the
7 confirmation. In the circumstances, that is now an entirely moot
8 motion and it has been formally withdrawn. Filing 805 under the 2018
9 case file.

10 JUDGE MASSELOT: This is well noted.

11 [Microphone not activated].

12 If there is no other issue that the parties may wish to raise,
13 we will now take a break, I would say, of an hour. So it is 2.15,
14 and we will reconvene at, let's say, 3.20.

15 --- Recess taken at 2.15 p.m.

16 --- On resuming at 3.23 p.m.

17 JUDGE MASSELOT: So we are now back in session. And I note, for
18 the record, that all parties and the Registry's representatives are
19 back in the courtroom.

20 I will now issue my oral ruling on Mr. Kilaj's detention.

21 Counsel Edwards, I have taken note of your request for
22 Mr. Kilaj's release on conditions, as those set forth in the decision
23 KSC-BC-2018-01, F00658/COR dated 3 May 2024, and any other additional
24 condition.

25 I take note of your submission regarding Mr. Kilaj's proven

1 behaviour over the last seven months that he can be trusted and that
2 he positively and faithfully complied with all conditions imposed.
3 You underline that Mr. Kilaj has not fled, has not obstructed, and
4 has not repeated the offences while on conditional release. I also
5 take note of your claim that the confirmation of the indictment and
6 the start of pre-trial proceedings do not change Mr. Kilaj's
7 situation.

8 As to the existence of the three risks under Article 41(6)(b) of
9 the Law, you submit, at the outset, that Mr. Kilaj has known for a
10 year about the SPO's factual and legal allegations, now contained in
11 the Confirmed Indictment, and the potential lengthy sentence
12 emanating therefrom. You emphasise in particular that the
13 establishment of well-grounded suspicion at this stage does not
14 incentivise Mr. Kilaj to flee. You also argue that Mr. Kilaj would
15 likely not take the risk of obstructing the proceedings by, for
16 example, contacting a witness or seeking to hide evidence or destroy
17 evidence given that he has had the means and every opportunity to do
18 exactly that at any time over the last seven months. In this
19 context, you also underline that even though Mr. Kilaj may have been
20 in possession of confidential material, he has never used it.

21 You further argue that Mr. Kilaj has pleaded not guilty and is
22 fully aware that a trial will ensue. You also request that I
23 consider that Mr. Kilaj is not charged for obstructing directly and
24 that, whereas case-related material was disclosed to Mr. Kilaj when
25 in detention this year, the three risks never materialised.

1 I've taken note of the Specialist Prosecutor's position that
2 Mr. Kilaj's request for conditional release be denied and that he
3 remain in detention. The SPO argues that all three risks exist. In
4 the SPO's view, Mr. Kilaj presents a clear and present danger to the
5 functioning of the Specialist Chambers. The SPO stresses that the
6 circumstances changed since: One, the indictment has been confirmed
7 only on 29 November 2024 while Mr. Kilaj did not know of the charges
8 at the time of his detention and conditional release; two, Mr. Kilaj
9 was released on the basis of proportionality considerations following
10 undue delay in the investigation, which is no longer the case today;
11 and, three, Mr. Kilaj was in possession of confidential material and
12 will continue to receive further such material.

13 Having considered all arguments, I find that none of your
14 arguments, Defence counsel, are capable of changing my assessment
15 that the conditions provided in Article 41(6) of the Law are met as
16 set out in the Decision on Arrest Warrants and Related Matters,
17 filing F00037, paragraphs 43 and 56 to 67.

18 Specifically, I'm not persuaded that Mr. Kilaj is not a flight
19 risk, mindful of his past compliance with the conditions imposed.
20 For the reasons set out in paragraph 56 to 60 in the Decision on
21 Arrest Warrants and Related Matters, I remain convinced that there is
22 a risk of flight. Contrary to the arguments of the Defence, the
23 Confirmed Indictment now subjects Mr. Kilaj to concrete charges.
24 Accordingly, he will also receive progressively the entirety of the
25 evidence in this case, which gives him additional incentive to flee.

1 The fact that Mr. Kilaj has rooted family ties in Kosovo only
2 partially mitigates and does not diminish the risk.

3 As to the risks of obstructing criminal proceedings and
4 repeating offences, I make reference to my findings in paragraphs 61
5 to 66 of the Decision on Arrest Warrants and Related Matters and find
6 that these risks continue to exist for the same reasons as I just
7 outlined in relation to the flight risk.

8 Therefore, having considered the parties' submissions, I
9 determine that Mr. Kilaj shall remain in detention.

10 The reasons for your detention, Mr. Kilaj, are the same as set
11 out in the Decision on Arrest Warrants and Related Matters at
12 paragraphs 43 and 56 to 67, which shall be read together with the
13 present ruling.

14 Accordingly, based on the information and material underpinning
15 decision F00037, and in the absence of any contrary intervening
16 information or development, I find that: First, there is a
17 well-grounded suspicion that you are criminally responsible for the
18 offences of which you were informed today; and, second, there are
19 articulable grounds to believe that you are a flight risk, you will
20 obstruct the progress of the criminal proceedings, and you will
21 repeat the criminal offences.

22 Furthermore, neither the conditions you proposed,
23 Counsel Edwards, such as bail in the amount of €40.000, frequent
24 reporting to the Kosovo police, and restrictions on communications
25 and movement, nor any other conditions I may impose on Mr. Kilaj, are

1 capable or adequate to mitigate these risks.

2 Lastly, I find that Mr. Kilaj's detention is proportionate,
3 notwithstanding his past detention from 2 November 2023 to 15 May
4 2024, in light of the possible sentence faced in the event of
5 conviction and the progress of the proceedings.

6 Mr. Kilaj, I will review the reasons for your detention within
7 two months, or at an earlier time, upon request or a change in
8 circumstances, as provided in Article 41(10) of the Law and
9 Rule 57(2) of the rules.

10 Counsel Edwards, should you wish to file submissions on the next
11 review of detention, please do so by no later than Wednesday,
12 15 January 2025. Responses and replies will follow the timeline set
13 out in Rule 76 of the rules.

14 Should the Defence decide not to file any submissions by the
15 aforementioned time limit, I order the SPO to file submissions on the
16 review of Mr. Kilaj's detention by no later than Tuesday, 21 January
17 2025. The Defence shall then respond, if it so wishes, by no later
18 than Tuesday, 28 January 2025. And I will not entertain a reply.

19 Lastly, Mr. Kilaj, you have the right to appeal today's ruling
20 on your detention directly before the Court of Appeal within ten
21 days, as provided in Article 45(2) of the Law and Rules 58 and 170 of
22 the rules.

23 This concludes my oral ruling.

24 And this concludes also today's hearing. I wish to thank all
25 the parties for their attendance and participation to this hearing as

1 well as all those who made this hearing possible today.

2 The hearing is adjourned.

3 --- Whereupon the Initial Appearance adjourned
4 at 3.33 p.m.

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