



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

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Decision on Periodic Review of Detention of Jakup Krasniqi

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TRIAL PANEL II of the Kosovo Specialist Chambers (“Panel”), pursuant to Article 41(6), (10), and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. The procedural background concerning the periodic review of the detention of Jakup Krasniqi (“Mr Krasniqi”) has been set out extensively in previous decisions.¹ Relevant events since the twelfth review of Mr Krasniqi’s detention on 15 November 2023 (“Twelfth Detention Decision”)² include the following.
2. On 20 December 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the thirteenth review of Mr Krasniqi’s detention (“SPO Submissions”).³
3. On 4 January 2024, the Defence for Mr Krasniqi (“Krasniqi Defence”) responded to the SPO submissions (“Response”).⁴
4. On 9 January 2024, the SPO replied to the Response (“Reply”).⁵

¹ See e.g. F01110, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Sixth Detention Decision”), 18 November 2022, confidential, paras 1-15 (a public redacted version was issued on the same day, F01110/RED).

² F01926, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 November 2023.

³ F02026, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 20 December 2023.

⁴ F02041, Specialist Counsel, *Krasniqi Defence Response to Prosecution Submissions on Detention Review* (F02026), 4 January 2024, confidential, with Annexes 1-2, confidential and *ex parte*.

⁵ F02048, Specialist Prosecutor, *Prosecution Reply to ‘Krasniqi Defence Response to Prosecution Submissions on Detention Review’ (F02026) with Confidential and Ex-Parte Annexes 1 and 2*, 9 January 2024, confidential.

II. SUBMISSIONS

5. The SPO requests the continuation of Mr Krasniqi's detention.⁶ It argues that absent any change in circumstances since the Twelfth Detention Decision, Mr Krasniqi's detention remains necessary and reasonable.⁷ It also submits that the continued progression of trial, and further disclosures giving Mr Krasniqi greater access to information regarding sensitive witnesses and the case against him buttress the necessity and reasonableness of his detention.⁸

6. The Krasniqi Defence requests Mr Krasniqi's immediate release, subject to such conditions as the Panel deems appropriate.⁹ It submits that, at this point in time, nearly 38 months after his initial detention, any remaining risks identified by the Panel are insufficient to justify Mr Krasniqi's ongoing detention.¹⁰ Accordingly, it requests that the Panel disregard the SPO's claims when conducting its periodic review of Mr Krasniqi's detention.¹¹

7. In its Reply, the SPO submits that the Response should be rejected and maintains that Mr Krasniqi should remain in detention.¹² It argues that the Response recasts and rehashes meritless arguments that have been rejected previously.¹³

⁶ SPO Submissions, paras 1, 29.

⁷ SPO Submissions, paras 1, 6.

⁸ SPO Submissions, paras 1, 6.

⁹ Response, paras 4, 8, 25.

¹⁰ Response, paras 3, 6, 25.

¹¹ Response, para. 24.

¹² Reply, paras 1, 9.

¹³ Reply, para. 1.

III. APPLICABLE LAW

8. The law applicable to deciding the present matter is set out in Article 41(6), (10), and (12) and Rules 56 and 57 and has been laid out extensively in earlier decisions.¹⁴ The Panel will apply these standards to the present decision.

IV. PERIODIC REVIEW OF DETENTION

9. The purpose of the bi-monthly review of detention pending trial pursuant to Article 41(10) is to determine whether reasons justifying detention still exist.¹⁵ A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.¹⁶

A. ARTICLE 41 CRITERIA

i. Grounded Suspicion

10. Regarding the threshold for continued detention, Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the Specialist Chambers (“SC”). This is a condition *sine qua non* for the validity of the detained person’s continued detention.¹⁷

11. The SPO argues that, absent any change in circumstances since the decision confirming the indictment and the Twelfth Detention Decision, there remains a grounded suspicion that Mr Krasniqi has committed a crime within the SC’s

¹⁴ See e.g. Sixth Detention Decision, paras 18-21.

¹⁵ IA022/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Periodic Review of Detention*, 22 August 2022, confidential, para. 37 (a public redacted version was issued on the same day, IA022/F00005/RED).

¹⁶ IA010/F00008, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 19 (a public redacted version was issued on the same day, IA010/F00008/RED).

¹⁷ See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

jurisdiction.¹⁸ The Krasniqi Defence does not make specific submissions on this point.

12. The Panel recalls that the Pre-Trial Judge determined that, pursuant to Article 39(2), there was a well-grounded suspicion that Mr Krasniqi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a).¹⁹ Moreover, the Pre-Trial Judge found that a well-grounded suspicion has also been established with regard to new charges brought by the SPO against Mr Krasniqi.²⁰ These findings were made on the basis of a standard

¹⁸ SPO Submissions, para. 7 (with further references).

¹⁹ F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*, para. 521(a)(i)-(ii). A confidential redacted version (F00026/CONF/RED), a public redacted version (F00026/RED), and a confidential lesser redacted version (F00026/CONF/RED2) were filed, respectively, on 19 November 2020, 30 November 2020, and 21 September 2023. The SPO submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the SPO submitted a confidential, corrected, and lesser redacted version of the confirmed indictment, F00647/A01.

²⁰ F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. A confidential redacted version (F00777/CONF/RED), a public redacted version (F00777/RED), a confidential lesser redacted version (F00777/CONF/RED2), and a confidential further lesser redacted version (F00777/CONF/RED3) were filed, respectively, on 22 April 2022, 6 May 2022, 16 May 2022, and 21 September 2023. The requested amendments are detailed at para. 11. A confirmed amended indictment was then filed by the SPO on 29 April 2022, strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions. On 30 September 2022, the SPO submitted a confirmed further amended indictment (“Confirmed Indictment”), strictly confidential and *ex parte* (F00999/A01; reclassified as confidential and *ex parte* status removed on 26 January 2023), with confidential redacted (F00999/A02) and public redacted versions (F00999/A03; a public lesser redacted [F01296/A03] and a public further lesser redacted version [F01323/A01] were filed, respectively, on 15 February 2023 and 27 February 2023), as ordered by the Pre-Trial Judge (F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment*, 22 July 2022, para. 49(e); F00993, Pre-Trial Judge, *Decision on the Prosecution Request to Amend the Indictment*, 29 September 2022, confidential, para. 24(b); a public redacted version was filed on the same day, F00993/RED).

exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).²¹

13. Absent any new material circumstances affecting the above findings, the Panel finds that there continues to be a grounded suspicion that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10).

ii. Necessity of Detention

14. With respect to the grounds for continued detention, Article 41(6)(b) sets out three alternative bases (risks) on which detention may be found to be necessary: (i) risk of flight; (ii) risk of obstruction of the proceedings; or (iii) risk of further commission of crimes.²² Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.²³ “Articulable” in this context means specified in detail by reference to the relevant information or evidence.²⁴ In determining whether any of the grounds under Article 41(6)(b) allowing for a person’s detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁵

²¹ See e.g. IA008/F00004, Court of Appeals Panel, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 21 (a public redacted version was issued on the same day, IA008/F00004/RED).

²² Cf. ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, [Judgment](#), 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, [Judgment](#), 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, [Judgment](#), 4 July 2019, para. 155.

²³ IA004/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release (“First Appeals Decision on Thaçi’s Detention”)*, 30 April 2021, confidential, para. 19 (a public redacted version was issued on the same day, IA004/F00005/RED).

²⁴ Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”.

²⁵ First Appeals Decision on Thaçi’s Detention, para. 22.

a) Risk of Flight

15. The SPO submits that Mr Krasniqi's greater knowledge of the scope of the case, including the charges against him and the evidence (to be) presented in relation to these charges, elevates his risk of flight.²⁶

16. With reference to the Panel's findings in the Twelfth Detention Decision, the Krasniqi Defence submits that Mr Krasniqi does not pose a flight risk and that the SPO failed to produce a concrete basis, specific to Mr Krasniqi, to support its submission that the risk of flight is elevated in his case.²⁷

17. The Panel has examined the SPO's arguments in light of the present stage of the proceedings and, as there are no new relevant factors to consider, reaffirms its prior finding that the SPO has failed to establish its claim of a "sufficiently real possibility"²⁸ that Mr Krasniqi will abscond if released.²⁹

18. In addition, as already determined, there is evidence that Mr Krasniqi has cooperated with the relevant authorities at all points during his detention and transfer.³⁰

19. While the risk of flight can never be completely ruled out, the Panel finds that Mr Krasniqi's continued detention may not be justified at this time on the ground of the risk of flight pursuant to Article 41(6)(b)(i).

²⁶ SPO Submissions, para. 9.

²⁷ Response, paras 10-11, referring to Twelfth Detention Decision, paras 17-19.

²⁸ See e.g. First Appeals Decision on Thaçi's Detention, para. 24.

²⁹ See Twelfth Detention Decision, para. 17.

³⁰ F01212, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Seventh Detention Decision"), 17 January 2023, confidential, para. 18 and fn. 30 (a public redacted version was issued on the same day, F01212/RED).

b) Risk of Obstructing the Progress of SC Proceedings

20. With reference to previous findings by various Panels, the SPO submits that Mr Krasniqi continues to present a risk of obstructing proceedings.³¹ According to the SPO, the further disclosure of highly sensitive information to the Krasniqi Defence and Mr Krasniqi continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question testify.³² Furthermore, the SPO avers that there continues to be a climate of witness intimidation and interference, which, as held by the Court of Appeals, is a relevant contextual consideration.³³

21. The Krasniqi Defence argues that there is no sufficiently real possibility that Mr Krasniqi will obstruct proceedings.³⁴ It submits, in particular, that there is no (sufficient) indication or evidence on: (i) a link between the alleged climate of witness intimidation and Mr Krasniqi; (ii) any predisposition by Mr Krasniqi towards witness intimidation; or (iii) Mr Krasniqi attempting to obstruct proceedings in any way.³⁵ The Krasniqi Defence also avers that none of the SPO witnesses heard thus far have substantiated any direct or indirect allegation against Mr Krasniqi. Rather, some SPO witnesses have provided character references for Mr Krasniqi.³⁶

22. The SPO replies that the Krasniqi Defence's arguments are simply a rebranding of the consistently rejected proposition that the SPO must produce concrete examples of continued efforts by Mr Krasniqi to personally intimidate or harass witnesses.³⁷ It submits that the absence of additional evidence underpinning the risks under Article 41(6) does not negate the sufficiency of the

³¹ SPO Submissions, paras 10-15 (*citing, in particular*, Twelfth Detention Decision, para. 28).

³² SPO Submissions, paras 13-15.

³³ SPO Submissions, para. 12 (with further references).

³⁴ Response, in particular, paras 12-17.

³⁵ Response, paras 2, 6-9, 12-14, 16-17.

³⁶ Response, paras 2, 15.

³⁷ Reply, para. 2.

evidence establishing them in previous detention rulings.³⁸ It also avers that there are several concrete examples of how Mr Krasniqi conducts himself when not detained.³⁹ Furthermore, the SPO takes issue with the Krasniqi Defence's contention that witness testimony elicited thus far has not substantiated any actions or character associated with obstruction.⁴⁰

23. The Panel calls attention to the standard utilised in assessing the risks under Article 41(6)(b), which does not require a "concrete example" of a situation in which Mr Krasniqi has personally intimidated or harassed a witness.⁴¹ Therefore, the fact that the SPO has not produced any evidence which suggests that Mr Krasniqi in fact shared any confidential information with visitors at the detention facilities of the SC ("Detention Facilities"), sought to interfere with any witness, or otherwise behaved inappropriately in the Detention Facilities,⁴² does not mean that a risk under Article 41(6)(b) cannot exist. Importantly, this does not contradict the Panel's previous finding that it is adjudicating this matter against a background of information that a general climate of witness interference persists in Kosovo regarding this case and others before the SC.⁴³

³⁸ Reply, para. 3.

³⁹ Reply, para. 4.

⁴⁰ Reply, para. 5.

⁴¹ See Seventh Detention Decision, para. 23, referring to IA003/F00005, Court of Appeals Panel, *Decision on Rexhep Selimi's Appeal Against Decision on Interim Release* ("First Appeals Decision on Selimi's Detention"), 30 April 2021, confidential, para. 59 (a public redacted version was issued on the same day, IA003/F00005/RED).

⁴² See F01977, Panel, *Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi* ("1 December 2023 Decision"), 1 December 2023, para. 29.

⁴³ See F01679, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Tenth Detention Decision"), 17 July 2023, confidential, para. 27 (a public redacted version was issued on 9 August 2023, F01679/RED); F01530, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Ninth Detention Decision"), 17 May 2023, confidential, para. 23 (a public redacted version was issued on 22 May 2023, F01530/RED); F01382, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Eighth Detention Decision"), 17 March 2023, confidential, para. 26 (a public redacted version was issued on 20 March 2023, F01382/RED), referring to KSC-BC-2020-05, F00494/RED/COR, Trial Panel I, *Corrected Version of Public Redacted Version of Trial Judgment*, 24 January 2023, para. 57. See also Twelfth Detention Decision, para. 26.

24. The Panel has already determined and reiterates that there is a risk of Mr Krasniqi obstructing SC proceedings based on, *inter alia*: (i) his position of influence which, combined with the willingness and ability to obtain access to confidential information inaccessible to the public, allows for the reasonable conclusion that it is possible for Mr Krasniqi to secure access to confidential information related to matters to which he is currently connected; (ii) his public statements criticising the SC; and (iii) the content of a 24 April 2020 Facebook post targeting “collaborators”.⁴⁴ Furthermore, the Court of Appeals has confirmed that: (i) there are indications that Mr Krasniqi is, at least, predisposed to witness intimidation, for reasons earlier stated;⁴⁵ and (ii) in assessing whether there is a risk that Mr Krasniqi will obstruct the proceedings if released, it was not unreasonable to take into account, among other factors, Mr Krasniqi’s public statements criticising the SC or the Facebook post of 24 April 2020.⁴⁶

25. As previously noted, in light of the ongoing nature of the trial, the names and personal details of certain highly sensitive witnesses have been and will continue to be disclosed to the Krasniqi Defence,⁴⁷ and will therefore become known to a broader range of people, including to Mr Krasniqi. The Panel maintains its view that this, in turn, increases the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give

⁴⁴ See e.g. F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Fourth Detention Decision”), 13 May 2022, confidential and *ex parte*, para. 48 (a confidential redacted version, F00801/CONF/RED, and a public redacted version, F00801/RED, were issued on 13 and 24 May 2022, respectively).

⁴⁵ IA002/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release* (“First Appeals Decision on Krasniqi’s Detention”), 30 April 2021, confidential, para. 62 (a public redacted version was issued on the same day, IA002/F00005/RED); IA006/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 30 (a public redacted version was issued on the same day, IA006/F00005/RED).

⁴⁶ First Appeals Decision on Krasniqi’s Detention, para. 50.

⁴⁷ See Twelfth Detention Decision, para. 25; F01795, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Eleventh Detention Decision”), 15 September 2023, confidential, para. 20 (a public redacted version was issued on the same day, F01795/RED); Tenth Detention Decision, para. 26; Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 25.

evidence. In this context, the release of an accused with sensitive information in his possession would not be conducive to the effective protection of witnesses who are yet to testify.⁴⁸

26. Accordingly, the Panel concludes that the risk that Mr Krasniqi will obstruct the progress of SC proceedings if released continues to exist.

c) Risk of Committing Further Crimes

27. With reference to the Panel's findings in the Twelfth Detention Decision, the SPO submits that Mr Krasniqi continues to present a risk of committing further crimes.⁴⁹ According to the SPO, the Panel's conclusion that the continuing disclosure of sensitive information presented an unacceptable risk for the commission of further crimes has taken on additional significance in light of the continuing progress of the trial.⁵⁰ Furthermore, the SPO argues that the extremely serious nature of the charges against Mr Krasniqi needs to be taken into account.⁵¹

28. The Krasniqi Defence submits that there is no compelling evidence establishing a sufficiently real risk that Mr Krasniqi will commit further crimes.⁵² In particular, it avers that Mr Krasniqi has demonstrated exemplary behaviour while in detention, which is a strong indication that he would continue to do so if granted interim release.⁵³ Furthermore, it contends that Mr Krasniqi's age and excellent behaviour during the time spent in detention are sufficient for the Panel to grant interim release.⁵⁴

⁴⁸ See Twelfth Detention Decision, para. 25; Eleventh Detention Decision, para. 20; Tenth Detention Decision, para. 26; Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 25; Seventh Detention Decision, para. 25.

⁴⁹ SPO Submissions, paras 16-20 (*citing, in particular, Twelfth Detention Decision, para. 34*).

⁵⁰ SPO Submissions, para. 20.

⁵¹ SPO Submissions, para. 18.

⁵² Response, paras 18, 20. *See also* Response, para. 2.

⁵³ Response, para. 19. *See also* Response, para. 20.

⁵⁴ Response, para. 20.

29. The SPO's submissions in the Reply with respect to the risk of committing further crimes are generally identical to those summarised in paragraph 22 above in respect of the risk of obstruction.

30. The Panel recalls its finding in the Twelfth Detention Decision that the risk of Mr Krasniqi committing further crimes continues to exist.⁵⁵ The Panel finds that the same considerations and factors that were taken into account in relation to the risk of obstruction are relevant⁵⁶ to the analysis of the risk of Mr Krasniqi committing further crimes.⁵⁷ In light of those, and despite the Krasniqi Defence's submissions in this regard,⁵⁸ the Panel considers that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.

31. The Panel further highlights the fact that the trial is ongoing, that the identities of sensitive witnesses continue to be disclosed to the Krasniqi Defence, and that any risk of further commission of crimes must be avoided.⁵⁹

32. The Panel considers that, taking all factors together, there continues to be a risk that Mr Krasniqi will commit further crimes as set out in Article 41(6)(b)(iii).

iii. Conclusion

33. The Panel concludes that, at this time, there continues to be insufficient information before it justifying a finding that Mr Krasniqi may abscond from justice. However, the Panel is satisfied, based on the relevant standard, that there continues to be a risk that Mr Krasniqi will obstruct the progress of SC proceedings and a risk that he will commit further crimes against those perceived as being opposed to the Kosovo Liberation Army, including witnesses who have

⁵⁵ Twelfth Detention Decision, para. 32.

⁵⁶ *See in this regard* Response, para. 19.

⁵⁷ *See above*, paras 23-25. *See also* Twelfth Detention Decision, para. 32.

⁵⁸ Response, paras 18-20.

⁵⁹ *See also* Twelfth Detention Decision, para. 33.

provided or could provide evidence in the case and/or are due to appear before the SC. The Panel will assess below whether these risks can be adequately addressed by any conditions for his release.

B. MEASURES ALTERNATIVE TO DETENTION

34. The SPO submits, with reference to the Panel's previous findings, that: (i) the risks pursuant to Article 41(6)(b) can only be effectively managed at the Detention Facilities; (ii) nothing has occurred since the Twelfth Detention Decision warranting a different assessment on conditions, either generally or for a discrete period of time; and (iii) rather, the continuation of trial and attendant further disclosure make the underlying risks higher than ever.⁶⁰

35. The Krasniqi Defence defers to the Panel as regards the conditions deemed appropriate.⁶¹

36. When deciding on whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks in Article 41(6)(b).⁶² Article 41(12) sets out a number of options to be considered in order to ensure the accused's presence at trial, to prevent reoffending or to ensure successful conduct of proceedings. In this respect, the Panel recalls that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b).⁶³ The Panel

⁶⁰ SPO Submissions, paras 21-25 (*referring to Twelfth Detention Decision, paras 39-41*).

⁶¹ Response, paras 4, 8.

⁶² As regards the obligation to consider "alternative measures", see KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova*, para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

⁶³ SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020*, 22 May 2020, para. 70. See also ECtHR, *Idalov v. Russia* [GC], para. 140 *in fine*.

must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Krasniqi Defence or the SPO.⁶⁴

37. As regards the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel has repeatedly held that:

- a) None of the conditions previously proposed by the Krasniqi Defence, nor any additional measures foreseen in Article 41(12), ordered *proprio motu*, could at this stage in the proceedings sufficiently mitigate the existing risks with respect to Mr Krasniqi;⁶⁵
- b) The measures in place at the Detention Facilities, viewed as a whole: (i) provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes; and (ii) offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented;⁶⁶ and
- c) It is only through the communication monitoring framework applicable at the Detention Facilities that Mr Krasniqi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁶⁷

38. The Panel maintains its view that no additional measures foreseen in Article 41(12), ordered *proprio motu*, could at this stage in the proceedings

⁶⁴ First Appeals Decision on Selimi's Detention, para. 86; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 24.

⁶⁵ See Twelfth Detention Decision, para. 39; Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 33; Eighth Detention Decision, para. 37; Seventh Detention Decision, para. 38. See also IA020/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention*, 2 August 2022, confidential, para. 39 (a public redacted version was issued on the same day, IA020/F00005/RED).

⁶⁶ See Twelfth Detention Decision, para. 39; Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 33; Eighth Detention Decision, para. 37; Seventh Detention Decision, para. 38. See also IA016/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, confidential, para. 30 (a public redacted version was issued on the same day, IA016/F00005/RED).

⁶⁷ See Twelfth Detention Decision, para. 39; Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 34; Eighth Detention Decision, para. 38; Seventh Detention Decision, para. 39.

sufficiently, and to a degree comparable to that of detention at the Detention Facilities, mitigate the existing risks with respect to Mr Krasniqi.

39. In light of the foregoing, the Panel remains persuaded of the conclusions previously reached, as summarised in paragraph 37 above, and finds that the risks of obstructing the proceedings and committing further offences can only be effectively managed at this stage of the proceedings if Mr Krasniqi remains at the Detention Facilities. In these circumstances, the Panel finds that there are no alternatives to Mr Krasniqi's continued detention capable of adequately averting the risks in Article 41(6)(b)(ii) and (iii), either generally or for a discrete period of time.

C. REASONABLENESS OF DETENTION

40. The SPO argues that, taking all factors into consideration, Mr Krasniqi's detention remains proportional.⁶⁸ To that end, the SPO refers to the Panel's previous findings that: (i) Mr Krasniqi is charged with ten counts of serious international crimes in which he is alleged to play a significant role; (ii) if convicted, he could face a lengthy sentence; (iii) the continuing risks under Article 41(6)(b)(ii) and (iii) cannot be sufficiently mitigated by the application of reasonable alternative measures; (iv) the case against Mr Krasniqi is complex; (v) a climate of witness intimidation exists as outlined above; and (vi) progress continues to be made in the case.⁶⁹

41. The Krasniqi Defence argues that Mr Krasniqi's ongoing detention is disproportionate.⁷⁰ It avers, in particular, that judging by the number of SPO witnesses heard thus far and the number of remaining witnesses whom the SPO intends to call, it is very likely that the completion of the Prosecution case will

⁶⁸ SPO Submissions, paras 26-28.

⁶⁹ SPO Submissions, para. 27.

⁷⁰ Response, paras 21-23, 25.

extend beyond the target date of April 2025.⁷¹ Furthermore, it avers that the recent modification of conditions in the Detention Facilities have already had a significant impact on Mr Krasniqi's rights and that the denial of Mr Krasniqi's rights, including the visits to which he is lawfully entitled, constitutes a compelling argument in favour of his immediate release.

42. The SPO replies that it would be contrary to applicable law and basic logic to decide whether detention is justified for the next sixty days on the basis of things that may or may not happen years in the future.⁷² With respect to Mr Krasniqi's visits, the SPO refers to previous conclusions by the Panel and submits that the annexes to the Response on this point should not be considered.⁷³

43. The Panel notes the Krasniqi Defence's submission that: (i) the 'increasing disproportionality' of the detention period to which Mr Krasniqi has been subjected needs to be taken into account; and (ii) considering Mr Krasniqi's exemplary behaviour thus far, his fundamental rights cannot and should not be impacted by factors unrelated to his behaviour or his specific circumstances.⁷⁴ As continuously stated, the Panel is conscious of its duty to assess the reasonableness of an accused's continued detention, including Mr Krasniqi's, on the facts of each case and according to its special features at the time when such assessment is being made.⁷⁵ Furthermore, the Panel is cognisant that the duration of time in detention is a factor that needs to be considered, along with the degree of the risks described in Article 41(6)(b), in order to determine whether, all factors being considered, the

⁷¹ Response, para. 22.

⁷² Reply, para. 6.

⁷³ Reply, para. 7.

⁷⁴ Response, para. 23.

⁷⁵ Twelfth Detention Decision, para. 45; Eleventh Detention Decision, para. 33; Tenth Detention Decision, para. 53; Ninth Detention Decision, para. 37; Eighth Detention Decision, para. 42; Seventh Detention Decision, para. 43.

continued detention “stops being reasonable” and the individual needs to be released.⁷⁶

44. In the Panel’s estimation, special features in this case include the following: (i) Mr Krasniqi is charged with ten counts of serious international crimes in which he is alleged to play a significant role;⁷⁷ (ii) if convicted, Mr Krasniqi could face a lengthy sentence; (iii) the continuing risks under Article 41(6)(b)(ii) and (iii) cannot be sufficiently mitigated by the application of reasonable alternative measures;⁷⁸ (iv) the case against Mr Krasniqi is complex;⁷⁹ (v) the climate of witness intimidation outlined above; and (vi) the fact that the trial is ongoing.

45. With respect to the Krasniqi Defence’s submissions regarding the allegedly slow progress of the trial,⁸⁰ the Panel recalls its previous finding that delays are attributable to both the SPO and the Defence.⁸¹ The Panel maintains its view that it is premature to make any determination that the progress of the trial violates Mr Krasniqi’s right to be tried within a reasonable time, as enshrined in Article 21(4)(d).⁸²

46. With respect to the Krasniqi Defence’s submission that recent modifications of conditions at the Detention Facilities have already had a significant impact on Mr Krasniqi’s rights and that the denial of Mr Krasniqi’s rights, including with respect to visits, constitutes a compelling argument in favour of his immediate release,⁸³ the Panel recalls first that the present decision is one on interim detention or release and not the conditions of detention, the former falling under Rule 57 and the latter under

⁷⁶ Seventh Detention Decision, para. 43, *referring to* First Appeals Decision on Krasniqi’s Detention, para. 69.

⁷⁷ Confirmed Indictment, paras 10-12, 32, 39-40, 44, 49, 53, 55-57, 176-177.

⁷⁸ *See above*, paras 37-39.

⁷⁹ *See e.g.* Sixth Detention Decision, para. 59; Fifth Detention Decision, para. 58; Fourth Detention Decision, para. 81.

⁸⁰ Response, para. 22.

⁸¹ Twelfth Detention Decision, para. 47.

⁸² *See also* Twelfth Detention Decision, para. 47.

⁸³ Response, para. 23.

Rule 56(6). Furthermore, the Panel is not satisfied that any of the circumstances outlined by the Krasniqi Defence in respect of restrictions imposed on other defendants would materially affect considerations pertaining to Mr Krasniqi's detention. The Panel remains satisfied that those measures are necessary and proportionate and compatible with the rights of Mr Krasniqi⁸⁴ and that they do not render his continued detention unreasonable.

47. Furthermore, the Panel reminds the Krasniqi Defence that complaints and judicial review mechanisms are available to the detainees at the Detention Facilities should they consider that, for instance, their visitation rights have been violated.⁸⁵

48. In light of the above, and in particular the factors noted in paragraph 44 above, the Panel finds that Mr Krasniqi's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

49. The Panel notes, however, that Mr Krasniqi has already been in detention for a significant period of time, and that the trial in this case is likely to be lengthy. As the Panel previously indicated,⁸⁶ this will require the Panel as well as all Parties to be particularly mindful of the need to ensure that the trial proceeds as expeditiously as possible. The Panel will continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable.

⁸⁴ See also 1 December 2023 Decision, para. 29.

⁸⁵ See e.g. Articles 6-11 of the 'Registry Practice Direction on Detainees: Complaints', KSC-BC-11/Rev1, 23 September 2020. See also 1 December 2023 Decision, paras 53, 69; F02028, Panel, *Decision on Urgent Request for an Order to the Registrar Regarding Implementation of Decision F01977*, 20 December 2023, paras 13-15, 17, 19.

⁸⁶ See e.g. Twelfth Detention Decision, para. 49; Eleventh Detention Decision, para. 35; Tenth Detention Decision, para. 56; Ninth Detention Decision, para. 39; Eighth Detention Decision, para. 44; Seventh Detention Decision, para. 46.

V. CLASSIFICATION

50. Noting that the Response was filed confidentially⁸⁷ and that no public redacted version has been filed thus far, the Panel orders the Krasniqi Defence to file a public redacted version of the Response by **Monday, 22 January 2024**. For future filings, the Panel reminds the Krasniqi Defence of the Panel's oral order regarding the publicity of proceedings, wherein the Panel ordered the Parties and participants, as a matter of principle, to: (i) file simultaneously a public redacted version of their confidential filing; and (ii) when there are compelling reasons not to do so, to indicate in the classification section of the filing the reasons why a public redacted version thereof cannot be provided at the same time.⁸⁸

51. Noting that the SPO does not object to the reclassification of the Reply as public⁸⁹ and considering that the Reply contains no confidential information, the Panel directs the Registry to reclassify the Reply as public.

VI. DISPOSITION

52. For the above-mentioned reasons, the Panel hereby:

- a) **ORDERS** Mr Krasniqi's continued detention;
- b) **ORDERS** the Krasniqi Defence to file a public redacted version of the Response by **Monday, 22 January 2024**;
- c) **DIRECTS** the Registry to reclassify the Reply (F02048) as public; and

⁸⁷ See also Response, para. 5.

⁸⁸ Transcript of Hearing, 7 November 2023, p. 9446, lines 13-20.

⁸⁹ Reply, para. 8.

- d) **ORDERS** the SPO to file submissions on the next review of Mr Krasniqi's detention by no later than **Friday, 23 February 2024 (at 16:00 hours)**, with subsequent written submissions following the timelines set out in Rule 76.



Judge Charles L. Smith, III
Presiding Judge

Dated this Monday, 15 January 2024
At The Hague, the Netherlands.