

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr. Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

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Krasniqi Defence Response
to Prosecution Submissions on Detention Review (F02026) with Confidential and
***Ex-Parte* Annexes 1 and 2**

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I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s Office (“Prosecution”) submissions on Mr. Krasniqi’s continued detention,¹ pursuant to Article 41 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 57 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”).

2. Over three years have now passed since Mr. Krasniqi was first detained by the Kosovo Specialist Chambers.² On 3 April 2023, following 29 months in confinement, this trial began.³ 38 witnesses have now provided evidence *viva voce* and pursuant to Rule 154.⁴ As stated in earlier submissions, no witness has provided credible evidence that is overtly critical of Mr. Krasniqi’s personal conduct.⁵ To the contrary, witnesses have provided evidence suggesting that Mr. Krasniqi is an honourable man, contradicting the SPO allegations that he is likely to obstruct proceedings or commit further crimes.

3. The applicable standard to justify ongoing detention requires articulable grounds supporting a ‘belief’ that there is a risk of one of the Article 41(6)(b) grounds occurring. The ‘belief’ test denotes ‘an acceptance of the possibility, not the inevitability, of a future occurrence’. In other words, the standard to be applied is less than certainty, but more than the mere possibility of a risk materialising.⁶ However,

¹ KSC-BC-2020-06, F02026, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 20 December, 2023, public (“Prosecution Submission”).

² Mr. Krasniqi was arrested on 4 November, 2020.

³ Prosecution Submission, para. 3.

⁴ *Idem*, para. 4.

⁵ KSC-BC-2020-06, F01886, Specialist Counsel, *Krasniqi Defence Response to Prosecution Submissions on Detention Review*, 6 November 2023, confidential.

⁶ Prosecution Submission, para. 8.

not even the mere possibility of a risk arises in Mr. Krasniqi's situation. The detention of Mr. Krasniqi should thus be the exception, not the rule.

4. The SPO's unsubstantiated allegations do not justify prolonging Mr. Krasniqi's detention any further and the Defence therefore respectfully requests Mr. Krasniqi's immediate release, subject to such conditions as the Trial Panel deems appropriate.

5. Pursuant to Rule 82(3) of the Rules, this filing is submitted confidentially because it refers to the content of evidentiary material currently classified as confidential.

II. SUBMISSIONS

6. The Defence submits that any risks previously identified by the Panel no longer suffice to justify Mr. Krasniqi's ongoing detention. The Prosecution asserts that since the Trial Panel's most recent decision, there have been no developments that diminish the factors supporting the need and reasonableness of detention.⁷ This is not correct. The Prosecution's active investigations at the Detention Unit facilities have revealed that Mr. Krasniqi has behaved appropriately at all times and has remained unconnected to allegations of witness interference.

7. On 17 November 2023, the SPO submitted a request for the modification of detention conditions.⁸ Therein, the Prosecution alleged that their investigations had revealed attempts to obstruct these proceedings, including through issuing of instructions on how witnesses should testify.⁹ There was no connection to Mr.

⁷ Prosecution Submission, para. 6.

⁸ KSC-BC-2020-06, F01933, Specialist Prosecutor, *Prosecution Urgent Request for Modification of Detention Conditions with Confidential Annexes 1 to 5*, 17 November 2023, confidential.

⁹ *Idem*, para. 1.

Krasniqi in this request and the Prosecution has not alleged that any actions justifying the modification of detention conditions were undertaken by Mr. Krasniqi.

8. On 1 December 2023, the Trial Panel issued a decision on the Prosecution's request.¹⁰ The Panel found that no evidence had been produced to suggest that Mr Krasniqi had improperly shared any confidential information with visitors, sought to interfere with any witness, or otherwise behaved inappropriately in the Detention Facilities.¹¹ There is thus no reasonable justification for Mr. Krasniqi's continued confinement and he should be released, subject to any conditions imposed on him by this Court.

9. The Prosecution has relied on the same grounds repeatedly across three years of detention, disregarding a pertinent change in circumstances arising from covert monitoring and the investigations thereafter. There is no indication – even after thorough investigations at the Detention Unit facilities – to suggest that Mr. Krasniqi will obstruct proceedings. This is an important fact which cannot and should not be ignored.

A. NO SUFFICIENTLY REAL POSSIBILITY THAT MR. KRASNIQI WILL FLEE

10. Mr. Krasniqi does not pose a flight risk. The Prosecution has submitted that the combination of continuing to gain a fuller knowledge of the case against him and seeing inculpatory evidence enter the record elevates Mr. Krasniqi's risk of flight to a 'sufficient real possibility'.¹² In contrast, the Trial Panel has stated that Mr. Krasniqi is

¹⁰ KSC-BC-2020-06, F01977, Trial Panel II, *Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi*, 1 December 2023, public.

¹¹ *Idem*, para. 29.

¹² Prosecution Submission, para. 9.

not considered to be a flight risk, and has not been for some time.¹³ Nor has the Prosecution produced a concrete basis, specific to Mr. Krasniqi, to support its submission that the risk of flight is elevated in his case.

11. In its most recent detention review decision, the Trial Panel reaffirmed its prior finding that the Prosecution has failed to establish its claim of a “sufficiently real possibility” that Mr. Krasniqi would abscond if released.¹⁴ The Trial Panel also consistently determined that Mr. Krasniqi has cooperated with the relevant authorities at all points during his detention and transfer.¹⁵ Mr. Krasniqi’s cooperation with the relevant authorities was established even prior to his arrest, transfer, and detention. His compliance with all detention conditions continues to-date. Equally, Mr. Krasniqi cooperated with ICTY officials as a witness in the *Limaj* case in February 2005 and *Haradinaj* case in May 2007, and also cooperated with the relevant authorities while a EULEX witness in 2019. Mr. Krasniqi has given no reason to suggest that he would be anything other than similarly compliant with any conditions imposed following his release.

B. NO SUFFICIENTLY REAL POSSIBILITY THAT MR. KRASNIQI WILL OBSTRUCT PROCEEDINGS

¹³ KSC-BC-2020-06, F01926, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 November 2023, public, paras 18-19.

¹⁴ KSC-BC-2020-06, F01926, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 November 2023, public, para 17, citing F01212, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Seventh Detention Decision”), 17 January 2023, confidential, para. 18 and footnote 30 (a public redacted version was issued on the same day, F01212/RED).

¹⁵ *Idem*, para 18

12. The Prosecution continues to submit over the years that there is a “persistent climate of intimidation of witnesses.”¹⁶ However, it has also failed to provide evidence concretely linking Mr. Krasniqi to such a climate.

13. The Prosecution suggests that Mr. Krasniqi is predisposed to witness intimidation.¹⁷ It is sufficient to simply say that this is not correct. Based on the aforementioned investigations conducted by the Prosecution itself,¹⁸ there is no indication or evidence that Mr. Krasniqi has any predisposition towards witness intimidation or has shown signs of attempting to obstruct proceedings in any way.

14. Over the three years in which Mr. Krasniqi has been detained, there is no evidence that he has ever attempted to pass on confidential information or that anyone connected with him has engaged in obstructing proceedings. The Trial Panel has agreed with the Defence and emphasized that no evidence has been produced which suggests that Mr. Krasniqi improperly shared any confidential information with visitors, sought to interfere with any witnesses, or otherwise behaved inappropriately in the Detention Facilities.¹⁹ The identification of a *general* climate of intimidation – which in the Prosecution’s view persists unabated²⁰ – is not sufficient to justify the continued detention of Mr. Krasniqi *specifically*.

¹⁶ KSC-BC-2020-06, F01886, Prosecution submission pertaining to periodic detention review of Jakup Krasniqi, 25 October 2023, para 12; KSC-BC-2020-06, F01053, Prosecution submissions on detention review of Mr Krasniqi, 24 October 2022, public.

¹⁷ Prosecution Submission, para 11.

¹⁸ KSC-BC-2020-06, F01933RED, *Prosecution urgent request for modification of detention conditions with confidential Annexes 1 to 5*, 22 November 2023, public.

¹⁹ KSC-BC-2020-06, F01977, *Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi*, 1 December 2023, public, para. 29.

²⁰ KSC-BC-2020-06, F01479, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 26 April 2023, confidential, with Annex 1, public, para. 17.

15. As emphasized in earlier submissions by the Defence,²¹ the Trial Panel has now heard the testimony of several Prosecution witnesses – 38 so far – and has had the opportunity to conduct a preliminary assessment of Mr. Krasniqi’s character from this evidence.²² None of the Prosecution’s witnesses thus far have substantiated any direct or indirect allegation by the SPO against Mr. Krasniqi. In contrast, several Prosecution witnesses have spoken highly of Mr. Krasniqi and indicated that he is a person of good character.²³

16. The Prosecution’s attempts to link Mr. Krasniqi to this climate of intimidation or interference are limited to Mr. Krasniqi’s criticism of the KSC through public statements and a single Facebook post of April 2020.²⁴ The Defence maintains its previous submissions on this issue.²⁵ The oft-referenced Facebook posts from Mr. Krasniqi from as back as 2020, are not sufficient evidence to suggest that Mr. Krasniqi will, at this stage, obstruct proceedings.²⁶ Mr. Krasniqi’s public statements are an exercise of free speech and do not on their own indicate a propensity towards witness interference. The Prosecution’s strategic use of the testimony of Robert Reid²⁷ mischaracterises and misrepresents past instances of so-called witness interference.

²¹ KSC-BC-2020-06, F01909RED, *Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01886)*, 7 November 2023, public, para. 11.

²² Prosecution Submission, para 4.

²³ KSC-BC-2020-06, Transcript of Hearing (“Transcript of 17 April”), 17 April 2023, confidential, p. 2869, lines 6-8, p. 2974, line 19 to p. 2975, line 25; Transcript of Hearing (“Transcript of 13 July”), 13 July 2023, confidential, p. 5629, lines 17-23; Transcript of Hearing (“Transcript of 19 July”), 19 July 2023, confidential, p. 6191, lines 10-15; Transcript of Hearing (“Transcript of 16 August”), 16 August 2023, confidential, p. 6651, lines 9-17; Transcript of Hearing, 13 September 2023, confidential p. 7904, line 21 to p. 7905, line 9.

²⁴ Prosecution Submission, para. 11.

²⁵ KSC-BC-2020-06, F01909, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01886)*, 6 November 2023, confidential, para. 16.

²⁶ KSC-BC-2020-06, F01181, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, confidential, paras 24-32.

²⁷ Prosecution Submission, para. 12.

17. The Prosecution erroneously claims that as Mr. Krasniqi has received information concerning the witnesses it intends to call in upcoming months, his risk of obstruction has increased.²⁸ Without offering any specific details pertaining to Mr. Krasniqi, the Prosecution cannot simply claim that this disclosure increases the risk of obstruction. For this argument to be persuasive, the Prosecution must demonstrate that, following this disclosure, witnesses were in fact intimidated or threatened or even contacted by Mr. Krasniqi or anyone connected with him. As no such evidence exists, the Defence respectfully emphasises that Mr. Krasniqi's circumstances should be considered *independently*, not conflated with or enhanced by those of the other Accused in this case.

C. NO SUFFICIENTLY REAL POSSIBILITY THAT MR. KRASNIQI WILL COMMIT FURTHER CRIMES

18. The evidence used by the Prosecution to allege that there is a sufficiently real risk that Mr. Krasniqi will commit further crimes, is the same as the evidence addressed above in relation to the alleged risk of interference with witnesses²⁹. The Defence maintains that there is no compelling evidence establishing that there is a sufficiently real risk that Mr. Krasniqi will commit further crimes.

19. Continuing detention on this basis – risk of committing further crimes – requires that: the previous behaviour of the defendant, the previous trials – if any, the number of criminal offenses for which the procedure is being conducted and the motive for committing the criminal offense, are relevant.³⁰ That Mr. Krasniqi has comported himself appropriately at all times and adhered to every condition imposed on him

²⁸ *Idem*, para. 13.

²⁹ Prosecution Submission, Para. 13.

³⁰ Commentary on the Kosovo Criminal Code of Procedure, page 491. http://jus.igjk.rks-gov.net/486/1/Komentari_Kodi%20i%20Procedures%20Penal.pdf

thus far, is a strong indication that he would continue to do so if granted interim release.

20. Over three years have now elapsed since Mr. Krasniqi was first detained by this institution. The Prosecution has not adduced any evidence of a sufficiently real risk that he would commit further crimes if released. In fact, the recent covert monitoring at the Detention Unit and SPO's investigations constitute sufficient basis for the Trial Panel to conclude that Mr. Krasniqi is not likely to or will not commit further crimes. His age and excellent behaviour over the past 37 months spent in detention are sufficient for the Trial Panel to grant interim release.

D. ONGOING DETENTION IS DISPROPORTIONATE

21. The Court should take into the consideration the increasing disproportionality of the detention period to which Mr. Krasniqi has been subjected. The more time an accused person spends in detention, the greater the burden on the Prosecution to establish that the risks identified under Article 41(6)(b) do in fact continue to exist, and are sufficient to warrant the ongoing confinement of a man entitled to the presumption of innocence and to be tried within a reasonable time.³¹

22. The Defence notes that the target date for completion of the Prosecution case in April 2025 – by which time Mr. Krasniqi will have been detained for four and a half years. Judging by the number of Prosecution witnesses that have been heard since the trial commenced and the number of witnesses remaining that the Prosecution intends to call, it is very likely that the completion of the Prosecution case will extend beyond the period anticipated by the Trial Panel.³²

³¹ Article 21(4)(d), Law.

³² KSC-BC-2020-06, Transcript of Hearing, 15 July 2023, confidential, p. 4982, lines 5-17.

23. The recent modification of conditions at the Detention Unit have already had a significant impact on Mr. Krasniqi's rights. For instance, the delays in processing the visits Mr. Krasniqi is entitled to have with his family has resulted in several complaints being logged with the management at the Detention Unit and the Registrar.³³ Considering his exemplary behaviour thus far, Mr. Krasniqi's fundamental rights cannot and should not be impacted by factors unrelated to his behaviour or his specific circumstances. The Defence considers 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.

III. CONCLUSION

24. In light of the foregoing, the Defence requests that the Trial Panel disregard the Prosecution's claims when conducting its periodic review of Mr Krasniqi's detention.

25. The Defence submits that at this point in time – nearly 38 months after his initial detention – any risks identified in relation to Mr. Krasniqi are no longer sufficient to justify his ongoing detention. Mr. Krasniqi's individual circumstances, his full compliance with proceedings thus far, and any risks related to Mr. Krasniqi's conditional release, should be considered on an individual basis. The period of detention has become unreasonable, and therefore Mr. Krasniqi should be released.

³³ See Annexes 1 and 2, filed confidentially and *ex-parte* due to the personal information contained therein.

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