



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**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  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 9 January 2024

**Language:** English

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**Prosecution reply to '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 Response<sup>1</sup> should be rejected, and Jakup Krasniqi ('Krasniqi') should remain detained. The Response recasts and rehashes meritless arguments that have been rejected previously.

## II. SUBMISSIONS

A. THERE CONTINUES TO EXIST A SUFFICIENTLY REAL POSSIBILITY THAT KRASNIQI WILL OBSTRUCT PROCEEDINGS AND COMMIT FURTHER CRIMES UNLESS DETAINED

2. Krasniqi contends that he should be released on the basis that SPO investigations at the Detention Unit have not detected any inappropriate behaviour on his part including allegations of witness interference.<sup>2</sup> In essence, Krasniqi's arguments in this regard<sup>3</sup> are simply a rebranding of his oft invoked<sup>4</sup> and consistently rejected<sup>5</sup> proposition that the SPO must produce concrete examples of continued efforts by Krasniqi to personally intimidate or harass witnesses.

3. The basis of these assertions fundamentally misunderstands the calculus of the decision to detain Krasniqi: specifically, that there is a risk that Krasniqi will obstruct

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<sup>1</sup> Krasniqi Defence Response to Prosecution Submissions on Detention Review (F02026) with Confidential and *Ex-Parte* Annexes 1 and 2, KSC-BC-2020-06/F02041, 4 January 2024, Confidential ('Response').

<sup>2</sup> Response, KSC-BC-2020-06/F02041, paras 6-9, 13-14. It is noted that Krasniqi mischaracterises the nature and results of the investigations in question. Investigations at the Detention Unit were not conducted in relation to Krasniqi, and therefore it is simply the case that evidence regarding Krasniqi's conduct was not available and not produced, rather than such investigations having positively shown 'that Mr. Krasniqi has behaved appropriately at all times' (*contra*. Response, KSC-BC-2020-06/F02041, para.6).

<sup>3</sup> Response, KSC-BC-2020-06/F02041, paras 6-9, 13-17.

<sup>4</sup> See Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01886), KSC-BC-2020-06/F01909, 6 November 2023, Confidential, paras 9-10.

<sup>5</sup> See Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01926, 15 November 2023, ('November Decision'), para.23 *citing* Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005/RED, 30 April 2021, para.59; *see also* Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01795, 15 September 2023, para.18; Public Redacted Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01679/RED, 17 July 2023, para.24.

proceedings and commit further crimes that can ‘only’ be mitigated by detention.<sup>6</sup> That detention mitigates these risks is the purpose of detention – an absence of further evidence underpinning the Article 41(6) risks does not negate the sufficiency of the evidence establishing them in previous detention rulings.

4. The entirely more relevant metric in this regard is Krasniqi’s actions in the absence of detention, which include public statements criticizing the KSC and his 24 April 2020 Facebook post targeting ‘collaborators’; a post which was written only months before Krasniqi’s arrest and at a time when he was aware that active SPO investigations were ongoing. Contrary to Krasniqi’s contentions, this is not the limit of such relevant examples,<sup>7</sup> and it is the Court of Appeals- not just the SPO<sup>8</sup>- that has recognized Krasniqi’s predisposition to witness intimidation based on additional relevant evidence.<sup>9</sup> Though not legally required, these do constitute several concrete examples of how Krasniqi conducts himself when not detained.

5. Similarly, the Panel has already heard and rejected Krasniqi’s argument that witness testimony elicited thus far has not substantiated any actions or character associated with obstruction.<sup>10</sup> As determined previously, evidence of direct or personal perpetration is not dispositive as to whether the relevant crimes against humanity and war crimes were committed pursuant to the modes of liability charged in this case.<sup>11</sup>

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<sup>6</sup> See November Decision, KSC-BC-2020-06/F01926, paras 35, 40-41.

<sup>7</sup> Response, KSC-BC-2020-06/F02041, para.16

<sup>8</sup> Response, KSC-BC-2020-06/F02041, para.13

<sup>9</sup> See Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01679, 17 July 2023, Confidential, para.25.

<sup>10</sup> See November Decision, KSC-BC-2020-06/F01926, paras 21-28.

<sup>11</sup> Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004, paras 22-24.

## B. DETENTION REMAINS PROPORTIONAL

6. As recently as November 2023, the Panel rejected as premature<sup>12</sup> Krasniqi's vague and largely unsupported assertion that the completion of the SPO case will extend beyond the target date. Such submissions also ignore the Panel's repeatedly expressed sensitivity to this issue. Each decision of the Panel extends detention for only a period of a further two months.<sup>13</sup> It would be contrary to the relevant 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.

7. Regarding Krasniqi's visits,<sup>14</sup> the SPO notes that the Panel has concluded that the recent measures are necessary and proportionate and compatible with the rights of Krasniqi,<sup>15</sup> that the Panel ruled as recently as November 2023 that the interference with Krasniqi's right to family life was reasonable under the circumstances,<sup>16</sup> and that mechanisms to address any issues with visits- short of immediate release- exist.<sup>17</sup> Finally, and just as is the case with materials supporting detention,<sup>18</sup> the *ex parte* annexes in the Response on this point should not be considered.

## III. CLASSIFICATION

8. This filing is submitted confidentially pursuant to Rule 82(4). The SPO does not object to its reclassification as public.

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<sup>12</sup> See November Decision, KSC-BC-2020-06/F01926, para.47.

<sup>13</sup> See November Decision, KSC-BC-2020-06/F01926, paras 48-49.

<sup>14</sup> See Response, KSC-BC-2020-06/F02041, para.23.

<sup>15</sup> See Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, KSC-BC-2020-06F01977, para.29.

<sup>16</sup> See November Decision, KSC-BC-2020-06/F01926, para.46.

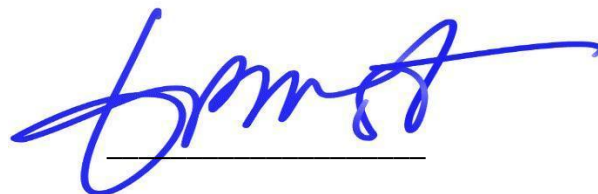
<sup>17</sup> See Practice Direction on Complaints, KSC-BD-11-Rev1, 23 September 2020.

<sup>18</sup> Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021, para.41.

#### IV. CONCLUSION

9. For the foregoing reasons, the Trial Panel should reject the Response and extend Krasniqi's detention.

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At The Hague, the Netherlands.