

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

Before: **Court of Appeals Panel**
Judge Michèle Picard
Judge Emilio Gatti
Judge Kai Ambos

Registrar: Dr Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

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Classification: Public

Public Redacted Version of

Krasniqi Defence Reply to Prosecution Response to Krasniqi Defence Appeal

Against Decision on Periodic Review of Detention of Jakup Krasniqi,

KSC-BC-2020-06/IA020/F00004, dated 13 June 2022

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I. INTRODUCTION

1. Pursuant to Rule 170(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), the Defence for Jakup Krasniqi (“Defence”) hereby replies to the Prosecution Response to Krasniqi Defence Appeal Against Decision on Periodic Review of Detention of Jakup Krasniqi (“Response”).¹

2. The Response does not address the substance of the Appeal,² resting instead on irrelevant and unsupported assertions. The Defence replies herewith.

3. In accordance with Rule 82(4) of the Rules, this filing is confidential as it refers to documents with the same classification. A public redacted version of these submissions will be filed in due course.

II. SUBMISSIONS

4. The Specialist Prosecutor’s Office (“SPO”) misreads and mischaracterises the Defence’s submissions. At no point in its Appeal did the Defence submit that the Pre-Trial Judge has found that the risks underpinning Mr. Krasniqi’s detention are relatively low.³ To the contrary, the Defence submitted that the risks identified by the Pre-Trial Judge in relation to Mr. Krasniqi are, in any sensible view, relatively low and that these risks must be weighed against the Additional Conditions.⁴ The only findings on which the Pre-Trial Judge relied to establish a risk emanating from Mr. Krasniqi himself are that he had a position of influence, he has made public statements

¹ KSC-BC-2020-06, IA020/F00003, Specialist Prosecutor, *Prosecution Response to ‘Krasniqi Defence Appeal Against “Decision on Periodic Review of Detention of Jakup Krasniqi” with public Annex 1’* (“Response”), 7 June 2022, confidential.

² KSC-BC-2020-06, IA020/F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Periodic Review of Detention of Jakup Krasniqi* (“Appeal”), 25 May 2022, confidential, with Annex 1, public.

³ *Contra*, Response, para. 11.

⁴ Appeal, paras 20, 33.

critical of the Specialist Chambers (“SC”), he made one Facebook post which uses the word “collaborators” in April 2020, [REDACTED].⁵ [REDACTED].

5. The SPO confines itself to repeating the findings of the Pre-Trial Judge and Court of Appeals Chamber (“Appeals Chamber”) that the risk of obstruction need not materialise from an Accused personally tampering with evidence or exerting influence or pressure on witnesses.⁶ The Defence maintains that Mr. Krasniqi is a 71-year-old retired politician who has never been convicted of any offence⁷ or accused of obstructing the processes of this – or any – court. He was called as a witness by the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and his evidence was accepted by the Trial Chamber on both occasions.⁸ In light of these circumstances, it is reasonable to conclude that any risk of tampering with evidence or pressuring witnesses, whether by Mr. Krasniqi himself or through others, is considerably low. This is all the more so considering that no evidence exists as to Mr. Krasniqi having ever engaged in such impropriety.

6. The SPO limits itself to characterising the Additional Conditions proposed by the Defence as “slight variations of some of the already proposed and considered conditions”,⁹ without engaging in any way with their far-reaching substance. The Prosecution’s mechanical citation of the past conclusions of the Pre-Trial Judge and the Appeals Chamber’s decision on the same,¹⁰ which both pre-date the Additional Conditions, does not support or bolster the Impugned Decision’s flawed assessment

⁵ KSC-BC-2020-06, F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Impugned Decision”), 13 May 2022, confidential and *ex parte*, paras 48, 54-55.

⁶ Response, para. 11.

⁷ Except for political reasons by the Serbian State.

⁸ ICTY, *Prosecutor v. Limaj et al.*, IT-03-66-T, Trial Chamber II, *Judgement*, 30 November 2005, para. 215; *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Trial Chamber I, *Judgement*, 3 April 2008, paras 68-69, 76, 84-85, 87-88, 471.

⁹ Response, para. 12.

¹⁰ Response, para. 12, referring to KSC-BC-2020-06, IA016/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention* (“Third Court of Appeals Decision”), 25 March 2022, confidential, para. 33.

of the Additional Conditions. No regime of conditional release anywhere in the world can perfectly replicate the conditions of detention, nor is it consistent with the presumption of liberty to require parity with the conditions of detention before granting provisional release. Instead, the issue before the Pre-Trial Judge was whether the conditions already proposed and the Additional Conditions in combination sufficiently mitigate the likelihood of any identified risk occurring.

7. With respect to the SPO's assertions that an oral hearing attended by the Kosovo Police ("KP") Director "would once more be a repetition of issues already raised, considered by the Pre-Trial Judge and upheld by the Appeals Panel"¹¹ and that "the Pre-Trial Judge's conclusion was not based on any ambiguities of the KP Submissions",¹² the Defence recalls the Pre-Trial Judge's finding that [REDACTED]. Specifically, the Pre-Trial Judge found *inter alia* that [REDACTED];¹³ [REDACTED].¹⁴

8. The Response is particularly unavailing in its attempt to extrapolate the findings of the Pre-Trial Judge and the Appeals Chamber in relation to the general regime proposed for [REDACTED]¹⁵ to the more far-reaching and comprehensive Additional Conditions. Limiting both [REDACTED] does reduce any identified risks. First, it reduces any opportunities to pass confidential information. Second, [REDACTED], it makes it more likely that any attempt to break the rules would be detected. The considerable reduction in risk which this entails was not reflected in the Impugned Decision.

¹¹ Response, para. 13.

¹² *Ibid.*

¹³ KSC-BC-2020-06, F00582, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi* ("Third Detention Decision"), 26 November 2021, confidential, para. 74.

¹⁴ Third Detention Decision., para. 75.

¹⁵ Response, para. 14, fn. 30.

9. The SPO's assertion that the Additional Conditions do not include [REDACTED]¹⁶ is simply incorrect. [REDACTED] is at least impliedly included in the proposed conditions,¹⁷ especially considering that Mr. Krasniqi has re-iterated his willingness to abide by any condition imposed by the Pre-Trial Judge, including, but not limited to, both the conditions specified in previous Defence submissions,¹⁸ and the Additional Conditions.¹⁹

10. Moreover, the SPO fails to explain how any residual possibility of [REDACTED], [REDACTED], could reasonably be assessed as sufficiently grave in the light of all the other relevant factors to justify ongoing detention. The answer cannot be contained in the Pre-Trial Judge's previous conclusions,²⁰ upheld by the Appeals Chamber,²¹ because those previous conclusions were based on the assessment of the previously proposed conditions, which did not include the Additional Conditions. Previous general conclusions by the Appeals Chamber in relation to conditions previously proposed cannot substitute for the lack of reasoning as to why the specific Additional Conditions now proposed (in conjunction with those already proposed) would not sufficiently mitigate the identified risks, enhanced and adjusted by such conditions as the SC deems appropriate.

11. With respect to the communication of possible concerns [REDACTED], the SPO conflates two distinct issues. The Defence acknowledges that the KP lacks specific knowledge about [REDACTED], and the [REDACTED]. The Defence argued that the

¹⁶ Response, para. 16.

¹⁷ KSC-BC-2020-06, F00761, Krasniqi Defence, *Krasniqi Defence Submissions on Third Detention Review* ("Request"), 6 April 2022, confidential and *ex parte*, para. 26, fn. 34; Appeal, paras 28, 30.

¹⁸ See e.g., KSC-BC-2020-06, F00122, Krasniqi Defence, *Application for Interim Release*, 7 December 2020, confidential, para. 19; F00524, Krasniqi Defence, *Krasniqi Defence Observations on Detention Review Timeline and Submissions on Second Detention Review*, 13 October 2021, confidential, para. 24; Appeal, para. 23.

¹⁹ Request, para. 26; Appeal, para. 23.

²⁰ Third Detention Decision, paras 70-71.

²¹ Third Court of Appeals Decision, para. 28.

Impugned Decision erred and abused the Pre-Trial Judge's discretion in finding that [REDACTED].²² The Impugned Decision does not explain or indicate the basis on which the Pre-Trial Judge relied to conclude that the KP do not "have the ability [REDACTED] in a manner that an official of the SC, such as the Chief Detention Officer, would have".²³ Even more so, the Pre-Trial Judge's concern could be addressed through minimum logistical effort, simply establishing [REDACTED].²⁴ The findings of the Pre-Trial Judge and the Appeals Chamber, on which the SPO relies in its Response, all relate to the KP's lack of knowledge about [REDACTED]²⁵ rather than the alleged consequences of an additional step [REDACTED]. Moreover, this does not constitute an additional or cumbersome measure since, under the current regime, [REDACTED] should any concern arise about Mr. Krasniqi's communications with his current visitors.

12. The SPO exaggerates in its assertion that "the Pre-Trial Judge cannot be expected to make endless hypothetical assessments and theoretical analyses".²⁶ The Defence acknowledges that the Pre-Trial Judge's obligation to inquire into and evaluate, *proprio motu*, all reasonable conditions, is not limitless.²⁷ However, the Pre-Trial Judge failed, even to the minimum reasonable extent, to thoroughly analyse their impact and properly evaluate the spectrum of risk and the extent to which the previously proposed conditions and Additional Conditions, including the capacity of the KP to implement these measures, reduce the level of any risk upon that spectrum.

²² Impugned Decision, para. 68.

²³ *Ibid.*

²⁴ Appeal, para.29.

²⁵ Response, para. 17, fn. 37.

²⁶ Response, para. 20.

²⁷ Impugned Decision, para. 70, with reference to the Third Court of Appeals Decision, para. 42.

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