

**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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**Public Redacted Version of 'Krasniqi Defence Response  
to Prosecution Submission Pertaining to Periodic Detention Review of Jakup  
Krasniqi (F02264)'**

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## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Krasniqi Defence”) hereby responds to the Specialist Prosecutor’s Office (“SPO”) submissions requesting Mr. Krasniqi’s continued detention,<sup>1</sup> pursuant to Article 41(10) 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. Mr. Krasniqi has now been detained for 42 months. The purpose of reviewing his detention every two months is to determine whether any reasons justifying detention still exist.<sup>2</sup> Whilst cognisant of the Trial Panel’s previous decisions on detention review, the Krasniqi Defence respectfully submits that the Prosecution Submission fails to justify ongoing detention. The grounds advanced by the SPO have remained substantially unchanged since its first detention submissions on 17 December 2020.<sup>3</sup> At this point – after 42 months of detention – these unchanged grounds are no longer sufficient to justify ongoing detention to the required standard.

3. This filing is submitted confidentially because it refers to witness evidence heard in a closed session.

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<sup>1</sup> KSC-BC-2020-06, F02264, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi* (“Prosecution Submission”), 24 April 2024, public.

<sup>2</sup> KSC-BC-2020-06, F02183, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“March 2024 Detention Decision”), 15 March 2024, public, para. 9.

<sup>3</sup> KSC-BC-2020-06, F00153, Specialist Prosecutor, *Prosecution response to Application for Interim Release on behalf of Mr Jakup Krasniqi*, 17 December 2020, confidential, with Annex 1, confidential.

## II. SUBMISSIONS

4. The Prosecution Submission fails to elucidate any articulable grounds establishing that there is still ‘more than a possibility’ of the materialisation of any of the factors entailed in Article 41(6)(b) of the Law.<sup>4</sup>

*i. Mr Krasniqi is not a flight risk*

5. The Trial Panel has repeatedly rejected the SPO’s claim that Mr. Krasniqi presents a flight risk.<sup>5</sup>

6. The Trial Panel has also already rejected the SPO’s submission<sup>6</sup> that the risk of flight is increased by the possibility of visa-free travel to Europe.<sup>7</sup>

7. The Prosecution submission that the risk of flight is elevated because Mr. Krasniqi has seen evidence against him steadily entering the trial record should likewise be rejected.<sup>8</sup> The SPO overlooks the steady flow of positive evidence about Mr. Krasniqi into the trial record, from the SPO’s own witnesses. Since the last review of detention, W04147, for example, gave evidence about Mr. Krasniqi’s “humanity”

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<sup>4</sup> March 2024 Detention Decision, para.14; KSC-BC-2020-06, IA002/F00005, Court of Appeals, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release*, 30 April 2021, confidential, para.26; KSC-BC-2020-07, F00507RED, Trial Panel II, *Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj*, 21 December 2021, public, para.28.

<sup>5</sup> March 2024 Detention Decision, para. 18; KSC-BC-2020-06, F02059, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 January 2024, public, para. 17; F01926, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 November 2023, public, para. 17; F01795, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 September 2023, confidential, para. 13; F01679, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 July 2023, confidential, para. 18; F01530, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 May 2023, confidential, para. 15.

<sup>6</sup> Prosecution Submission, para. 9.

<sup>7</sup> March 2024 Detention Decision, para. 16.

<sup>8</sup> Prosecution Submission, para. 9.

and that Mr. Krasniqi was “basically a man of peace”.<sup>9</sup> After all of his personal interactions with Mr. Krasniqi, W04147 confirmed that he did not think of Mr. Krasniqi as somebody involved in crime.<sup>10</sup> [REDACTED].<sup>11</sup> The positive character references which have been given by prosecution witnesses further reduces any alleged risk of flight.

8. The Prosecution submission does not contain any other new material capable of showing that Mr. Krasniqi presents a risk of flight. To the contrary, there is a body of evidence which confirms that Mr. Krasniqi is not a flight risk. Mr. Krasniqi made no attempt to avoid arrest in the years following the establishment of the Kosovo Specialists Chambers. The Trial Panel recognised that Mr. Krasniqi co-operated with the organs of the Court in his arrest and detention.<sup>12</sup> Moreover, personal factors confirm that Mr. Krasniqi is unlikely to flee because he has very strong ties to Kosovo.<sup>13</sup> His home is in Kosovo. His wife and children, and many other family members and friends live in Kosovo. There is no basis for any assertion that Mr. Krasniqi is likely to flee from Kosovo.

*ii. Possible Obstruction of proceedings*

9. The SPO has not established that any risk of obstruction of proceedings is still more than a mere possibility. Ongoing detention can only be justified by “specific indications” or “concrete facts”.<sup>14</sup> General submissions, including those about the alleged climate of intimidation, are not sufficient to show that there is more than a mere possibility that Mr. Krasniqi would obstruct the proceedings.<sup>15</sup>

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<sup>9</sup> KSC-BC-2020-06, Transcript of Hearing, 26 March 2024, confidential, T. 13734 lines 5-8.

<sup>10</sup> KSC-BC-2020-06, Transcript of Hearing, 27 March 2024, confidential, T. 13821 lines 2-7.

<sup>11</sup> KSC-BC-2020-06, Transcript of Hearing, 3 April 2024, confidential, T. 14379, lines 5-7.

<sup>12</sup> March 2024 Detention Decision, para. 17.

<sup>13</sup> ECtHR, Panchenko v. Russia, no. 45100/98, Judgment, 8 February 2005, para. 107.

<sup>14</sup> ECtHR, Ilijkov v. Bulgaria, no. 33977/96, Judgment, 26 July 2001, para. 84.

<sup>15</sup> ECtHR, Merabishvili v. Georgia, no. 72508/13, Judgment, 28 November 2017, para. 222.

10. The progressive disclosure of information during every criminal trial results in more material becoming known to the Accused (disclosure to other members of the Defence team being irrelevant to detention review).<sup>16</sup> This is insufficient to justify ongoing detention because there is currently no specific indication or concrete fact to suggest that Mr. Krasniqi is likely to use this information to obstruct the proceedings.

11. The Prosecution submission relies on Mr. Krasniqi's public statements against the KSC and a single Facebook post from 24 April 2020 to assert that there is more than a mere possibility that Mr. Krasniqi would obstruct the proceedings, if released.<sup>17</sup> After 42 months of detention, the weight assigned to these factors should be re-evaluated. Material posted on Facebook more than four years ago does not still raise a sufficient risk of obstruction today. The Facebook post pre-dates Mr. Krasniqi's arrest and the trial proceedings in this matter. It was posted long before protocols were imposed which restrict contact with Prosecution witnesses.<sup>18</sup> The Krasniqi Defence is not aware of any allegation of similar conduct by or attributable to Mr. Krasniqi in the past 42 months. Similarly, the public statements that Mr. Krasniqi has made about the KSC are historic. No recent evidence, specific indications or concrete facts have been adduced by the SPO to demonstrate that any risk still exists. In any event, the Trial Panel could impose conditions preventing Mr. Krasniqi from making public statements or posting material online.

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<sup>16</sup> March 2024 Detention Decision, para.24.

<sup>17</sup> Prosecution Submission, para. 12.

<sup>18</sup> KSC-BC-2020-06, F00854, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant*, 24 June 2022, public; IA024/F00019, Court of Appeals, *Decision on Defence Appeals against "Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant"*, 27 December 2022, public.

12. The Trial Panel has previously held that the risk of interference does not necessarily reduce as trial progresses, due to the possibility that witnesses who have already testified could subsequently be pressurised to recant.<sup>19</sup> To date, 60 witnesses have testified in Court and evidence of around 45 witnesses have been admitted in writing.<sup>20</sup> No evidence has been adduced to suggest that any of those witnesses has been contacted and asked to recant by Mr. Krasniqi or anyone connected to him. Similarly, whilst there are protected witnesses who have yet to testify, there is an extensive witness protection regime in place and the SPO has had many months to secure their evidence. In similar situations, the Kosovo Criminal Procedural Code provides that detention on the ground of obstruction should be terminated as soon as the relevant evidence has been taken or secured.<sup>21</sup>

13. After 42 months of detention, the SPO's submissions are no longer sufficient to justify ongoing detention. Mr. Krasniqi has behaved appropriately throughout his detention. There is no recent evidence suggesting that he poses any relevant risk. As a result, it is no longer possible to maintain that more than a mere possibility exists that Mr. Krasniqi's release would open the gate for him to obstruct these proceedings.<sup>22</sup>

*iii. Possible Commission of Further Crimes*

14. The issues in relation to the possible commission of further crimes substantially overlap with the previous section. For the reasons set out in paragraphs 6 and 8-12 above, the Krasniqi Defence respectfully submits that the SPO has not demonstrated

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<sup>19</sup> March 2024 Detention Decision, para. 25.

<sup>20</sup> KSC-BC-2020-06, Transcript of Hearing, 6 May 2024, confidential, T. 15349 lines 10-14.

<sup>21</sup> Kosovo Criminal Procedure Code, para.184(2).

<sup>22</sup> ECtHR, *Rokhlina v. Russia*, no. 54071/00, Judgment, 7 April 2005 (12 October 2005, Final), para. 69.

that there is still more than a mere possibility that Mr. Krasniqi would commit further crimes.

*iv. Conditions of release*

15. If released, Mr. Krasniqi will abide by any conditions imposed on him by the Trial Panel. He remains willing to offer appropriate undertaking as set out in previous submissions. It is respectfully submitted that a combination of conditions and undertakings would limit any risks to an acceptable level.

### III. CONCLUSION

16. Mr. Krasniqi has been detained for 42 months. For all the reasons set out above, the Krasniqi Defence requests Mr Krasniqi's release, subject to such conditions as the Panel deems appropriate.

**[Word count: 1621]**



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Monday, 6 May 2024

The Hague, the Netherlands.



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Monday, 6 May 2024

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