



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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

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

**Date:** 12 July 2024

**Language:** English

**Classification:** Public

---

**Prosecution reply to F02426**

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Response<sup>1</sup> should be rejected, and Jakup KRASNIQI ('KRASNIQI') should remain detained. Extensive redactions applied to essential portions of the Response prevent the Specialist Prosecutor's Office ('SPO') from meaningfully replying thereto, and therefore should not be relied upon by this Panel. However, to the extent the SPO can discern the arguments in the Response, they have been consistently rejected, and the Response provides no basis for deviation.

## II. SUBMISSIONS

2. As a preliminary matter, while the family and health issues raised in the Response are cast as a change in circumstances and/or factors impacting proportionality, they raise discrete, new issues that – based on the limited information available to the SPO – do not appear to directly bear on the necessity or proportionality of continued detention,<sup>2</sup> but instead amount to and would be more appropriately addressed in a request for release under Rule 56(3). Rather than make such a request in the context of the Response, the Defence should file a separate motion, providing adequate opportunity for submissions and consideration.

### A. EXTENSIVE REDACTIONS IMPROPERLY PREVENT A MEANINGFUL REPLY

3. The Response contains extensive redactions, particularly to submissions concerning the Accused's health and family life upon which the request for provisional release is based.<sup>3</sup> Of particular note, the entirety of the 'change in circumstances' relied upon by

---

<sup>1</sup> Confidential Redacted Version of "Krasniqi Defence Response to 'Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi (F02401)'", KSC-BC-2020-06/F02426/CONF/RED, 4 July 2024, Confidential ('Response').

<sup>2</sup> See Response, KSC-BC-2020-06/F02426/CONF/RED, paras 13-15.

<sup>3</sup> See Response, KSC-BC-2020-06/F02426/CONF/RED, paras 2, 11-15, 17.

KRASNIQI is redacted.<sup>4</sup> Extensive redactions – like those made in the Response – prevent the SPO from meaningfully fulfilling its obligations and exercising its rights under the legal framework.<sup>5</sup> As the SPO has not been provided a meaningful opportunity to respond to the redacted parts of the Response, they should not be considered by the Panel.<sup>6</sup>

#### B. DETENTION REMAINS NECESSARY AND PROPORTIONATE

4. In the parts of the Response available to the SPO and therefore properly considered by the Panel, KRASNIQI has not advanced any arguments that detract from the necessity and proportionality of continued detention.

5. For example, KRASNIQI advances the same arguments in relation to a ‘concrete example’ of personal witness interference that have been repeatedly rejected.<sup>7</sup>

6. Regarding KRASNIQI’s proposed conditions and duration of release,<sup>8</sup> the Panel has already rejected functionally the same on the basis that it is only through the communication monitoring applicable at the KSC Detention Facilities that KRASNIQI’s communications can be restricted in a manner which would sufficiently mitigate the risks

---

<sup>4</sup> See Response, KSC-BC-2020-06/F02426/CONF/RED, paras 11-12.

<sup>5</sup> In this respect, the SPO bears the burden of demonstrating that the Accused’s detention remains necessary and has the right to, as appropriate, respond or reply to Defence detention submissions. *See also* Decision on Kadri Veseli’s Application for Interim Release, KSC-BC-2020-06/F00178, 22 July 2021 (‘Veseli Decision’), para.41. While the Veseli Decision concerned information not available to the detained Accused, the same logic applies here, considering that detention reviews and release requests are adversarial to ensure the rights and interests of all concerned Parties, participants, victims, witnesses, and the public.

<sup>6</sup> *See, similarly*, Veseli Decision, KSC-BC-2020-06/F00178, para.41.

<sup>7</sup> *See* Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F02313, 15 May 2024(‘Review F02313’), para.19.

<sup>8</sup> Response, KSC-BC-2020-06/F02426/CONF/RED, paras 2, 9.

of obstruction and commission of further crimes.<sup>9</sup> The Panel further notes that these findings have been confirmed, in great detail, by the Court of Appeals.<sup>10</sup>

7. Regarding KRASNIQI's inability to attend family events and the impact of detention on his family life,<sup>11</sup> the Panel has noted that European Court of Human Rights ('ECtHR') jurisprudence indicates that inevitable family separation during imprisonment does not, without more, constitute a violation of a detainee's right to family and private life.<sup>12</sup> The Panel also noted that the ECtHR emphasised the importance of enabling detainees to maintain contact, in particular through visits to the detention facilities, which are available to KRASNIQI.<sup>13</sup> To the extent these considerations are related to his health,<sup>14</sup> KRASNIQI is guaranteed at least the same standards of health care as are available in the Host State.<sup>15</sup>

### III. CONCLUSION

8. For the foregoing reasons, the Trial Panel should reject the Response and order KRASNIQI's continued detention.

---

<sup>9</sup> Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01679, 17 July 2023 ('Review F01679'), para.42.

<sup>10</sup> Review F01679, KSC-BC-2020-06/F01679, Paras 45-46.

<sup>11</sup> Response, KSC-BC-2020-06/F02426/CONF/RED, para.15.

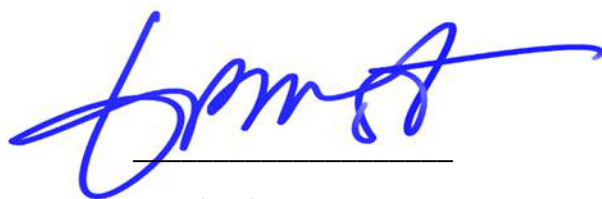
<sup>12</sup> Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01926, 15 November 2023 ('Review F01926'), para.46. This Decision concerned, *inter alia*, a previous request by the KRASNIQI Defence for release during a judicial recess to spend time with his family.

<sup>13</sup> Review F01926, KSC-BC-2020-06/F01926, para.46.

<sup>14</sup> Response, KSC-BC-2020-06/F02426/CONF/RED, para.15.

<sup>15</sup> Rules of Detention, KSC-BD-08-Rev1, 23 September 2020, Rule 30(2).

**Word count: 774**



---

**Kimberly P. West**

**Specialist Prosecutor**

Friday, 12 July 2024

At The Hague, the Netherlands.