



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06
The 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: Fidelma Donlon

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Decision on Periodic Review of Detention of Jakup Krasniqi

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TRIAL PANEL II of the Kosovo Specialist Chambers (“Panel”), pursuant to Article 41(6), (10), and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. The procedural background concerning the periodic review of the detention of Jakup Krasniqi (“Mr Krasniqi”) has been set out extensively in previous decisions.¹ Relevant events since the fifteenth review of Mr Krasniqi’s detention on 15 May 2024 (“Fifteenth Detention Decision”)² include the following.
2. On 24 June 2024, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the fifteenth review of Mr Krasniqi’s detention (“SPO Submissions”).³
3. On 4 July 2024, the Defence for Mr Krasniqi (“Krasniqi Defence”) responded to the SPO Submissions (“Response”).⁴
4. The SPO replied to the Response on 12 July 2024 (“Reply”).⁵

¹ See e.g. F01110, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Sixth Detention Decision”), 18 November 2022, confidential, paras 1-15 (a public redacted version was issued on the same day, F01110/RED).

² F02313, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 May 2024.

³ F02401, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 24 June 2024.

⁴ F02426, Specialist Counsel, *Krasniqi Defence Response to ‘Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 4 July 2024, confidential & *ex parte* (a confidential redacted version was filed the same day, F02426/CONF/RED).

⁵ F02440, Specialist Prosecutor, *Prosecution Reply to F02426*, 12 July 2024.

II. SUBMISSIONS

5. The SPO requests the continuation of Mr Krasniqi's detention.⁶ It argues that absent any change in circumstances since the Fifteenth Detention Decision, Mr Krasniqi's detention remains necessary and reasonable.⁷ It also submits that the continued progression of trial and other developments in the case augment the necessity of Mr Krasniqi's detention.⁸

6. The Krasniqi Defence requests that the Panel authorise Mr Krasniqi's interim release and allow Mr Krasniqi to spend three weeks over the Summer judicial recess, subject to certain measures, at the location specified by the Krasniqi Defence in its Response ("Specified Location").⁹ It argues that the imposition of certain measures during a relatively short period of interim release would reduce any alleged risks of obstruction of proceedings and commission of further crimes to an acceptable level.¹⁰

7. The SPO replies that the Response contains extensive redactions improperly preventing a meaningful reply and the redacted part of the Response should not be considered by the Panel.¹¹ The SPO further submits that, in the parts of the Response available to the SPO, the Defence has not advanced any arguments that detract from the necessity and proportionality of continued detention.¹²

⁶ SPO Submissions, paras 1, 29.

⁷ SPO Submissions, paras 1, 6, 28.

⁸ SPO Submissions, paras 1, 6.

⁹ Response, paras 2, 9, 16-17.

¹⁰ Response, para. 9.

¹¹ Reply, para. 3.

¹² Reply, para. 4.

III. APPLICABLE LAW

8. The law applicable to deciding the present matter is set out in Article 41(6), (10), and (12) and Rules 56 and 57 and has been laid out extensively in earlier decisions.¹³ The Panel will apply these standards to the present decision.

IV. PERIODIC REVIEW OF DETENTION

9. The purpose of the bi-monthly review of detention pending trial pursuant to Article 41(10) is to determine whether reasons justifying detention still exist.¹⁴ A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.¹⁵

A. ARTICLE 41 CRITERIA

i. Grounded Suspicion

10. Regarding the threshold for continued detention, Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the Specialist Chambers (“SC”). This is a condition *sine qua non* for the validity of the detained person’s continued detention.¹⁶

11. The SPO argues that, absent any change in circumstances since the decision confirming the indictment and the Fifteenth Detention Decision, there remains a grounded suspicion that Mr Krasniqi has committed a crime within the SC’s

¹³ See e.g. Sixth Detention Decision, paras 18-21.

¹⁴ IA022/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Periodic Review of Detention*, 22 August 2022, confidential, para. 37 (a public redacted version was issued on the same day, IA022/F00005/RED).

¹⁵ IA010/F00008, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 19 (a public redacted version was issued on the same day, IA010/F00008/RED).

¹⁶ See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

jurisdiction.¹⁷ The Krasniqi Defence does not make specific submissions on this point.

12. The Panel recalls that the Pre-Trial Judge determined that, pursuant to Article 39(2), there was a well-grounded suspicion that Mr Krasniqi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a).¹⁸ Moreover, the Pre-Trial Judge found that a well-grounded suspicion has also been established with regard to new charges brought by the SPO against Mr Krasniqi.¹⁹ These findings were made on the basis of a standard

¹⁷ SPO Submissions, para. 7 (with further references).

¹⁸ F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*, para. 521(a)(i)-(ii). A confidential redacted version (F00026/CONF/RED), a public redacted version (F00026/RED), and a confidential lesser redacted version (F00026/CONF/RED2) were filed, respectively, on 19 November 2020, 30 November 2020, and 21 September 2023. The SPO submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the SPO submitted a confidential, corrected, and lesser redacted version of the confirmed indictment, F00647/A01.

¹⁹ F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. A confidential redacted version (F00777/CONF/RED), a public redacted version (F00777/RED), a confidential lesser redacted version (F00777/CONF/RED2), and a confidential further lesser redacted version (F00777/CONF/RED3) were filed, respectively, on 22 April 2022, 6 May 2022, 16 May 2022, and 21 September 2023. The requested amendments are detailed at para. 11. A confirmed amended indictment was then filed by the SPO on 29 April 2022, strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions. On 30 September 2022, the SPO submitted a confirmed further amended indictment (“Confirmed Indictment”), strictly confidential and *ex parte* (F00999/A01; reclassified as confidential and *ex parte* status removed on 26 January 2023), with confidential redacted (F00999/A02) and public redacted versions (F00999/A03; a public lesser redacted [F01296/A03] and a public further lesser redacted version [F01323/A01] were filed, respectively, on 15 February 2023 and 27 February 2023), as ordered by the Pre-Trial Judge (F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment*, 22 July 2022, para. 49(e); F00993, Pre-Trial Judge, *Decision on the Prosecution Request to Amend the Indictment*, 29 September 2022, confidential, para. 24(b); a public redacted version was filed on the same day, F00993/RED).

exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).²⁰

13. Absent any new material circumstances affecting the above findings, the Panel finds that there continues to be a grounded suspicion that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10).

ii. Necessity of Detention

14. With respect to the grounds for continued detention, Article 41(6)(b) sets out three alternative bases (risks) on which detention may be found to be necessary: (i) risk of flight; (ii) risk of obstruction of the proceedings; or (iii) risk of further commission of crimes.²¹ Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.²² “Articulable” in this context means specified in detail by reference to the relevant information or evidence.²³ In determining whether any of the grounds provided in Article 41(6)(b) exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁴

²⁰ See e.g. IA008/F00004, Court of Appeals Panel, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 21 (a public redacted version was issued on the same day, IA008/F00004/RED).

²¹ Cf. ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, [Judgment](#), 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, [Judgment](#), 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, [Judgment](#), 4 July 2019, para. 155.

²² IA004/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release (“First Appeals Decision on Thaçi’s Detention”)*, 30 April 2021, confidential, para. 19 (a public redacted version was issued on the same day, IA004/F00005/RED).

²³ Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”.

²⁴ First Appeals Decision on Thaçi’s Detention, para. 22.

a) Risk of Flight

15. The SPO submits that Mr Krasniqi's greater knowledge of the scope of the case, including the charges against him and the evidence (to be) presented in relation to these charges, elevates his risk of flight.²⁵ It argues that this, in combination with prior findings concerning Mr Krasniqi's means to travel, leads to a sufficiently real possibility that a risk of flight exists with respect to Mr Krasniqi.²⁶

16. The Krasniqi Defence points to the fact that the Panel has repeatedly rejected the SPO's claim that Mr Krasniqi presents a flight risk.²⁷ Furthermore, it submits that the positive character references which have been given by some of the SPO's witnesses reduce any alleged risk of flight.²⁸ Lastly, it argues that Mr Krasniqi adhered to all protocols and exemplified nothing but good conduct in the past 44 months.²⁹

17. The Panel notes that the SPO is putting forward substantially the same arguments that this Panel has already considered and rejected in relation to this issue. In this regard, the Panel recalls the finding of the Court of Appeals Panel that the Pre-Trial Judge should not be expected to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.³⁰ The Panel considers that this principle applies equally to the current stage of the proceedings, and it has not found any additional factor sufficiently compelling to affect the previous finding regarding the risk of flight.³¹

²⁵ SPO Submissions, para. 9.

²⁶ SPO Submissions, para. 9.

²⁷ Response, para. 5, also referring to Fifteenth Detention Decision, para. 16.

²⁸ Response, para. 5.

²⁹ Response, para. 5.

³⁰ KSC-BC-2020-04, IA003/F00005, Court of Appeal Panel, *Decision on Pjetër Shala's Appeal Against Decision on Review of Detention ("Shala Appeal Decision")*, 11 February 2022, para. 18.

³¹ See Fifteenth Detention Decision, paras 13-16; see also *Shala Appeal Decision*, para. 18, holding that a panel may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.

18. The Panel therefore finds that, while the risk of flight can never be completely ruled out, Mr Krasniqi's continued detention may not be justified at this time on the ground of the risk of flight pursuant to Article 41(6)(b)(i).

b) Risk of Obstructing the Progress of SC Proceedings

19. With reference to previous findings, the SPO submits that Mr Krasniqi continues to present a risk of obstructing proceedings.³² According to the SPO, the further disclosure of highly sensitive information, including the identity of witnesses whose identity was subjected to delayed disclosure, increases the risk of obstruction.³³ Furthermore, the SPO avers that there continues to be a climate of witness intimidation and interference, which, as held by the Court of Appeals, is a relevant contextual consideration.³⁴

20. The Krasniqi Defence argues that there is no sufficiently real possibility that Mr Krasniqi will obstruct proceedings.³⁵ It submits, in particular, that: (i) general submissions are not sufficient to show that there is more than a mere possibility that Mr Krasniqi would obstruct the proceedings; (ii) no recent indications or concrete facts have been adduced by the SPO to demonstrate that any risk of obstructing the proceedings exists; (iii) the progressive disclosure of information to Mr Krasniqi is insufficient to justify ongoing detention because there is no indication that he is likely to use information disclosed to him to obstruct the proceedings; and (iv) no evidence has been adduced to suggest that any of the witnesses who have testified or whose evidence has been admitted in writing were contacted and asked to recant by Mr Krasniqi or anyone connected to him.³⁶

³² SPO Submissions, paras 11-15.

³³ SPO Submissions, para 14.

³⁴ SPO Submissions, para. 12.

³⁵ Response, paras 6-8.

³⁶ Response, paras 6-8.

21. The Panel has already determined and reiterates that there is a risk of Mr Krasniqi obstructing SC proceedings based on, *inter alia*: (i) his position of influence which, combined with the willingness and ability to obtain access to confidential information inaccessible to the public, allows for the reasonable conclusion that it is possible for Mr Krasniqi to secure access to confidential information related to matters to which he is currently connected; (ii) his public statements criticising the SC; and (iii) the content of a 24 April 2020 Facebook post targeting “collaborators”.³⁷ Furthermore, the Court of Appeals has confirmed that: (i) there are indications that Mr Krasniqi is, at least, predisposed to witness intimidation, for reasons earlier stated;³⁸ and (ii) in assessing whether there is a risk that Mr Krasniqi will obstruct the proceedings if released, it was not unreasonable to take into account, among other factors, Mr Krasniqi’s public statements criticising the SC or the Facebook post of 24 April 2020.³⁹

22. As previously noted, in light of the ongoing nature of the trial, the names and personal details of certain highly sensitive witnesses have been and will continue to be disclosed to the Krasniqi Defence,⁴⁰ and will therefore become known to a

³⁷ See F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Fourth Detention Decision”), 13 May 2022, confidential and *ex parte*, para. 48 (a confidential redacted version, F00801/CONF/RED, and a public redacted version, F00801/RED, were issued on 13 and 24 May 2022, respectively).

³⁸ IA002/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release* (“First Appeals Decision on Krasniqi’s Detention”), 30 April 2021, confidential, para. 62 (a public redacted version was issued on the same day, IA002/F00005/RED); IA006/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 30 (a public redacted version was issued on the same day, IA006/F00005/RED).

³⁹ First Appeals Decision on Krasniqi’s Detention, para. 50.

⁴⁰ See Fifteenth Detention Decision, para. 22; F02183, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Fourteenth Detention Decision”), 15 March 2024, para. 25; F01926, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Twelfth Detention Decision”), 15 November 2023, para. 25; F01795, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Eleventh Detention Decision”), 15 September 2023, confidential, para. 20 (a public redacted version was issued on the same day, F01795/RED); F01679, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Tenth Detention Decision”), 17 July 2023, confidential, para. 26 (a public redacted version was issued on 9 August 2023, F01679/RED); F01530, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Ninth Detention Decision”), 17 May 2023, confidential, para. 22 (a public redacted version was issued on 22 May 2023, F01530/RED); F01382, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*

broader range of people, including to Mr Krasniqi. The Panel maintains its view that this, in turn, increases the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence.⁴¹ In this context, the release of an accused with sensitive information in his possession would not be conducive to the effective protection of witnesses who are yet to testify.⁴²

23. Furthermore, with regard to the Krasniqi Defence's argument that no evidence has been adduced to suggest that any of the witnesses who have testified were contacted and asked to recant by Mr Krasniqi or anyone connected to him,⁴³ the Panel calls attention to the standard for assessing the risks under Article 41(6)(b), which does not require a "concrete example" of a situation in which Mr Krasniqi has personally intimidated or harassed a witness.⁴⁴ Therefore, as previously stated, the fact that the SPO has not produced any evidence that suggests that Mr Krasniqi in fact sought to interfere with any witness does not mean that a risk under Article 41(6)(b) cannot exist.⁴⁵ Importantly, this does not contradict the Panel's previous finding that it is adjudicating this matter against a background of information that a general climate of witness interference persists in Kosovo regarding this case and others before the SC.⁴⁶

("Eighth Detention Decision"), 17 March 2023, confidential, para. 25 (a public redacted version was issued on 20 March 2023, F01382/RED).

⁴¹ F02059, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*, ("Thirteenth Detention Decision") 15 January 2024, para. 25.

⁴² See Thirteenth Detention Decision, para. 25; Twelfth Detention Decision, para. 25; Eleventh Detention Decision, para. 20; Tenth Detention Decision, para. 26; Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 25; F01212, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Seventh Detention Decision"), para. 25.

⁴³ Response, para. 6.

⁴⁴ See Seventh Detention Decision, para. 23 referring to IA003/F00005, Court of Appeals Panel, *Decision on Rexhep Selimi's Appeal Against Decision on Interim Release* ("First Appeals Decision on Selimi's Detention"), 30 April 2021, confidential, para. 59 (a public redacted version was issued on the same day, IA003/F00005/RED).

⁴⁵ Fifteenth Detention Decision, para. 19.

⁴⁶ See Tenth Detention Decision, para. 27; Ninth Detention Decision, para. 23; Eighth Detention Decision, para. 26 referring to KSC-BC-2020-05, F00494/RED/COR, Trial Panel I, *Corrected Version of*

24. Accordingly, the Panel concludes that, taking all factors together, the risk that Mr Krasniqi will obstruct the progress of SC proceedings if released continues to exist.

c) Risk of Committing Further Crimes

25. With reference to the Panel's findings in the Fifteenth Detention Decision, the SPO submits that Mr Krasniqi continues to present a risk of committing further crimes.⁴⁷ According to the SPO, the Panel's conclusion that the continuing disclosure of sensitive information presented an unacceptable risk of the commission of further crimes has taken on additional significance in light of the continuing progress of the trial.⁴⁸ Furthermore, the SPO argues that the extremely serious nature of the charges against Mr Krasniqi needs to be taken into account.⁴⁹

26. The Krasniqi Defence submits that the SPO has not demonstrated that there is still more than a mere possibility that Mr Krasniqi would commit further crimes.⁵⁰ The Krasniqi Defence submits that the issues in relation to the risk of committing further crimes substantially overlap with those in relation to the risk of obstruction of proceedings.⁵¹

27. The Panel recalls its finding in the Fifteenth Detention Decision that the risk of Mr Krasniqi committing further crimes continues to exist.⁵² The Panel finds that the same considerations and factors that were taken into account in relation to the risk of obstruction are relevant to the analysis of the risk of Mr Krasniqi committing further crimes.⁵³ In light of those, the Panel considers that no new

Public Redacted Version of Trial Judgment, 24 January 2023, para. 57. See also Twelfth Detention Decision, para. 26; Thirteenth Detention Decision, para. 23.

⁴⁷ SPO Submissions, paras 16-20.

⁴⁸ SPO Submissions, para. 27.

⁴⁹ SPO Submissions, para. 19.

⁵⁰ Response, para. 10.

⁵¹ Response, para. 10.

⁵² Fifteenth Detention Decision, para. 26-28.

⁵³ See above, paras 19-24. See also Thirteenth Detention Decision, para. 30.

circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.

28. The Panel considers that, taking all factors together, there continues to be a risk that Mr Krasniqi will commit further crimes as set out in Article 41(6)(b)(iii).

iii. Conclusion

29. The Panel concludes that, at this time, there continues to be insufficient information before it justifying a finding that Mr Krasniqi may abscond from justice. However, the Panel is satisfied, based on the relevant standard, that there continues to be a risk that Mr Krasniqi will obstruct the progress of SC proceedings and a risk that he will commit further crimes against those perceived as being opposed to the Kosovo Liberation Army, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC. The Panel will assess below whether these risks can be adequately addressed by any conditions for his release.

B. MEASURES ALTERNATIVE TO DETENTION

30. The SPO submits, with reference to the Panel's previous findings, that: (i) the risks pursuant to Article 41(6)(b) can only be effectively managed at the Detention Facilities; (ii) nothing has occurred since the Fifteenth Detention Decision warranting a different assessment on conditions, either generally or for a discrete period of time; and (iii) rather, the continuation of trial and attendant further disclosure make the underlying risks higher than ever.⁵⁴

⁵⁴ SPO Submissions, paras 21-25.

31. The Krasniqi Defence argues that allowing Mr Krasniqi to spend three weeks at the Specified Location during the Summer judicial recess, subject to certain measures, would reduce any alleged risks of obstruction of proceedings and commission of further crimes to an acceptable level (“Request for Conditional Release”).⁵⁵ The Krasniqi Defence proposes the following measures:

- a) Release for a limited period of three weeks;
- b) A prohibition from making any public statements;
- c) Limited access to communication devices and the internet;
- d) Limited access to visitors; and
- e) Monitoring of communications.⁵⁶

32. When deciding on whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks in Article 41(6)(b).⁵⁷ Article 41(12) sets out a number of options to be considered in order to ensure the accused’s presence at trial, to prevent reoffending or to ensure successful conduct of proceedings. In this respect, the Panel recalls that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b).⁵⁸

33. The Panel has found that the alternative measures specified in Article 41(12), including home detention for a limited period under Article 41(12)(d), could not

⁵⁵ Response, paras 2, 9, 16.

⁵⁶ Response, para. 9.

⁵⁷ As regards the obligation to consider “alternative measures”, see KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office* (“SCCC 26 April 2017 Judgment”), 26 April 2017, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova*, para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, *Judgment*, 22 May 2012, para. 140 *in fine*.

⁵⁸ SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020*, 22 May 2020, para. 70. See also ECtHR, *Idalov v. Russia* [GC], para. 140 *in fine*.

sufficiently mitigate the existing risks with respect to Mr Krasniqi.⁵⁹ The Panel also recalls its findings that it is only through the communication monitoring framework applicable at the Detention Facilities that Mr Krasniqi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁶⁰ The Panel also previously held that the measures in place at the Detention Facilities, viewed as a whole: (i) provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes; and (ii) offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁶¹

34. With respect to the limited duration of release requested by the Krasniqi Defence, the Panel has already determined that the temporally limited nature of conditional release would not alter the Panel's conclusion that it is only through the communication monitoring applicable at the SC Detention Facilities that Mr Krasniqi's communications can be restricted in a manner which would sufficiently mitigate the risks of obstruction and commission of further crimes.⁶²

⁵⁹ See Tenth Detention Decision, paras 37, 42-48; Eighth Detention Decision, paras 6, 35-37; Seventh Detention Decision, paras 6, 34-38. See also IA020/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention* ("Fourth Appeals Decision on Krasniqi's Detention"), 2 August 2022, confidential, para. 39 (a public redacted version was issued on the same day, IA020/F00005/RED).

⁶⁰ See Thirteenth Detention Decision, para. 37; Twelfth Detention Decision, para. 39; Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 34; Eighth Detention Decision, para. 38; Seventh Detention Decision, para. 39.

⁶¹ See Thirteenth Detention Decision, para. 37; Twelfth Detention Decision, para. 39; Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 33; Eighth Detention Decision, para. 37; Seventh Detention Decision, para. 38. See also IA016/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention* ("Third Appeals Decision on Krasniqi's Detention"), 25 March 2022, confidential, para. 30 (a public redacted version was issued on the same day, IA016/F00005/RED).

⁶² Tenth Detention Decision, para. 42. See also Eighth Detention Decision, para. 38; Seventh Detention Decision, para. 39.

35. The Panel also observes that the Krasniqi Defence has not indicated how the proposed additional measures would be enforced nor did it provide any details that would buttress its submission that the imposition of a combination of the measures over a relatively short period of interim release would reduce any alleged risks to an acceptable level. The Panel finds that the proposed measures would require detailed monitoring of the Specified Location, including its interior. In this respect, even if the interior of the Specified Location were monitored during the period of interim release, this would, outside the controlled environment of the SC Detention Facilities, still leave considerable opportunities for unmonitored forms of communication, including for the purposes of obstructing SC proceedings or committing further crimes.⁶³

36. The Panel also recalls its previous finding that the Registry is in a unique position to manage and administer the SC Detention Facilities and has access to the relevant information and a detailed understanding of the reasons giving rise to the need to implement measures to protect witnesses, victims and others at risk on account of testimony given by witnesses in the present case.⁶⁴ In contrast, the Kosovo Police do not and cannot have access to all relevant information pertaining to witnesses, victims and others at risk on account of testimony given by witnesses in the present case. In the absence of such information, the Kosovo Police are not in a position to clearly and effectively evaluate the risks involved and to ensure a degree of protection comparable to that provided at the SC Detention Facilities,

⁶³ See Tenth Detention Decision, para. 46. See also Fourth Detention Decision para. 68; 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, paras 71, 74 (a public redacted version was issued on 8 December 2021, F00582/RED); F00371, Pre-Trial Judge, *Decision on Review of Detention of Jakup Krasniqi* ("Second Detention Decision"), 25 June 2021, confidential, para. 52 (a public redacted version was issued on 30 June 2021, F00371/RED); Fourth Appeals Decision on Krasniqi's Detention, paras 33-34 (also with respect to the feasibility of live monitoring by a Registry official of communications with family members); Third Appeals Decision on Krasniqi's Detention, para. 28.

⁶⁴ See Tenth Detention Decision, para. 45; Third Detention Decision, para. 72.

particularly with respect to disclosure of confidential information potentially exchanged.⁶⁵

37. In light of the above, the Panel considers that the conditions proposed in the Response could not adequately prevent Mr Krasniqi from passing on confidential information and/or from asking a family member to pass on a message orally or transmit covert messages for the purposes of obstructing SC proceedings or committing further crimes.⁶⁶

38. In the absence of a detailed proposal for effective enforcement of the measures proposed by the Krasniqi Defence, the Panel finds that detention at the Specified Location, over three weeks during the Summer recess and subject to the conditions discussed above, does not sufficiently mitigate the existing risks with respect to Mr Krasniqi.

39. The Panel also must consider all reasonable alternative measures that could be imposed and not only those raised by the Krasniqi Defence or the SPO.⁶⁷ The Panel maintains its view that no additional measures foreseen in Article 41(12), ordered *proprio motu*, could at this stage in the proceedings sufficiently, and to a degree comparable to the protection in place at the Detention Facilities, mitigate the existing risks with respect to Mr Krasniqi.

40. In light of the foregoing, the Panel remains persuaded of the conclusions previously reached, as summarised in paragraph 33 above, and finds that the risks of obstructing the proceedings and committing further offences can only be effectively managed at this stage of the proceedings if Mr Krasniqi remains at the

⁶⁵ See Tenth Detention Decision, para. 45. See also Fourth Appeals Decision on Krasniqi's Detention, para. 35; Third Appeals Decision on Krasniqi's Detention, paras 31-32.

⁶⁶ See also Fourth Detention Decision, para. 66; Third Detention Decision, para. 70; Second Detention Decision, para. 52; IA006/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention* ("Second Appeals Decision on Krasniqi's Detention"), 1 October 2021, confidential, paras 52-53 (a public redacted version was issued on the same day, IA006/F00005/RED); Fourth Appeals Decision on Krasniqi's Detention, para. 29.

⁶⁷ First Appeals Decision on Selimi's Detention, para. 86; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 24.

Detention Facilities. In these circumstances, the Panel finds that there are no alternatives to Mr Krasniqi's continued detention capable of adequately averting the risks in Article 41(6)(b)(ii) and (iii), either generally or for a discrete period of time.

C. REASONABLENESS OF DETENTION

41. The SPO argues that, taking all factors into consideration, Mr Krasniqi's detention remains proportional.⁶⁸ To that end, the SPO refers to the Panel's previous findings that: (i) Mr Krasniqi is charged with ten counts of serious international crimes in which he is alleged to play a significant role; (ii) if convicted, he could face a lengthy sentence; (iii) the continuing risks under Article 41(6)(b)(ii) and (iii) cannot be sufficiently mitigated by the application of reasonable alternative measures; (iv) the case against Mr Krasniqi is complex; (v) a climate of witness intimidation exists; and (vi) progress continues to be made in the case.⁶⁹

42. The Krasniqi Defence argues that it would be proportionate and consistent with Mr Krasniqi's right to family life, in light of his advanced age, and additional factors detailed in the Response, to allow Mr Krasniqi to spend three weeks at the Specified Location during the Summer judicial recess.⁷⁰ It argues that: (i) there has been a change of circumstances since the Fifteenth Detention Decision, relating to personal circumstances detailed in the *ex parte* version of the Response, which the Panel must consider;⁷¹ (ii) Mr Krasniqi has now been detained for 44 months, during which he has not been allowed to visit his home, and his family life is

⁶⁸ SPO Submissions, paras 26-28.

⁶⁹ SPO Submissions, para. 27.

⁷⁰ Response, paras 2, 13, 15.

⁷¹ Response, paras 11-12.

suffering;⁷² and (iii) the conditional release would positively contribute to his well-being and mental health.⁷³

43. The SPO replies that family separation during imprisonment does not, without more, constitute a violation of a detainee's right to family and private life, and Mr Krasniqi has access to the same standards of health care as are available in the Host State.⁷⁴

44. First, regarding the Defence's claim of change of circumstances, the Panel is not satisfied that the conditions of Mr Krasniqi's detention in the SC Detention Facilities are causing him hardship in dealing with the suggested changed circumstances that would justify his release at this point.

45. Second, the Panel is cognisant that the duration of time in detention is a factor that needs to be considered, along with the degree of the risks described in Article 41(6)(b), in order to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.⁷⁵ The Panel recalls that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.⁷⁶ In the Panel's estimation, special features in this case include the following: (i) Mr Krasniqi is charged with ten counts of serious international crimes in which he is alleged to have played a significant role;⁷⁷ (ii) if convicted, Mr Krasniqi could face a lengthy sentence; (iii) the continuing risks under Article 41(6)(b)(ii) and (iii) cannot be sufficiently mitigated by the application of reasonable alternative measures;⁷⁸ (iv) the

⁷² Response, paras 2, 17

⁷³ Response, para. 14.

⁷⁴ Reply, para. 7.

⁷⁵ Seventh Detention Decision, para. 43, *referring to* First Appeals Decision on Krasniqi's Detention, para. 69.

⁷⁶ Seventh Detention Decision, para. 43.

⁷⁷ Confirmed Indictment, paras 10-12, 32, 39-40, 44, 49, 53, 55-57, 176-177.

⁷⁸ *See above*, paras 30-35.

case against Mr Krasniqi is complex;⁷⁹ (v) the climate of witness intimidation; and (vi) the fact that the trial is ongoing.

46. Third, the Panel also notes the Defence's argument that Mr Krasniqi's family life suffers. The Panel finds that Mr Krasniqi's right to family life is inherently limited to a certain extent by the detention, but all reasonable steps, consistent with international human rights law and internationally accepted standards for the treatment of persons deprived of their liberty, are being taken to reduce the impact. The Panel considers that a short period of conditional release would undoubtedly positively contribute to Mr Krasniqi well-being and mental health. However, this does not mean that his continued detention has become unreasonable – especially in light of the special features in this case enumerated above.

47. Lastly, mindful that age is among the factors to be considered under Article 3 of the European Convention on Human Rights and Fundamental Freedoms in assessing a person's suitability for detention,⁸⁰ the Panel is satisfied that Mr Krasniqi's health and well-being are currently adequately secured in the SC Detention Facilities and that Mr Krasniqi's age does not render his detention unreasonable.

48. In light of the above, the Panel finds that Mr Krasniqi's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

⁷⁹ See e.g. Sixth Detention Decision, para. 59; F00978, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 19 September 2022, confidential, para. 58 (a public redacted version was issued on 23 September 2022, F00978/RED); Fourth Detention Decision, para. 81.

⁸⁰ See also Fifth Detention Decision, para. 62; Fourth Detention Decision, para. 83; ECtHR, *Mouisel v. France*, no. 67263/01, [Judgment](#), 14 November 2002, para. 38.

49. The Panel notes, however, that Mr Krasniqi has already been in detention for a significant period of time, and that the trial in this case is lengthy. As the Panel previously indicated,⁸¹ this will require the Panel as well as all Parties to be particularly mindful of the need to ensure that the trial proceeds as expeditiously as possible. The Panel will continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable. The Panel also recalls that the Panel can order compassionate release, for a limited period of time, should Mr Krasniqi's personal circumstance constitute compelling humanitarian grounds justifying such release in the future.⁸²

V. CLASSIFICATION

50. The Panel notes that the Krasniqi Defence filed its Response as confidential & *ex parte* and submitted a confidential redacted version of the Response. The Panel therefore orders the Defence to submit a public redacted version of the Response by Monday, 22 July 2024.

VI. DISPOSITION

51. For the above-mentioned reasons, the Panel hereby:

- a) **REJECTS** the Krasniqi Defence's Request for Conditional Release;
- b) **ORDERS** Mr Krasniqi's continued detention;

⁸¹ See e.g. Fifteenth Detention Decision, para. 40; Fourteenth Detention Decision, para. 47; Thirteenth Detention Decision, para. 49; Twelfth Detention Decision, para. 49; Eleventh Detention Decision, para. 35; Tenth Detention Decision, para. 56; Ninth Detention Decision, para. 39; Eighth Detention Decision, para. 44; Seventh Detention Decision, para. 46.

⁸² Rule 56(3).

- c) **ORDERS** the SPO to file submissions on the next review of Mr Krasniqi's detention by no later than **Friday, 23 August 2024 (at 16:00 hours)**, with subsequent written submissions following the timelines set out in Rule 76; and
- d) **ORDERS** the Krasniqi Defence to file a public redacted version of the Response by **Monday, 22 July 2024**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Monday, 15 July 2024
At The Hague, the Netherlands.