

**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:** Specialist Counsel for Jakup Krasniqi

**Date:** 04 April 2025

**Language:** English

**Classification:** Public

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**Public Redacted Version of ‘Krasniqi Defence Request for Provisional Release  
with Confidential and *Ex Parte* Annexes 1 and 2  
and Confidential Annex 3’**

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## I. INTRODUCTION

1. Jakup Krasniqi has now endured four years and six months of detention. This prolonged deprivation of liberty weighs heavily against continued detention, especially in light of the fundamental right to be presumed innocent, and the extraordinary length of time he has already served without conviction. Detention is the exception, not the rule, and should be a measure of last resort. The continued detention of Mr. Krasniqi in these circumstances may well be perceived as an anticipatory sentence which runs contrary to the presumption of innocence and will undermine the very rights that form the bedrock of a fair trial.

2. Circumstances have now materially changed. The Prosecution has called its last witness and the main rationale for continued detention - namely, the risk that Mr. Krasniqi might interfere with Prosecution witnesses - no longer exists in any concrete or credible form. There are no further witnesses to influence. Any claim that Mr. Krasniqi might obstruct proceedings by interfering with witnesses who have already testified, or with any case to be called by Victims' Counsel, is entirely speculative, lacking any factual basis and is insufficient to justify depriving him of his liberty any further. Continued reliance on conjecture of this kind would be disproportionate and unjustifiable.

3. The basis for Mr. Krasniqi's detention, unchanged since he was first detained in November 2020, can no longer withstand scrutiny and the Trial Panel should re-assess whether detention remains necessary. Proceedings have entered a new phase: it is the Defence who must prepare and present its case. In order to be able to prepare effectively, the Defence requires active, real-time consultation with Mr. Krasniqi. His

presence in Kosovo will significantly enhance the Defence's ability to take instructions and conduct necessary investigations.<sup>1</sup>

4. Mr. Krasniqi's personal circumstances have evolved significantly and warrant compassionate consideration. First, he is now 74 years old and [REDACTED] in the last four and a half years, [REDACTED].<sup>2</sup> The Panel is aware of [REDACTED].<sup>3</sup> Most recently, [REDACTED].<sup>4</sup> [REDACTED] are not merely ancillary – they go to the heart of [REDACTED] to meaningfully participate in his defence, particularly under condition of prolonged [REDACTED] detention. Since the beginning of his detention two grandchildren have been born. Mr. Krasniqi now seeks to return to his family with dignity and spend meaningful time with his growing family - an incentive that only strengthens his motivation to comply with any and all conditions the Panel may impose.

5. There is clearly no longer a sufficient basis to justify Mr. Krasniqi's continued detention. The Defence respectfully submits that his provisional release will not only safeguard the fairness of proceedings, but also restore balance to a process in which the presumption of innocence must be more than a formality.

6. Pursuant to Rule 82(4) of the Rules, this filing is classified as confidential and *ex parte* as it refers to [REDACTED] of the Accused.

## II. PROCEDURAL HISTORY

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<sup>1</sup> ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber II, *Decision on the Motion for Provisional Release of the Accused Petković*, 19 February 2008, p.4; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber III, *Decision on the Motion for Provisional Release of the Accused Stojić*, 19 February 2008, p.4.

<sup>2</sup> See [REDACTED]; Annex 1, pp 3-6, [REDACTED]; Annex 2, pp 16-27, [REDACTED].

<sup>3</sup> See most recently, KSC-BC-2020-06, Transcript of Hearing, 23 October 2024, confidential, T.21003-21005; *see also* [REDACTED].

<sup>4</sup> Annex 2, p. 16.

7. On 4 November 2020, Mr. Krasniqi was arrested and transferred to the Kosovo Specialist Chambers Detention Facilities.

8. On 22 January 2021, the Pre-Trial Judge rejected Mr. Krasniqi's application for provisional release, finding that "[t]here is a risk that Mr Krasniqi will abscond, obstruct the progress of SC proceedings or commit further crimes against those who allege that KLA members committed crimes, including witnesses who provided or could provide evidence in the case and/or are due to appear before the SC".<sup>5</sup> These findings were repeated in the Pre-Trial Judge's subsequent decisions on detention review.<sup>6</sup>

9. On 26 October 2021, the Kosovo Police responded to questions posed by the Pre-Trial Judge to confirm the steps that the Kosovo Police would be able to take to monitor the Accused during provisional release.<sup>7</sup> In particular, the Kosovo Police confirmed [REDACTED].<sup>8</sup>

10. Nonetheless, on 26 November 2021, the Pre-Trial Judge concluded that conditions would be insufficient to mitigate the risks he had identified.<sup>9</sup>

11. On 30 November 2022, the President assigned the Trial Panel.<sup>10</sup>

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<sup>5</sup> KSC-BC-2020-06, F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi's Application for Interim Release*, 22 January 2021, confidential, para. 44.

<sup>6</sup> KSC-BC-2020-06, F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 11 May 2022, confidential and *ex parte*, para. 58; F00978, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 19 September 2022, confidential, para. 46; F01110, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 18 November 2022, confidential, para. 47.

<sup>7</sup> KSC-BC-2020-06, F00548, Kosovo General Police Directorate, *Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021* ("KP Response"), 27 October 2021, confidential.

<sup>8</sup> *Idem*, p. 7.

<sup>9</sup> KSC-BC-2020-06, F00582, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi*, 26 November 2021, confidential, para. 85.

<sup>10</sup> KSC-BC-2020-06, F01132, President of the Specialist Chambers, *Decision Assigning Trial Panel II*, 30 November 2022, public.

12. On 17 January 2023, the Trial Panel found that there was insufficient information to support a risk that Mr. Krasniqi may abscond from justice, but that *“there is 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 KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC”*.<sup>11</sup> The Trial Panel has maintained that position in every subsequent detention review, most recently on 13 March 2025.<sup>12</sup>

13. On 8 October 2024, following the death of Mr. Krasniqi’s brother, the Trial Panel granted Mr. Krasniqi’s request for a temporary release on compassionate grounds.<sup>13</sup>

14. On 23 October 2024, the Registry filed a Report on Mr. Krasniqi’s temporary release.<sup>14</sup> The Report confirms that Mr. Krasniqi fully complied with all directives of the Chief Custody Officer and escorting officers and, further, that the cooperation with external partners was highly effective.<sup>15</sup>

15. On 28 March 2025, the Kosovo Police confirmed that it has the necessary capacities, including human resources and technical equipment, to implement the house arrest measures for the entire duration of the conditional release.<sup>16</sup> [REDACTED].<sup>17</sup> Moreover, the Kosovo Police informed that it [REDACTED].<sup>18</sup>

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<sup>11</sup> KSC-BC-2020-06, F00582, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 January 2023, confidential, para. 33.

<sup>12</sup> KSC-BC-2020-06, F03005, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, public, para. 23.

<sup>13</sup> KSC-BC-2020-06, F02626, Trial Panel II, *Decision on Urgent Krasniqi Defence Request for Temporary Release on Compassionate Grounds*, 8 October 2024, confidential and *ex parte*.

<sup>14</sup> KSC-BC-2020-06, F02669, Registrar, *Report of the Registrar Pursuant to Decision on Urgent Krasniqi Defence Request for Temporary Release on Compassionate Grounds*, 23 October 2024, confidential.

<sup>15</sup> *Idem*, paras 21-22.

<sup>16</sup> Annex 3, p.2.

<sup>17</sup> *Idem*, p. 4.

<sup>18</sup> *Idem*, p. 5.

16. On 1 April 2025, the Prosecution was due to call its last witness, though, in the event, the Prosecution elected to file a Rule 155 application for this witness. Formal closure of the Prosecution case is anticipated imminently.

17. The trial phase is far from complete. Ongoing procedural steps include the resolution of all outstanding evidential motions, Rule 130 litigation, the Victims' case, the Defence case, closing submissions and, ultimately, the consideration and drafting of the Judgment. A conservative estimate would be that, if provisional release is denied, Mr. Krasniqi likely faces ongoing detention for a further twelve months before the trial judgment is rendered.

### III. SUBMISSIONS

18. The Defence recalls that the fundamental principles applicable to provisional release are that:

- a. Pre-trial detention is the exception not the rule; prolonged pre-trial detention is deplorable;<sup>19</sup>
- b. The burden of proving the necessity of detention weighs on the SPO;<sup>20</sup>
- c. The Law recognises three specific risks which, if substantiated to the requisite legal standard, may justifiably override the Accused's fundamental right to liberty and the presumption of innocence: – (i) the risk of flight, (ii) the risk of obstructing the course of the criminal proceedings

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<sup>19</sup> KSC-BC-2020-06, IA004/F00005, Appeals Chamber, *Decision on Hashim Thaci's Appeal against Decision on Interim Release*, 30 April 2021, confidential, Separate Concurring Opinion of Judge Ambos, para. 4.

<sup>20</sup> *Idem*, para. 17.

through intimidation or influencing witnesses, victims or accomplices, and  
(iii) risk of reoffending;<sup>21</sup>

- d. The required standard has been defined by the Appeals Chamber as more than a mere possibility but less than certainty;<sup>22</sup>
- e. The Panel is obligated to assess whether less restrictive alternatives to detention are available and sufficient to address any identified risks. Continued detention is warranted only where there are no alternative, less severe measures that can adequately mitigate those identified risks.

#### A. NO RISK OF FLIGHT

19. The Trial Panel has repeatedly found that Mr. Krasniqi does not present a flight risk.<sup>23</sup> On 13 March 2025, the Trial Panel again rejected the submission by the Prosecution that the risk of flight was elevated because the “expeditious progress of trial” made the “the possible imposition of lengthy prison sentence becom[e] more concrete”.<sup>24</sup> The imminent closure of the Prosecution case provides no reason to alter that conclusion.

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<sup>21</sup> Article 41(6)(b) of the Law.

<sup>22</sup> KSC-BC-2020-06, IA016/F00005, Appeals Chamber, Decision on Jakup Krasniqi’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022, confidential, para. 25.

<sup>23</sup> KSC-BC-2020-06, F02313, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 May 2024, public, para. 16; F02183, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 March 2024, public, para. 18; 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; F03005, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, public, para. 23.

<sup>24</sup> KSC-BC-2020-06, F03005, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, public, paras 13-14; *see also* KSC-BC-2020-06, F02824, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 January 2025, paras 12-14.

20. In any event, the Defence re-iterates that Mr. Krasniqi's advanced age (74 years old), [REDACTED], and a strong personal and family connection to Kosovo mean that he presents no risk of flight.

21. [REDACTED].<sup>25</sup> [REDACTED].<sup>26</sup> [REDACTED].<sup>27</sup> Mr. Krasniqi is not willing [REDACTED] to flee.

22. Furthermore, Mr. Krasniqi maintains strong personal ties to Kosovo, where his close and extended family reside. Mr. Krasniqi has not spent time with his family in a normal setting, outside of the Detention Unit, for over four years. He did not seek compassionate release during his brother's illness, to attend the marriage of two of his children or the birth of two of his grandchildren. Mr. Krasniqi now respectfully seeks provisional release to return to his family and assume familial responsibilities with dignity. The prospect of spending meaningful time with his growing family constitutes compelling personal incentive, further reinforcing his determination to adhere strictly to any and all conditions the Panel may see fit to impose. There is no risk that Mr. Krasniqi would flee.

#### B. NO RISK OF INTERFERENCE

23. The Panel has previously found that there was a risk of Mr. Krasniqi obstructing the process of the KSC by interfering with witnesses. Significant changes in circumstances, and the passage of time, justify reconsideration of this conclusion.

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<sup>25</sup> See [REDACTED]; Annex 2, pp 4, 10, 12, 19, 23-24.

<sup>26</sup> See fn 2.

<sup>27</sup> See Annex 2, pp 4, 10, 12, 16-17, 23-26.



24. First, the imminent conclusion of the Prosecution case constitutes a material change of circumstances, as there are no remaining Prosecution witnesses who could be subject to interference. The Trial Panel's prior assessment of risk have primarily centred on the potential for interference with witnesses before their testimony.<sup>28</sup> That risk has now dissipated. Accordingly, there are no further witnesses who need to be protected prior to giving evidence. Other tribunals have recognised the end of the Prosecution case as a relevant factor in favour of provisional release.<sup>29</sup>

25. The Defence acknowledges that in March 2024, the Trial Panel rejected the Defence submission that the risk of interference diminishes as trial progresses.<sup>30</sup> However, that determination was predicated on the ongoing Prosecution case, and the presence of "highly sensitive protected witnesses who are yet to testify".<sup>31</sup> With the Prosecution now concluding its case, those concerns no longer apply, there are no remaining Prosecution witnesses, no risks of dissuading future testimony and no requests to recall any witness. The basis for the earlier finding has therefore fallen away.

26. The sole remaining risk previously identified by the Trial Panel is the possibility that "witnesses who have already testified could still be at risk of interference, for instance if interference attempts aim at securing a recantation".<sup>32</sup> This is a purely speculative risk unsupported by any evidence. While the threshold for assessing risk

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<sup>28</sup> KSC-BC-2020-06, F03005, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, public, para. 18 ("before the witnesses in question give evidence...protection of witnesses who are yet to testify"), see also F02824, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 January 2024, public, para. 18; F02313, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 May 2024, public, para. 22.

<sup>29</sup> See e.g., ICTY, *Prosecutor v Haradinaj*, IT-04-84bis-PT, *Decision on Ramush Haradinaj's Motion for Provisional Release*, 10 September 2010, para. 19.

<sup>30</sup> KSC-BC-2020-06, F02183, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, public, 15 March 2024, para. 25.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

may not require proof of actual interference by Mr. Krasniqi,<sup>33</sup> the Panel must equally consider that over the course of two years, since the first witness testified, there has been no indication that Mr. Krasniqi or anyone acting on his behalf, has interfered with any of the 125 witnesses who have testified in court, or the evidence of those whose statements were admitted in writing. The risk assessment must be individualised and grounded in fact and in Mr. Krasniqi's case, there is no basis to suggest any such conduct has occurred or is likely to occur.

27. Furthermore, a realistic assessment of the risk that witnesses who have testified could be pressurised to recant must recognise that the evidential value of such recantations would be inherently limited – particularly in a context where the Prosecution and the Panel would be well positioned to scrutinize the motives behind any change in testimony. In any event, robust safeguards exist, including the Panel's contempt powers, to deter and address any such interference.

28. Any suggestion that Mr. Krasniqi poses a risk of interfering with potential witnesses in the Victims' case is entirely speculative. The Defence has no knowledge of the anticipated content of the Victims' case and Victims' Counsel has not confirmed that protected witnesses will be called to testify.<sup>34</sup> Notably, Victims' Counsel has tacitly acknowledged that there is no evidence that Mr. Krasniqi has ever misused access to any confidential information in these proceedings.<sup>35</sup> Moreover, due to the limited scope of Victims' participation in the proceedings, any factual evidence

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<sup>33</sup> KSC-BC-2020-06, F02824, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 January 2024, public, para. 16.

<sup>34</sup> KSC-BC-2020-06, F03033, Victims' Counsel, *Victims' Counsel's Submissions concerning the Specialist Prosecutor's observations in F02896*, 18 March 2025, public; F03051, Victims' Counsel, *Victims' Counsel's Reply to the Veseli Defence Response to Victims' Counsel's Submissions concerning the Specialist Prosecutor's observations in F02896*, 24 March 2025, public.

<sup>35</sup> KSC-BC-2020-06, F03033, Victims' Counsel, *Victims' Counsel's Submissions concerning the Specialist Prosecutor's observations in F02896*, 18 March 2025, public, para. 7.

presented is unlikely to relate directly to Mr. Krasniqi's individual criminal responsibility. Accordingly, any purported risk of interference is inherently minimal.

29. Mr. Krasniqi's conduct, both in custody and during all monitored external communications, has been consistently responsible and incident-free. This track record demonstrates that any alleged risk of obstruction or interference is not only minimal and manageable, but effectively rebutted by his conduct to date.

30. Furthermore, the Trial Panel now has had the benefit of observing Mr. Krasniqi's conduct during his compassionate release in Kosovo in Autumn 2024. The Defence has not previously made submissions in a detention review about this circumstance, which is highly relevant. Other tribunals have considered the Accused's good behaviour and compliance during their prior provisional releases as a factor favouring provisional release.<sup>36</sup> In this instance, the KSC Registry confirmed that Mr. Krasniqi abided by the instructions of the custodial and escorting officers throughout this release – despite the emotionally challenging context of the passing of a close relative.<sup>37</sup> Mr. Krasniqi's exemplary conduct during this period, consistent with his overall record of compliance in detention, strongly indicates that he poses no risk of interference with witnesses, were a longer period of release to be granted.

31. A further change in circumstances - not previously addressed in detention review submissions - is the initiation of contempt proceedings in Case 2023-12 against five individuals, including one of the Accused in this case, for the alleged witness

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<sup>36</sup> ICTY, *Prosecutor v. Haradinaj*, IT-04-84bis-PT, *Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release*, 10 September 2010, paras 30-32; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber II, *Decision on the Motion for Provisional Release of the Accused Petković*, 19 February 2008, p. 3; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber III, *Decision on the Motion for Provisional Release of the Accused Praljak*, 29 November 2007, p. 2; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber III, *Decision on the Motion for Provisional Release of the Accused Stojić*, 19 February 2008, p. 4, second paragraph.

<sup>37</sup> KSC-BC-2020-06, F02669, Registrar, *Report of the Registrar Pursuant to Decision on Urgent Krasniqi Defence Request for Temporary Release on Compassionate Grounds*, 23 October 2024, confidential, para. 21.

interference. These proceedings are significant, as the realistic prospect of re-arrest and additional charges serves as a strong deterrent and must be considered by the Panel in assessing any residual risk of interference in this case.<sup>38</sup> In light of the Judgment in Case 2023-10 and the confirmed Indictment in Case 2023-12, Mr. Krasniqi is fully aware that any attempt to interfere with witnesses would expose him to immediate re-arrest and further prosecution. This heightened legal awareness reduces the likelihood that Mr. Krasniqi would engage in any conduct jeopardising provisional release.

32. The factors previously relied upon to justify detention must now be reviewed in light of the forthcoming closure of the Prosecution case and the four and a half years of detention that Mr. Krasniqi has endured. That the Pre-Trial Judge determined that risks existed in January 2021, does not necessarily mean that the same risks exist today.

33. The Prosecution<sup>39</sup> and the Panel<sup>40</sup> repeatedly relied 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. After the closure of the Prosecution case and four and a half years of detention, the weight assigned to these factors should be re-evaluated. Material posted on Facebook five years ago does not still raise a sufficient risk of obstruction today. The Facebook post pre-dates Mr. Krasniqi's arrest, the trial proceedings, and the protocols restricting contact with Prosecution witnesses.<sup>41</sup> The

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<sup>38</sup> KSC-BC-2020-06, IA004/F00005, Appeals Chamber, *Decision on Hashim Thaçi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential, Separate Concurring Opinion of Judge Kai Ambos, para. 5(i).

<sup>39</sup> See e.g., KSC-BC-2020-06, F02264, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi* ("Prosecution Submission"), 24 April 2024, public, para. 12.

<sup>40</sup> See e.g., KSC-BC-2020-06, F03005, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, public, para. 17.

<sup>41</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, Appeals Chamber, *Decision on Defence Appeals against "Decision on Framework for the Handling of Confidential Information during Investigations*

Krasniqi Defence is not aware of any allegation of similar conduct by or attributable to Mr. Krasniqi in the past four and a half years.

34. Moreover, 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. There has been no evidence and no allegation that Mr. Krasniqi has interfered with the administration of justice since the confirmation of the Indictment. It is no longer justifiable to presume risks based upon Mr. Krasniqi's alleged influence in Kosovo, because there is no evidence that he would use any such influence unlawfully.<sup>42</sup> In any event, if provisional release is granted, the Trial Panel could impose conditions preventing Mr. Krasniqi from making public statements or posting material online.

### C. NO RISK OF FURTHER CRIME

35. Prior findings identifying a risk of committing further crimes were all premised upon Mr. Krasniqi "being progressively informed [...] of the evidence underpinning the charges against him, including the identity of witnesses who provided or could provide evidence in the case and/or due to appear before the SC".<sup>43</sup> There are no more Prosecution witnesses to be called. This change in circumstances necessarily implies that any risk of Mr. Krasniqi committing further crimes is no longer present and that any such risk is no longer sufficiently likely to justify ongoing detention.

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*and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant"*, 27 December 2022, public.

<sup>42</sup> See ICTY, *Prosecutor vs. Prlic et al.*, IT-04-74-PT, Trial Chamber, *Order on Provisional Release of Jadranko Prlic*, 30 July 2004.

<sup>43</sup> KSC-BC-2020-06, F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi's Application for Interim Release*, 22 January 2021, confidential, para. 42.

36. Mr. Krasniqi benefits from the presumption of innocence in relation to allegations underlying the Indictment on which the allegations about the risk of committing further crimes are based. The Indictment allegations relate to events in 1998-1999, more than 25 years ago. There is no allegation that Mr. Krasniqi has been involved in any criminality in the intervening years. Mr. Krasniqi is 74 years old and [REDACTED]. Far from wielding a network of supporters, he holds no state office or position of authority over anyone. There is simply no evidence that he is likely to commit further crimes.

37. In any event, the test in Article 41(6)(b)(iii) is narrow and specific. It is not satisfied by a general risk of re-offending, but requires proof of a risk that Mr. Krasniqi will “repeat the criminal offence” or “complete an attempted crime” or “commit a crime which he or she has threatened to commit”. This test is not satisfied. There is no evidence that Mr. Krasniqi has threatened to commit other crimes. There is no evidence identifying any attempted crime that he might try to complete. He cannot “repeat the criminal offence”, given that he is charged with war crimes and crimes against humanity allegedly committed more than 25 years ago, in connection with a conflict which has long since ended. The repetition of the criminal offences charged is simply impossible given the changed circumstances in Kosovo. As a result, the risk delineated in Article 41(6)(b)(iii) does not exist.

#### D. CONDITIONS CAN MITIGATE ANY IDENTIFIED RISK

38. The Kosovo Police has recently confirmed their willingness and capacity to monitor and enforce any conditions imposed by the Panel.<sup>44</sup>

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<sup>44</sup> Annex 3.

39. The Defence invites the Panel to take into consideration that the conditions that it imposed were strictly followed on Mr. Krasniqi's recent compassionate release. The Registry report acknowledged [REDACTED] in this regard.<sup>45</sup> A package of conditions modelled on those which were effective during the compassionate release could be imposed. In particular, the Panel could order that:-

- a. [REDACTED];
- b. Mr. Krasniqi is provisionally released [REDACTED];
- c. Mr. Krasniqi is only permitted [REDACTED];
- d. [REDACTED];
- e. Mr. Krasniqi would not be permitted [REDACTED];
- f. [REDACTED];
- g. Mr. Krasniqi would not be permitted to [REDACTED];
- h. Mr. Krasniqi would regularly [REDACTED].

40. Furthermore, in accordance with the Letter received from the Kosovo Police, if released, Mr. Krasniqi would be subjected to other additional measures implemented by the Kosovo Police, such as:

- a. [REDACTED];

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<sup>45</sup> KSC-BC-2020-06, F02669, Registrar, *Report of the Registrar Pursuant to Decision on Urgent Krasniqi Defence Request for Temporary Release on Compassionate Grounds*, 23 October 2024, confidential, para. 22.



b. [REDACTED];

c. [REDACTED];

d. Any other measures deemed necessary and appropriate by the Trial Panel.

41. At least one Judge on the Appeals Panel has previously highlighted the need to take into account the actual possibility of a re-arrest in relation to provisional release.<sup>46</sup> Mr. Krasniqi is well aware, from his recent compassionate release, that the conditions imposed by the Panel must be strictly complied with. The Registry has confirmed a highly effective co-operation with external partners. The confirmation of the Indictment in Case 2023-12 and other contempt prosecutions before the KSC confirm that anyone suspected of attempting to interfere with witnesses faces investigation and prosecution – which would surely include the return to the Detention Unit, should any condition imposed by the Panel be breached. Knowing the likelihood of being returned to the Detention Unit, it is unrealistic that Mr. Krasniqi would attempt to breach the conditions imposed by the Panel.

42. The Defence emphasises that the correct test for the Panel to apply is whether such measures can mitigate any identified risks to an acceptable level. Plainly, no conditions of house arrest can exactly mimic the conditions in a Detention Unit. The test does not require them to; if it did, then provisional release could never be ordered and that would be contrary to the presumption of innocence and the right to liberty. As a result, comparison with the Detention Unit regime is not necessary, what matters is whether the proposed (or any additional conditions) limit any identified risks to an

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<sup>46</sup> KSC-BC-2020-06, IA004/F00005, Appeals Chamber, *Decision on Hashim Thaçi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential, Separate Concurring Opinion of Judge Kai Ambos, para. 5(i).



acceptable degree. The Defence submits that the limited nature of any remaining risk of interference after the end of the Prosecution case can be acceptably mitigated by appropriate measures.

43. If the Panel did not consider the proposed measures sufficient, it could order additional conditions, including house arrest with no visits (outside the immediate family who reside at the same address). It would be absurd to conclude that such measures are insufficient. The only possible risk in this scenario would arise from Mr. Krasniqi passing information to his immediate family, who are people of good character – there is no evidence to conclude that they may be involved in criminal activity involving interference with witnesses.

#### E. ONGOING DETENTION IS DISPROPORTIONATE

44. Mr. Krasniqi has been now detained for four years and six months. As a person presumed of innocence, the significant duration of his pretrial detention weighs heavily in favour of provisional release. The passage of such a substantial period, without a final determination of guilt, raises serious concerns regarding the protection of his fair trial rights.

45. Whilst the Defence acknowledges the seriousness of the charges and the complexity of the case, it must be emphasised that - despite Defence objections - the Prosecution was granted an extraordinary period of two years to present its case. This protracted timeline, marked by the Prosecution's overly expansive presentation of evidence, has directly contributed to the prolonged detention of Mr. Krasniqi.

46. The proportionality of continued detention must also take into Mr. Krasniqi's age and [REDACTED]. As set out above, [REDACTED].

47. The proceedings are now entering a new phase in which the Defence will be actively engaged in preparing its case. Much of the necessary investigative and preparatory work must occur outside The Hague, particularly in Kosovo. The assessment of proportionality must take into account Mr. Krasniqi's right to adequate facilities to prepare his defence. In order to ensure his meaningful participation in this phase of the trial it is essential that he be permitted to return to Kosovo under appropriate conditions.

## II. CONCLUSION

48. The Defence for Mr. Krasniqi respectfully submits that the completion of the Prosecution's case, the absence or remaining Prosecution witnesses and the compelling personal [REDACTED] circumstances of Mr. Krasniqi constitute clear and material changes in circumstances. In light of these developments, continued detention is no longer necessary, reasonable or proportionate. The legal and factual foundations that once justified detention have now fallen away. Provisional release, subject to appropriate conditions, would fully safeguard the integrity of these proceedings while restoring a measure of balance and humanity to Mr. Krasniqi's treatment and personal circumstances. Where liberty remains the rule, and detention the exception, it is incumbent for the Panel to take into account principles of proportionality and fundamental fairness. The Defence therefore requests the Panel to grant Mr. Krasniqi provisional release under such conditions it considers appropriate.

Word Count: 5418



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