

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

Date: 22 April 2025

Language: English

Classification: Public

Public Redacted Version of 'Krasniqi Defence Reply to Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03112)'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws KC

Counsel for Hashim Thaçi

Luka Misetic

Counsel for Kadri Veseli

Rodney Dixon KC

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

1. The Defence for Jakup Krasniqi ("Defence") hereby replies to the Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests.¹ The Prosecution fails to establish that at the current stage of proceedings any risks regarding Mr. Krasniqi are sufficient to justify his ongoing detention. Instead, the Consolidated Response is largely based on hypothetical scenarios and speculative risks, rather than concrete evidence. In determining whether provisional release is appropriate, the Court must focus on the real likelihood of the alleged risks materialising, not on theoretical possibilities. The Prosecution's speculative assertions do not meet the evidentiary threshold required to justify continued detention.

2. The Prosecution's decision to file a consolidated response is revealing and improper. Mr. Krasniqi's request for provisional release must be assessed individually, based on his personal circumstances, not conflated with the positions of other Accused. Submissions about Mr. Veseli and/or Mr. Selimi² are wholly irrelevant to the assessment of the risks in Article 42(6) as pertaining to Mr. Krasniqi. The Prosecution's attempt to bolster its case by importing allegations against others amounts to an acceptance that it cannot substantiate the alleged risks against Mr. Krasniqi himself. Mr. Krasniqi's position is clear and distinct; he has never been accused of breaching confidentiality or engaging in any form of misconduct in these proceedings. His unblemished record, including during his compassionate release in Kosovo in Autumn 2024, must be given full and proper weight in any individualised risk assessment. The Panel should reject any effort to dilute that assessment by reliance on unrelated conduct attributed to others.

¹ KSC-BC-2020-06, F03112, Specialist Prosecutor, *Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078 and F03086)* ('Consolidated Response'), 14 April 2025, confidential, with Annex 1, public.

² Consolidated Response, paras 3, 17-18, 25, 27-28, 42.

3. The Consolidated Response fails to establish that Mr. Krasniqi presents a flight risk. None of the Prosecution's submissions address the individual circumstances of Mr. Krasniqi.³ Submissions premised on the Accused losing the Rule 130 litigation are premature and speculative, since the Rule 130 motions have yet to be filed.⁴ There is no reason to depart from the Panel's previous conclusion that Mr. Krasniqi does not present a flight risk.

4. The Consolidated Response fails to substantiate any alleged risk that Mr. Krasniqi will obstruct the current phase of proceedings. First, the Consolidated Response relies on mere possibilities and speculation. It asserts a risk of obstruction during the Victims' case,⁵ although it is not yet known what, if any, lay evidence will be called during the Victims' case and this risk is therefore purely speculative. It relies on Prosecution rebuttal evidence, despite expressly acknowledging that this is merely "possible".⁶ Yet, the parties are agreed that the standard to be applied requires more than a mere possibility of a risk materialising.⁷ Even on their face, the Prosecution's submissions do not pass this threshold.

5. Second, the Consolidated Response alleges that provisional release would create "a chilling effect" on victims and witnesses.⁸ This unsupported allegation is irrelevant to the issue. Pursuant to Article 42(6)(b)(ii), Mr. Krasniqi's detention is only justified if the Panel is satisfied that "he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices". The test solely relates to things likely to be said or done by Mr. Krasniqi; it cannot be satisfied by reference to any alleged chilling effect which does not arise from his own conduct.

³ Consolidated Response, paras 9-13.

⁴ Consolidated Response, para. 10.

⁵ Consolidated Response, para. 22.

⁶ Consolidated Response, para. 26.

⁷ Consolidated Response, para. 7.

⁸ Consolidated Response, para. 26.

6. Furthermore, as the Defence previously submitted,⁹ the Panel has heard positive evidence about Mr. Krasniqi from Prosecution witnesses, which contradicts any assertion that his release would have a chilling effect. Numerous witnesses, including victims or relatives of victims, spoke of Mr. Krasniqi with respect and praise.¹⁰ For example, W04474 spoke of [REDACTED].¹¹ W04746 described Mr. Krasniqi as “one of the most respected figures in the Republic of Kosovo”¹² and as a “significant figure who I respected and continue to respect”.¹³ W02153 referred to Mr. Krasniqi as a “very learned and impressive individual”.¹⁴ W03879 stated that [REDACTED].¹⁵ This evidence rebuts the Prosecution’s allegation that provisional release would create “a chilling effect” on victims and witnesses.

7. Third, the Consolidated Response resorts to unsupported and speculative assertions. It asserts that “[f]orced recantation is a real and present danger”, although the only citation provided is to the existence of a criminal offense of retaliating against a witness.¹⁶ If the Prosecution had any evidence that any witness in these proceedings had been pressured to recant after their testimony by Mr. Krasniqi, or that Mr. Krasniqi is likely to attempt to force a witness to recant, the Prosecution would have deployed that evidence in the Consolidated Response. Instead, the absence of any such evidence is telling.

⁹ See e.g. KSC-BC-2020-06, F01909RED, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01886)*, 7 November 2023, public, paras 11-12.

¹⁰ KSC-BC-2020-06, Transcript of 17 April 2023, confidential, p. 2869, lines 6-8, p. 2974, line 19 to p. 2975, line 25; Transcript of 13 July 2023, confidential, p. 5629, lines 22-23; Transcript of 19 July 2023, confidential, p. 6191, lines 14-15; Transcript of 16 August 2023, confidential, p. 6651, lines 14-16.

¹¹ KSC-BC-2020-06, Transcript of 17 April 2023, confidential, p. 2869, lines 6-8.

¹² KSC-BC-2020-06, Transcript of 17 July 2023, confidential, p. 5814, lines 8-9.

¹³ KSC-BC-2020-06, Transcript of 13 July 2023, confidential, p. 5629, lines 22-23.

¹⁴ KSC-BC-2020-06, Transcript of 19 July 2023, confidential, p. 6164, lines 19-20.

¹⁵ KSC-BC-2020-06, Transcript of 16 August 2023, confidential, p. 6651, lines 15-16.

¹⁶ Consolidated Response, para. 4 and fn 7.

8. Fourth, the Consolidated Response relied heavily on the Appeals Panel finding from 2021 that [REDACTED].¹⁷ Four years later, the Panel should re-evaluate that finding in light of Mr. Krasniqi's conduct to date – specifically, that there is no evidence or allegation that he has attempted to interfere with any witness during four and a half years of his detention. Instead, Mr. Krasniqi's record demonstrates that he has not engaged in any behaviour even remotely resembling witness interference; to the contrary, he has conducted himself appropriately throughout.

9. Moreover, the 2021 finding was based on Mr. Krasniqi's possession of a [REDACTED].¹⁸ There is no evidence establishing when Mr. Krasniqi received this [REDACTED] or what, if anything, he did with it. Throughout this trial, the Panel has received evidence about the volume and types of documentary material found at Mr. Krasniqi's house and the number of published and unpublished books that he wrote. Against that evidentiary backdrop, the mere possession of a [REDACTED] cannot rationally sustain an inference that Mr. Krasniqi was predisposed to intimidate witnesses, as opposed to conducting research or engaging in writing activities. In the circumstances, continued reliance on the 2021 finding would be unjustified and unfair.

10. The Defence reiterates that, after the closure of the Prosecution case and four and a half years of detention, the Panel must assess whether the risks previously identified continue to exceed the required threshold. As set out above, the Consolidated Response fails to demonstrate that any risks continue after the closure of the Prosecution case and Mr. Krasniqi should therefore be provisionally released.

¹⁷ Consolidated Response, para. 16; See 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 62.

¹⁸ See KSC-BC-2020-06, IA002/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential, paras 61-62.

11. The Consolidated Response is equally unpersuasive regarding the availability of conditional release, again lapsing into unsubstantiated and unevidenced assertions. For instance, the lengthy paragraph asserting [REDACTED] is entirely unsupported by any evidence.¹⁹ Absent such evidence, there is no reason to doubt the [REDACTED]. Furthermore, quibbling about the proposed monitoring or surveillance measures [REDACTED] misses the point.²⁰ Pursuant to Article 53 of the Law, the Panel may issue orders to the Kosovo Police. The Panel must therefore direct its attention first to whether adequate conditions can be imposed to mitigate any identified risks. The possibility of imposing stricter measures is not a justification for denying release altogether, but rather a basis for crafting appropriate safeguards to enable it.

12. The Consolidated Response also complains that adversarial fairness means that the Panel should not rely on material submitted to it *ex parte*.²¹ In making that submission, the Prosecution overlooks that throughout these proceedings, the Defence have been forced to make submissions on matters, including protective measures and disclosure, despite the extensive redactions which the Prosecution imposed on the submissions available to the Defence.²² At no point was the Defence afforded the benefit of full disclosure or equality of arms, including when responding

¹⁹ Consolidated Response, para. 37.

²⁰ Consolidated Response, paras 33-35.

²¹ Consolidated Response, para. 50.

²² See e.g., KSC-BC-2020-06, F02886CONFRED, Specialist Prosecutor, *Confidential redacted version of Prosecution request to vary protective measures and admit evidence of W04363*, 31 January 2025, confidential; F00968CONFRED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution request for protective measures for certain information requested by the Defence pursuant to Rule 102(3) with strictly confidential and ex parte Annexes 1-29'*, KSC-BC-2020-06/F00968, dated 13 September 2022, 15 September 2022, confidential; F00825CONFRED, Specialist Prosecutor, *Confidential Redacted Version of 'Second Prosecution request for protective measures for items containing Rule 103 information'*, KSC-BC-2020-06/F00825, dated 31 May 2022, 2 June 2022, confidential; F00821CONFRED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution request for protective measures for items containing Rule 103 information'*, KSC-BC-2020-06/F00821, dated 27 May 2022, 2 June 2022, confidential; F00176CONFRED, Specialist Prosecutor, *Confidential Redacted Version of Renewed request for protective measures*, 20 January 2021, confidential; F00094CONFRED, Specialist Prosecutor, *Confidential Redacted Version of 'Request for Protective Measures'*, KSC-BC-2020-06-F00094, dated 19 November 2020 with confidential Annex 13, 24 November 2020, confidential.

to the Prosecution's redacted Pre-Trial Brief. The Prosecution cannot now invoke adversarial fairness, when it has consistently undermined that very principle to the detriment of the Defence.

13. Unsurprisingly, the single case cited by the Prosecution actually related to an attempt by the Prosecution to redact the basis for denying provisional release to an Accused.²³ On that occasion, the Pre-Trial Judge considered the "impact of deprivation of liberty on the fundamental rights of the person concerned" in deciding not to rely against the Accused on evidence to which the Accused could not meaningfully respond.²⁴ The decision was thus based on the Accused's fundamental rights. It cannot be read across to the Prosecution, which does not have to endure the deprivation of its liberty should its submissions be rejected.

14. Finally, difficulties in securing privileged visits have in fact occurred. The DU was unable to accommodate the [REDACTED]. It is not possible to exchange and review documents in a video-conference. The real likelihood that these issues recur demonstrates the delay and prejudice to the preparation of the Defence case, if detention is continued.

15. The Defence therefore maintains that Mr. Krasniqi's continued detention is no longer necessary, reasonable, or proportionate, and requests his provisional release, under the appropriate conditions.

Word Count: 1970

²³ Consolidated Response, para. 50 fn. 100.

²⁴ KSC-BC-2020-06, F001778, Pre-Trial Judge, *Decision on Kadri Veseli's Application for Interim Release*, 22 January 2021, public, para. 41; *See*, ECtHR, *Oravec v. Croatia*, Application no. 51249/11, *Judgment*, 11 July 2017, para. 67; *Podeschi v. San Marino*, Application no. 66357/14, *Judgment*, 13 April 2017, para. 176; *Albrechtas v. Lithuania*, Application no. 1886/06, *Judgment*, 19 January 2016, para. 75; *Emilian-George Igna v. Romania*, Application no. 21249/05, *Judgment*, 26 November 2013, para. 27.



Venkateswari Alagendra

Tuesday, 22 April 2025

Kuala Lumpur, Malaysia.



Aidan Ellis

Tuesday, 22 April 2025

London, United Kingdom.



Shyamala Alagendra Khan

Tuesday, 22 April 2025

The Hague, the Netherlands.



Victor Băieșu

Tuesday, 22 April 2025

The Hague, the Netherlands.