



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

Date: 13 May 2025

Language: English

Classification: Public

**Public Redacted Version of Further Corrected Version of Consolidated Decision
on Krasniqi Defence Request for Provisional Release and on Periodic Review of
Detention of Jakup Krasniqi**

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

I. PROCEDURAL BACKGROUND

1. On 13 March 2025, the Panel issued a decision on the periodic review of detention of Jakup Krasniqi ("Mr Krasniqi") ("Accused") wherein it found that Mr Krasniqi's detention for a further two months was necessary and reasonable in the specific circumstances of the case and ordered Mr Krasniqi's continued detention ("Twentieth Detention Decision").¹
2. On 4 April 2025, the Defence for Mr Krasniqi ("Krasniqi Defence") filed a request for provisional release ("Request").²
3. On 14 April 2025, the Specialist Prosecutor's Office ("SPO") filed its response ("Response").³
4. On 15 April 2025, the SPO filed a notice announcing the closing of its case.⁴
5. On 16 April 2025, the SPO filed its submissions on the twenty-first review of Mr Krasniqi's detention ("SPO Submissions").⁵ The Krasniqi Defence did not respond to the SPO Submissions.

¹ F03005, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, paras 31, 32.

² F03086, Specialist Counsel, *Krasniqi Defence Request for Provisional Release*, 4 April 2025, confidential and *ex parte*, with Annexes 1 and 2, confidential and *ex parte*, Annex 3, confidential (a confidential redacted version was filed on the same day, F03086/CONF/RED and a public redacted version was filed on 23 April 2025, F03086/RED).

³ F03112, Specialist Prosecutor, *Consolidated Prosecution Response to Veseli, Selimi, and Krasniqi Provisional Release Requests (F03076, F03078, and F03086)*, 14 April 2025, confidential, with Annex 1 (a public redacted version was filed on 22 April 2025, F03112/RED).

⁴ F03121, Specialist Prosecutor, *Prosecution Notice Pursuant to Rule 129*, 15 April 2025.

⁵ F03124, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 16 April 2025.

6. On 22 April 2025, the Krasniqi Defence replied to the Response (“Reply”).⁶

7. On 23 April 2025, the Panel held a status conference during which it ordered the Defence to file its joint Rule 130 motion by 2 June 2025, or within 14 days of the Panel’s last ruling on admission of evidence, whichever occurs later⁷ and ordered the SPO to file its consolidated response by 1 July 2025, or within 30 days of the Defence’s Rule 130 motion, whichever occurs later.⁸

8. The Panel also ordered Victims’ Counsel to present, by 28 May 2025,⁹ or on a rolling basis, but no later than 1 July 2025,¹⁰ *inter alia*: (i) a list of proposed witnesses to be called should the Panel find the Rule 130 motion unsuccessful; (ii) statements and/or reports of these witnesses; (iii) summaries of the witnesses’ proposed evidence; and (iv) a list of evidentiary items to be tendered.¹¹ The Panel also ordered the Parties to notify the Panel by 9 June 2025, whether they object to the proposed admission of Victims Counsel’s evidence and inform the Panel which witnesses the Parties intend to cross-examine.¹² The Panel also indicated it expected Victims’ Counsel’s case to start in July 2025.¹³

II. SUBMISSIONS

9. The Krasniqi Defence submits that the completion of the SPO’s case, the absence of remaining SPO witnesses, and the compelling personal and [REDACTED] circumstances of Mr Krasniqi constitute a material change in circumstances and argues that the basis of Mr Krasniqi’s detention can no longer

⁶ F03139, Specialist Counsel, *Krasniqi Defence Reply to Consolidated Prosecution Response to Veseli, Selimi and Krasniqi Provisional Release Requests*, 22 April 2025, confidential.

⁷ Transcript of Hearing, 23 April 2025, p. 26176, lines 7-11.

⁸ Transcript of Hearing, 23 April 2025, p. 26176, lines 11-13.

⁹ Transcript of Hearing, 23 April 2025, p. 26177, lines 1-2.

¹⁰ Transcript of Hearing, 23 April 2025, p. 26184, lines 17-19.

¹¹ Transcript of Hearing, 23 April 2025, p. 26177, lines 2-13.

¹² Transcript of Hearing, 23 April 2025, p. 26177, lines 14-20.

¹³ Transcript of Hearing, 23 April 2025, p. 26175, lines 24-25.

withstand scrutiny.¹⁴ The Krasniqi Defence further avers that Mr Krasniqi's continued detention may be perceived as an anticipatory sentence which runs contrary to the presumption of innocence.¹⁵ In light of these circumstances, and in order to spend meaningful time with his family, the Krasniqi Defence requests that the Panel grant Mr Krasniqi's provisional release under conditions.¹⁶

10. The SPO responds that the Request should be rejected given that the criteria under Article 41(6) of the Law continue to be met, and no alternative measures sufficiently address the risks under Article 41(6)(b) of the Law.¹⁷ The SPO contends that presumption of innocence does not play a role in determining provisional release.¹⁸ It also contends that Mr Krasniqi's wish to see family members does not constitute compelling humanitarian circumstances nor should it inform the Panel's analysis of any of the Article 41(6)(b) of the Law's limbs.¹⁹ Additionally, the SPO contends that the Krasniqi Defence relies on information and annexes that are *ex parte* and submits that the Panel should not rely on such information without the SPO being heard.²⁰

11. The Krasniqi Defence replies that the Response is largely based on hypothetical scenarios and speculative risks and that such assertions do not meet the evidentiary threshold for continued detention.²¹ The Krasniqi Defence further replies that, in complaining that the Panel should not rely on material submitted to it *ex parte*, the SPO overlooks that, throughout the proceedings, the Defence was forced to make submissions on matters despite the extensive redactions imposed by the SPO.²²

¹⁴ Request, paras 1-5, 33, 35, 47, 48. *See also* Reply, paras 8, 10.

¹⁵ Request, paras 1, 44.

¹⁶ Request, paras 22, 48.

¹⁷ Response, paras 1, 52.

¹⁸ Response, para. 49.

¹⁹ Response, para. 48.

²⁰ Response, para. 50.

²¹ Reply, paras 1, 2.

²² Reply, para. 12.

12. In the SPO Submissions, the SPO requests the continuation of Mr Krasniqi's detention.²³ The SPO argues that, since the Twentieth Detention Decision, there has been no change in circumstances that merits deviating from the previous determination of the Panel, and as such, Mr Krasniqi's detention remains necessary and reasonable.²⁴ The SPO also submits that the close of the SPO's case heightens the risks of obstruction and the commission of further crimes, and warrants the Panel's reconsideration of the existence of the risk of flight.²⁵ In addition, the SPO submits that detention should also be maintained also for the reasons set out in its Response to the Request, insofar as the two filings overlap.²⁶

III. APPLICABLE LAW

13. The law applicable to deciding the present matter is set out in Article 41(6), (10), and (12) of the Law and Rules 56 and 57 of the Rules and has been laid out extensively in earlier decisions.²⁷ Particularly, Article 41(6) of the Law provide that the accused shall be detained only when the requirements under subsections (a)-(b)(i)-(iii) are met. In determining whether detention is necessary, pursuant to Article 41 (12) of the Law, and Rule 56(5) of the Rules, the Panel may consider alternative measures to be imposed on the accused's release.

14. If detention is necessary, Article 41(10) of the Law and Rule 57(2) of the Rules provide that the accused's detention must be reviewed every two (2) months from

²³ SPO Submissions, paras 1, 29.

²⁴ SPO Submissions, paras 1, 6.

²⁵ SPO Submissions, para. 8.

²⁶ SPO Submissions, para. 2, *referring to* the Request.

²⁷ See e.g. F01212, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Seventh Detention Decision"), 17 January 2023, confidential, para. 3 (a public redacted version was issued on the same day, F01212/RED); See also, F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi's Application for Interim Release* ("Krasniqi First Interim Release Decision"), 22 January 2021, paras 14-24 (a public redacted version was issued on 26 January 2021, F00180/RED); F01110, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 18 November 2022, confidential, paras 1-15 (a public redacted version was issued on the same day, F01110/RED).

the last ruling thereof, and/or at any time upon request by any of the Parties, or *proprio motu*. The scope of the review is to assess whether, since the Panel's last review, the grounds justifying detention still exist or there has been a change in circumstances warranting the accused's release. Any such determination must consider alternative measures to the accused's detention, and whether his ongoing detention is proportional.

IV. DISCUSSION

A. PRELIMINARY MATTERS

15. First, the Panel notes that it has before it Mr Krasniqi's request for provisional release as well as the SPO's submissions on the Panel's bi-monthly review of detention which is due 13 May 2025. In these particular circumstances, the Panel will address both matters in one consolidated decision, taking into account all the submissions made by the Parties. The Panel emphasises that this does not alter the regular schedule for detention review, or the right of the Parties to request at any time a review of detention under Rule 57(2). Nor does it affect the fact that the SPO bears the onus of establishing the necessity and reasonableness of continued detention.

16. Second, the Panel notes the SPO's submission that it was deprived from making relevant submissions on information annexed to the Request which are classified as *ex parte* and avers that the Panel should not rely on such information in relation to the Request.²⁸ Having reviewed the redacted information contained in the Request as well as the *ex parte* Annexes 1 and 2 to the Request, the Panel is satisfied that, in light of the sensitive nature of the information contained therein, the *ex parte* classification is justified. The Panel does not consider that the SPO has been prejudiced from making relevant submissions in relation to the Request

²⁸ Response, para. 50.

without having access to this information. In particular, the Panel considers that, while the SPO was unable to make effective submissions in respect of this material, the relevance and weight of that material was so limited that any prejudice arising from it was outweighed by the privacy interests justifying the *ex parte* nature of the material.

17. Third, the Panel observes that the Krasniqi Defence refers to “compelling personal [REDACTED] circumstances” in support of the Request.²⁹ Given that these submissions are made in the context of a purported material change of circumstances, the Panel will consider this as a factor to be weighed in the context of Mr Krasniqi’s request for provisional release.

18. Fourth, the Panel also observes that the Krasniqi Defence raises in the Reply the issue of securing privileged visits at the Detention Facilities on 23 April 2025, and notes that it cannot exchange and review documents with Mr Krasniqi in a video-conference.³⁰ The Panel observes that, during the Status Conference on 23 April 2025, the Defence raised similar issues related to communication with Mr Krasniqi in the Detention Facilities, in the presence of the Deputy Registrar, and these issues were addressed and, where possible, dealt with.³¹ The Panel considers that the Krasniqi Defence thus had an opportunity to raise the issue before the Panel, and the Deputy Registrar. In addition, the Panel ordered that further meetings take place between the Krasniqi Defence teams and the Registry to resolve this issue.³² Where a practical solution cannot be found with the Registry, the matter can then be brought to the attention of the Panel.

²⁹ See *e.g.*, Request, para. 22. See also Response, para. 48.

³⁰ Reply, para. 14.

³¹ See *e.g.*, Transcript of Hearing, 23 April 2025, p. 26170, line 15 to p. 26174, line 11.

³² Transcript of Hearing, 23 April 2025, p. 26173, line 18 to p. 26174, line 11.

B. APPLICABLE LEGAL STANDARD

1. Grounded Suspicion

19. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.³³

20. Neither the Krasniqi Defence, nor the SPO, made submissions in relation to Article 41(6)(a) of the Law in the Request, the Response, and the Reply. Conversely, in the SPO Submissions, the SPO argues that well-grounded suspicion has increased with the evidence of all SPO witnesses now included in the trial record.³⁴

21. The Panel notes that, pursuant to Article 39(2) of the Law, it has been determined that there is a well-grounded suspicion that Mr Krasniqi is criminally responsible 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) of the Law.³⁵ It has also been established that there is a well-grounded suspicion with regard to the new charges brought by the SPO against Mr Krasniqi with the requested amendments to the indictment.³⁶ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.³⁷

³³ Similarly, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

³⁴ SPO Submissions, para. 9.

³⁵ Twentieth Detention Decision, para. 9 with references.

³⁶ Twentieth Detention Decision, para. 9 with references.

³⁷ See e.g. IA008/F00004, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Review of Detention* ("Appeals Decision on First Veseli Detention Review"), 1 October 2021, confidential, para. 21 (a public redacted version was issued on the same day, IA008/F00004/RED).

22. As for the SPO's contention that the well-grounded suspicion has increased with the closure of the SPO case, the Panel finds this argument to be speculative and inapposite as, pursuant to Rule 139(2), the Panel shall conduct a holistic evaluation and weighing of all the evidence taken as a whole at the end of the trial to establish whether or not the facts at issue have been established.³⁸

23. The Panel has repeatedly confirmed these findings since they were made.³⁹ Accordingly, and in the absence of any new material circumstances, the Panel finds that there continues to be a grounded suspicion that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the Specialist Chambers ("SC") for the purposes of Article 41(6)(a) and (10) of the Law.

2. Necessity of Detention

24. With respect to the grounds for continued detention, Article 41(6)(b) of the Law 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.⁴⁰ These grounds must be "articulable" in the sense that they must be specified in detail by reference to the relevant information or evidence.⁴¹ In determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person's detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴²

³⁸ See Rule 139(2) of the Rules.

³⁹ See amongst many, Twentieth Detention Decision, para. 9.

⁴⁰ Cf. ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016 ("*Buzadji v. the Republic of Moldova* [GC]"), para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, 9 February 2021, [Judgment](#), para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, 17 September 2020, [Judgment](#), para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, 4 July 2019, [Judgment](#), para. 155.

⁴¹ 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". See also IA002/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential ("First Appeals Decision on Krasniqi's Interim Release") (a public redacted version was issued on the same day, IA002/F00005/RED).

⁴² First Appeals Decision on Krasniqi's Interim Release, para. 26.

25. The Krasniqi Defence submits that the closure of the SPO case constitutes a material change of circumstances, militating against the Panel's previous findings that Mr Krasniqi's continued detention is necessary.⁴³ Conversely, the SPO maintains that the circumstances in which the Panel found that there is a risk that Mr Krasniqi will obstruct the proceedings and commit further offences have not been materially altered by the closing of the SPO case.⁴⁴ The SPO adds that in view of the impending Rule 130 litigation there is also a risk that Mr Krasniqi may abscond, if released.⁴⁵

26. The Panel recalls that a change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.⁴⁶ The Panel will assess the three alternative bases on which detention may be found necessary in light of the purported changes of circumstances averred by the Parties, notably, the closing of the SPO's case and the impending Rule 130 litigation. The Panel is of the view that these can be regarded as significant enough procedural developments that warrant such renewed considerations by the Panel. The Panel will therefore assess whether the new stage of the proceedings impacts the Panel's previous findings on the matter.

(a) Risk of Flight

27. The Krasniqi Defence submits that the Panel has repeatedly found that Mr Krasniqi did not present a flight risk and that the imminent closure of the SPO's case provides no reason to alter that conclusion.⁴⁷ The Krasniqi Defence

⁴³ See above, paras 9, 11.

⁴⁴ See above, paras 10, 12.

⁴⁵ See above, paras 10, 12.

⁴⁶ IA006/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention* ("Appeals Decision on Krasniqi First Detention Review"), 1 October 2021, confidential, para. 16 (a public redacted version was issued on the same day, IA006/F00005/RED).

⁴⁷ Request, para. 19.

further argues that Mr Krasniqi's advanced age, his [REDACTED], and a strong personal and family connection to Kosovo mean he presents no risk of flight.⁴⁸

28. The SPO posits that the imminent Rule 130 litigation marks a new juncture in this trial and, should the Accused lose such litigation, it may increase his incentive to flee.⁴⁹ According to the SPO, the Panel must take such a significant procedural development into consideration when deciding interim release. Similarly, the SPO submits that the fact that the Accused is now closer to receiving the judgement on the charges against him, which include ten counts of war crimes and crimes against humanity, itself increases the risk of absconding to avoid a potentially long sentence of up to life imprisonment.⁵⁰ The SPO further argues that the Accused's assurances that he would not flee are immaterial within the meaning of Article 41(6)(b)(i) of the Law.

29. According to the SPO, the Accused has the means to abscond.⁵¹ The SPO further contends that the Panel need only consider the possibility – not the inevitability – of the Accused having access to resources where the risk is established on the basis of concrete evidence. The SPO then avers that, taken together, the combination of these factors elevates the risk of flight to a “sufficiently real possibility.”⁵²

30. The SPO also claims that the Accused's compliance with previous provisional releases does not mean he would not be a flight risk when he would not be accompanied by a custodial escort and the findings on past cooperation with authorities are diluted by the advanced stage of the trial.⁵³

⁴⁸ Request, paras 20-22.

⁴⁹ Response, paras 9, 10.

⁵⁰ Response, para. 10. *See also* SPO Submissions, para. 11.

⁵¹ Response, para. 12. *See also* SPO Submissions, para. 11.

⁵² Response, para. 13. *See also* SPO Submissions, para. 11.

⁵³ Response, para. 11.

31. The Krasniqi Defence replies that the SPO does not address the individual circumstances of Mr Krasniqi and fails to establish that Mr Krasniqi presents a flight risk.⁵⁴ Moreover, the Krasniqi Defence replies that the SPO's submissions related to the Rule 130 litigation are speculative and premature and do not warrant departure from the Panel's previous conclusion that Mr Krasniqi does not present a risk of flight.⁵⁵

32. The Panel observes that proceedings akin to Rule 130 litigation have been previously regarded as significant enough procedural developments that warranted renewed consideration of a risk of flight posed by an accused.⁵⁶ The Panel notes, however, that no Rule 130 ruling has been made.⁵⁷ The Panel also notes in this regard that in the Twentieth Detention Decision, in assessing whether Mr Krasniqi posed a risk of flight, the Panel considered and rejected, *inter alia*, the SPO's argument that the expeditious progression of trial means that the possible imposition of a sentence against Mr Krasniqi becomes more concrete.⁵⁸ The Panel similarly considers that the close of the SPO's case does not mean that the possible imposition of a sentence against Mr Krasniqi becomes more concrete as many procedural steps remain, including the Rule 130 procedure. Furthermore, Mr Krasniqi continues to enjoy the presumption of innocence. The fact that the Panel will decide whether he has a case to answer does not affect this guarantee. In the present circumstances, the Panel observes that the SPO relies on legal arguments which are, however, not supported by concrete evidence to show that any ruling of the Panel on the Rule 130 applications would prompt Mr Krasniqi to abscond. Accordingly, the Panel finds no merit in the SPO's contention that, in

⁵⁴ Reply, para. 3.

⁵⁵ Reply, para. 4.

⁵⁶ See e.g., ICTY, *The Prosecutor v. Prlić et al*, Case No. IT-04-74-AR65.5, Appeals Chamber, [Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić](#), 11 March 2008, para. 20.

⁵⁷ See Transcript of Hearing, 23 April 2025, p. 26176, lines 8-14.

⁵⁸ Twentieth Detention Decision, paras 12, 13.

light of the impending Rule 130 litigation, the Panel should depart from its previous finding that Mr Krasniqi does not pose a flight risk. For the same reasons, while taking note of the Krasniqi Defence's submissions regarding Mr Krasniqi's personal and family circumstances,⁵⁹ the Panel is of the view that, at this juncture, it does not need to entertain them in the context of the risk of flight as the Panel has already established that there is no sufficiently real possibility that Mr Krasniqi will flee.

33. The Panel therefore finds that no new evidence has been presented that would warrant, in light of the impending Rule 130 litigation, departure from the Panel's previous finding that Mr Krasniqi is not at risk of flight as set out in Article 41(6)(b)(i) of the Law.

(b) Risk of Obstructing the Progress of SC Proceedings

34. The Krasniqi Defence submits that significant changes in circumstances and the passage of time justify reconsideration of the Panel's previous findings in relation to the risk of Mr Krasniqi obstructing SC proceedings by interfering with witnesses.⁶⁰ First, according to the Krasniqi Defence, the Panel's prior assessments of said risk have primarily centred on the potential for interference with witnesses before their testimony and in relation to the ongoing SPO case.⁶¹ In the Krasniqi Defence's view, the basis for the Panel's findings has fallen away.⁶² Secondly, the Krasniqi Defence submits that Mr Krasniqi's personal circumstances have evolved significantly and his [REDACTED], warranting the Panel's compassionate consideration.⁶³

⁵⁹ Request, paras 4, 20-22.

⁶⁰ Request, paras 23, 24.

⁶¹ Request, paras 24, 25.

⁶² Request, paras 25.

⁶³ Request, paras 4, 22, 46.

35. The Krasniqi Defence also submits that there has been no indication that Mr Krasniqi has interfered with any of the witnesses who have testified in court, and therefore any possibility of interference or attempts at securing a recantation is purely speculative, unsupported by any evidence and can be deterred by the Panel through the use of its contempt powers.⁶⁴ The Krasniqi Defence further argues that any purported risk of interfering with any witnesses to be called by Victims' Counsel is inherently minimal.⁶⁵ The Krasniqi Defence also submits that Mr Krasniqi's conduct in custody has been consistently responsible and incident-free⁶⁶ as was his conduct during his compassionate release in Kosovo in 2024.⁶⁷ The Krasniqi Defence further contends that the basis of the Panel's findings insofar as they relate to his public statements from 2020 pre-date his arrest and there has been no such other conduct since.⁶⁸ Additionally, the Krasniqi Defence points to the initiation of the proceedings in the case of the *Specialist Prosecutor vs. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi* (KSC-BC-2023-12) ("Case 12") which is, in its view, a sufficiently deterring factor for Mr Krasniqi to not engage in similar conduct.⁶⁹

36. The SPO responds that the factors underpinning the Panel's recent findings in relation to Mr Krasniqi, as well as those by the Court of Appeals Panel, continue to exist.⁷⁰ The SPO further responds that the Panel never advanced a finding that the end of the SPO's case would exclude the risk of obstruction.⁷¹ In the SPO's view, the close of the SPO's case does not alter the Panel's assessment within the meaning of Article 41(6)(b)(ii) of the Law⁷² as obstruction may occur at any stage

⁶⁴ Request, paras 26-27.

⁶⁵ Request, para. 28.

⁶⁶ Request, para. 29.

⁶⁷ Request, para. 30.

⁶⁸ Request, paras 33, 34.

⁶⁹ Request, para. 31.

⁷⁰ Response, paras 15, 16. *See also* SPO Submissions, paras 12-17.

⁷¹ Response, para. 21.

⁷² Response, paras 20, 22. *See also* SPO Submissions, paras 12, 15.

of trial.⁷³ The SPO further argues that, given Mr Krasniqi's stated propensity towards obstruction, his interim release would increase his capacity to obstruct and endanger proceedings, including through witnesses who have already testified.⁷⁴ The SPO also submits that the Accused's release to Kosovo, where the majority of Prosecution witnesses reside, could improperly influence their evidence.⁷⁵ The SPO posits that the provisional release could have a chilling effect on cooperation of the witnesses for Victims' Counsel's case or dual status witnesses.⁷⁶

37. The Krasniqi Defence replies that the SPO resorts to unsupported and speculative assertions without providing any concrete evidence showing that Mr Krasniqi has pressured any witness in the proceedings to recant.⁷⁷ Similarly, according to the Krasniqi Defence, the SPO's arguments pertaining to Victims' Counsel's case and rebuttal evidence are merely speculative⁷⁸ as are its arguments that the provisional release would create a chilling effect on victims and witnesses.⁷⁹ The Krasniqi Defence further argues that the Panel should re-evaluate the Court of Appeals Panel's finding from 2021 that he is predisposed to witness intimidation in light of Mr Krasniqi's conduct to date, which instead demonstrates that he has not engaged in any behaviour resembling witness interference.⁸⁰

38. The Panel notes that the Krasniqi Defence argues that the material change of circumstances in the present case has been occasioned by: (i) the close of the SPO's

⁷³ Response, paras 22-24.

⁷⁴ Response, para. 25.

⁷⁵ Response, para. 26.

⁷⁶ Response, para. 26.

⁷⁷ Reply, para. 7.

⁷⁸ Reply, para. 4.

⁷⁹ Reply, paras 5, 6.

⁸⁰ Reply, paras 8, 9.

case, with no more SPO witnesses to testify; and (ii) Mr Krasniqi's [REDACTED] and a change in his family circumstances.

39. The Panel notes that in the Twentieth Detention Decision, it determined that the risk of obstructing the progress of proceedings emanated from, *inter alia*: (i) Mr Krasniqi's 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".⁸¹ Furthermore, the Court of Appeals Panel has confirmed that: (i) there are indications that Mr Krasniqi is, at least, predisposed to witness intimidation;⁸² 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 2020.⁸³

40. The Panel notes in this regard that, as the Krasniqi Defence appears to infer, the Panel's prior assessments of risk have primarily centred on the potential for interference with witnesses before their testimony and in relation to the ongoing SPO case.⁸⁴ The Panel considers that its finding must be assessed in the context of the stage of proceedings in which it was rendered and did not in any way preclude an assessment in relation to any other witnesses who may testify before the court, at any given stage of the proceedings. Further, the Panel never advanced a finding that the end of the SPO's case would exclude the risk of obstruction. In this regard,

⁸¹ Twentieth Detention Decision, para. 17, referring to, *inter alia*, 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).

⁸² First Appeals Decision on Krasniqi's Detention, para. 62; Appeals Decision on Krasniqi First Detention Review, para. 30.

⁸³ First Appeals Decision on Krasniqi's Interim Release, para. 50.

⁸⁴ Request, paras 24, 25.

the Panel considers that Victims' Counsel will submit a list of potential witnesses for its case by 28 May 2025⁸⁵ and that Victims' Counsel has been instructed to be ready to present his case in July 2025.⁸⁶ Mr Krasniqi will ultimately be, in a short amount of time, exposed to sensitive information regarding the names and personal details of witnesses,⁸⁷ and victims' statements or supplementary information on the harm that the many victims are alleged to have sustained.⁸⁸ The Panel considers that the rationale it applied in relation to SPO witnesses applies equally to the witnesses to be called by Victims' Counsel.

41. The Panel's consideration is even more pertinent in light of the Krasniqi Defence's submissions. In particular, the Panel observes that the Krasniqi Defence states that much of its investigations will take place in Kosovo, and Mr Krasniqi's presence will significantly enhance its ability to conduct necessary investigations.⁸⁹ The Panel has on many occasions recalled that due to the general climate of witness and victim intimidation prevailing in Kosovo, victims and witnesses participating in the proceedings are especially vulnerable.⁹⁰ In this context, the Panel finds some, albeit limited, merit in the SPO's contention that Mr Krasniqi's provisional release in Kosovo may have a chilling effect on the willingness of victims and/or potential witnesses to participate in the proceedings.⁹¹ The Panel additionally considers that this would increase the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence.⁹² The Panel therefore also finds that the Krasniqi Defence's argument that any purported risk of

⁸⁵ See Transcript of Hearing, 23 April 2025, p. 26177, lines 2-13.

⁸⁶ See Transcript of Hearing, 23 April 2025, p. 26175, lines 24, 25 and p. 26186, lines 20, 21.

⁸⁷ See Transcript of Hearing, 23 April 2025, p. 26177, lines 14-20.

⁸⁸ Transcript of Hearing, 23 April 2025, p. 26158, lines 2-11.

⁸⁹ Request, paras 3, 47.

⁹⁰ See e.g. F02786, Panel, *Decision on Seventeenth Registry Report on Victims' Applications for Participation in the Proceedings*, 16 December 2024, confidential, para. 26.

⁹¹ Response, para 26.

⁹² See similarly Twentieth Detention Decision, para. 18.

interfering with any witnesses to be called by Victims' Counsel is inherently minimal⁹³ to be without merit. The Panel also notes that the risk of interference exists also in relation to witnesses which the Defence may choose to call. In addition, the risk of interference which detention seeks to prevent is not limited to attempts to enforce a certain version of the events; it also includes, for instance: (i) any attempt to retaliate against witnesses who have testified in these proceedings; (ii) attempts to incentivise a witness to recant; and (iii) attempts to interfere with witnesses in parallel proceedings. On that last point, the Panel notes that proceedings regarding allegations of interference in the present case are ongoing.

42. The Panel notes the Krasniqi Defence's argument that: (i) there has been no indication that Mr Krasniqi has interfered with any of the witnesses who have testified in court;⁹⁴ and (ii) Mr Krasniqi's conduct in custody has been consistently responsible and incident-free.⁹⁵ The Panel calls attention to the standard for assessing the risks under Article 41(6)(b) of the Law, which does not require a "concrete example" of a situation in which Mr Krasniqi has personally intimidated or harassed a witness.⁹⁶ 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) of the Law cannot exist.⁹⁷ Moreover, the Panel recalls previous findings that Mr Krasniqi is predisposed to witness intimidation.⁹⁸ Importantly, these considerations must be weighed against a background of the general climate of witness interference

⁹³ Request, para. 28.

⁹⁴ Request, para. 26.

⁹⁵ Request, para. 29.

⁹⁶ 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).

⁹⁷ Twentieth Detention Decision, para. 16.

⁹⁸ First Appeals Decision on Krasniqi's Detention, para. 62; Appeals Decision on Krasniqi First Detention Review, para. 30.

that persists in Kosovo regarding this case and others before the SC.⁹⁹ For similar reasons, the Panel also rejects the Krasniqi Defence's argument that the Panel's findings insofar as they relate to his public statements from 2020 pre-date his arrest and that there has been no such other conduct since.¹⁰⁰ Furthermore, the Panel finds no merits in the Krasniqi Defence's reliance on the initiation of Case 12 as a deterring factor. The Panel notes, in particular, that witnesses who have already testified in this case and other witnesses relevant to these proceedings could be subject to interference. Secondly, the suggestion that the initiation of these proceedings is sufficiently deterring is purely hypothetical. The Panel notes in this regard that cases have been brought before this jurisdiction in respect of issues of alleged interferences with witnesses, including in relation to the proceedings in the present case.¹⁰¹ This clearly demonstrates the extent and magnitude of the challenges associated with this issue and that said proceedings have not had a deterring effect on attempts to interfere with the work of the SC.

43. In light of the foregoing, the Panel finds that, at the current stage of the proceedings, namely the close of the SPO's case and the impending Rule 130 litigation, the risk that Mr Krasniqi will obstruct the progress of SC proceedings has not diminished.

44. Therefore, the Panel finds that the risk that Mr Krasniqi will obstruct the progress of SC proceedings, if released, as set out in Article 41(6)(b)(ii) of the Law, continues to exist.

⁹⁹ Twentieth Detention Decision, para. 16.

¹⁰⁰ Request, paras 33, 34.

¹⁰¹ See *The Prosecutor v. Hysni Gucati and Nasim Haradinaj* (KSC-BC-2020-07); *The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala* (KSC-BC-2023-10); Case 12.

(c) Risk of Committing Further Crimes

45. The Krasniqi Defence submits that given his age, lack of criminal record in the past 25 years, and him holding no state office or authority, there is no evidence that Mr Krasniqi is likely to commit further crimes.¹⁰²

46. The SPO responds that the assessment under Article 46(1)(b)(iii) of the Law involves whether there is a risk of the Accused committing further crimes, not actual evidence of their planning to do so and that the factors considered by the Panel in the Twentieth Detention Decision remain unchanged.¹⁰³

47. The Panel notes that in the Twentieth Detention Decision it held that the risk of Mr Krasniqi committing further crimes continued to exist.¹⁰⁴ The Panel also found that the same considerations and factors that were taken into account in relation to the risk of obstruction of proceedings were relevant to the analysis of the risk of Mr Krasniqi committing further crimes.¹⁰⁵

48. The Panel recalls that there continues to exist a risk that Mr Krasniqi will obstruct the proceedings.¹⁰⁶ The Panel is therefore satisfied that no new circumstances have arisen since the last detention review or as a result of the current stage of proceedings that would justify a different finding in respect of this matter. The Panel further highlights the fact that the trial is ongoing and that any risk of further commission of crimes must be avoided.

49. 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) of the Law.

¹⁰² Request, paras 36, 37.

¹⁰³ Response, paras 30, 31. *See also* SPO Submissions, paras 18-21, *in particular* para. 19.

¹⁰⁴ Twentieth Detention Decision, para. 21.

¹⁰⁵ Twentieth Detention Decision, para. 21.

¹⁰⁶ *See above* at para. 44.

3. Conclusion

50. The Panel concludes that, at this time, including in light of the new stage of proceedings, there continues to be insufficient information before it justifying a finding that Mr Krasniqi may abscond from justice. However, the Panel is not satisfied that the current stage of the proceedings warrants a reversal of the Panel's earlier findings that there is a risk that Mr Krasniqi will obstruct the progress of SC proceedings or 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. The Panel will assess below whether these risks can be adequately addressed by any conditions for Mr Krasniqi's release.

C. PROPOSED CONDITIONS

51. The Krasniqi Defence invites the Panel to consider that the conditions that it imposed during Mr Krasniqi's recent compassionate release¹⁰⁷ were strictly followed.¹⁰⁸ According to the Krasniqi Defence, a package of conditions modelled on those which were effective during the compassionate release could be imposed. In particular, the Panel could order that: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; and (viii) [REDACTED].¹⁰⁹ Moreover, the Krasniqi Defence provides additional proposed measures received from the Kosovo Police, which include: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED].¹¹⁰ Alternatively, the Krasniqi Defence submits that should the

¹⁰⁷ See F02626, Panel, *Decision on Urgent Krasniqi Defence Request for Temporary Release on Compassionate Grounds* ("Compassionate Release Decision"), 8 October 2024, confidential and *ex parte*.

¹⁰⁸ Request, para. 39.

¹⁰⁹ Request, para. 39.

¹¹⁰ Request, paras 38, 40.

Panel not consider the proposed measures sufficient, it could order further conditions, including [REDACTED] ("Proposed Conditions").¹¹¹

52. According to the Krasniqi Defence, no conditions of house arrest can exactly mimic the conditions in the SC Detention Facilities, and in the Krasniqi Defence's view, the test does not require them to, as otherwise provisional release could never be ordered.¹¹²

53. The SPO responds that, regardless of the improved capacities of the Kosovo Police, no combination of these conditions is sufficient to mitigate the risks of the provisional release.¹¹³ The SPO contends in this regard that: (i) [REDACTED];¹¹⁴ (ii) [REDACTED];¹¹⁵ (iii) [REDACTED];¹¹⁶ (iv) [REDACTED];¹¹⁷ (v) [REDACTED];¹¹⁸ (vi) [REDACTED];¹¹⁹ and (vii) the monitoring framework of the SC Detention Facilities remains critical to ensuring that no confidential information is disclosed to unauthorised persons.¹²⁰ The SPO further submits that: (i) the risks pursuant to Article 41(6)(b) of the Law can only be effectively managed at the SC Detention Facilities; (ii) nothing has occurred since the Twentieth Detention Decision warranting a different assessment on conditions, either generally or for a discrete period of time; and (iii) the continuation of trial makes the underlying risks higher than ever.¹²¹

54. The Krasniqi Defence replies that the SPO's assertions are unsupported by evidence, and there is no reason to doubt the submissions of the Kosovo Police.¹²²

¹¹¹ Request, para. 43.

¹¹² Request, para. 42.

¹¹³ Response, para. 32.

¹¹⁴ Response, para. 33.

¹¹⁵ Response, para. 34 and footnote 74. *See also*, Response, para. 36.

¹¹⁶ Response, para. 35.

¹¹⁷ Response, para. 37.

¹¹⁸ Response, para. 38.

¹¹⁹ Response, paras 39, 40.

¹²⁰ Response, para. 41.

¹²¹ SPO Submissions, paras 22-26.

¹²² Reply, para. 11.

55. When deciding whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.¹²³ Article 41(12) of the Law sets out a number of options to be considered in order to ensure an 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) of the Law.¹²⁴ The Panel must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Krasniqi Defence or the SPO.¹²⁵

56. The Panel has repeatedly found that none of the measures foreseen in Article 41(12) of the Law, nor any of the conditions previously proposed by the Krasniqi Defence, nor any additional measure it may order would sufficiently mitigate the risk that Mr Krasniqi may obstruct the proceedings or commit further crimes, if released.¹²⁶ The Panel has also repeatedly maintained that these risks can only be managed through the communication monitoring framework applicable at the SC Detention Facilities, including those conditions ordered by this Panel.¹²⁷ These findings rest on, *inter alia*, findings made by the Pre-Trial Judge, including on some of the Proposed Conditions, which were upheld by the Court of Appeals

¹²³ 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 Judgement"), 26 April 2017, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 87 in fine; ECtHR, *Idalov v. Russia* [GC], para. 140 in fine.

¹²⁴ 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, *Buzadji v. the Republic of Moldova* [GC], para. 87 in fine; ECtHR, *Idalov v. Russia* [GC], para. 140 in fine.

¹²⁵ F00371, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Jakup Krasniqi* ("Krasniqi First Detention Review Decision"), 25 June 2021, confidential, para. 26 (a public redacted version was issued on 30 June 2021, F00371/RED)

¹²⁶ Twentieth Detention Decision, para. 26 with references.

¹²⁷ Twentieth Detention Decision, para. 27 with references.

Panel first, and then continuously maintained by the Panel throughout this trial up until the Twentieth Detention Decision.¹²⁸ The Panel notes, in this regard, that there are no new circumstances warranting reversal of the Panel's earlier findings that the abovementioned risks continue to exist.¹²⁹

57. The Proposed Conditions include measures akin to those imposed on Mr Krasniqi by this Panel during his recent compassionate release, and measures which the Kosovo Police have reported to be willing and able to enforce.

58. The Panel notes that some of the Proposed Conditions have been found to be effective by the Registrar in the context of the Compassionate Release Decision.¹³⁰ The Panel also notes the information provided by the Kosovo Police, particularly in relation to its personnel training and the cases wherein it was tasked to implement house arrests, including in cases involving persons convicted by the SC [REDACTED].¹³¹ However, the Panel remains unpersuaded that the Proposed Conditions can sufficiently address the issue of dealing with [REDACTED], during a longer period of time. In particular, the Panel notes that measures that may sufficiently and adequately address risks over a short period of release might become impractical or un-enforceable over a lengthier period of time.

59. The Panel also recalls that the conditions imposed in the Compassionate Release Decision¹³² were tailored for the specific purpose of addressing the existing identified risks for a short period against the backdrop of the urgent nature of the circumstances underpinning Mr Krasniqi's request for compassionate release.¹³³ The circumstances in which said measures were ordered are discernibly different

¹²⁸ See also, Krasniqi First Interim Release Decision, paras 49-50; First Appeals Decision on Krasniqi's Interim Release; Krasniqi First Detention Review Decision, paras 50-53; Appeals Decision on Krasniqi First Detention Review, paras 51-59. See also Twentieth Detention Decision, paras 26-28.

¹²⁹ See above, paras 44,49, 50.

¹³⁰ As defined in footnote 107.

¹³¹ See Annex 3 to the Request, pp. 2-4.

¹³² See footnote 130.

¹³³ Compassionate Release Decision, paras 19-21.

from those currently before the Panel and the Panel does not consider the context of the Compassionate Release Decision¹³⁴ a merited baseline to assert that said measures, and or measures akin to them, would be effective in the longer term, in particular, considering that compassionate release measures are directly managed by security and detention officers of the SC and they are designed to be enforced in short-term interim releases.

60. Second, the Panel is of the view that the information provided by the Kosovo Police does not adequately address the risk associated with the possible leak of information about protected witnesses, including those who have already testified and those who may come to testify in the upcoming phases of the trial. In particular, [REDACTED].¹³⁵ Even taking at best the proposed measures of: (i) [REDACTED],¹³⁶ and/or (ii) [REDACTED],¹³⁷ the Panel considers that these measures are insufficient to monitor the Accused's exchanges with his close family members.¹³⁸ The Panel notes in this regard that, at the SC Detention Facilities, unmonitored communications are strictly limited considering that detainees are only allowed unmonitored "private visits" for limited time periods and that visitors are searched before entries of the premises.¹³⁹ Additionally, the Panel observes that, where the Registrar (or the Chief Detention Officer) is in possession of information that there is a credible risk of witness-related information being disclosed during a visit, including a private visit with family members, the

¹³⁴ See footnote 130.

¹³⁵ See Annex 3 to the Request.

¹³⁶ See Annex 3 to the Request, p. 7.

¹³⁷ See Annex 3 to the Request, p. 9.

¹³⁸ See similarly, Second Appeals Decision on Krasniqi Detention Decision, paras 51-53, with references to Krasniqi First Detention Review Decision; F00582, Panel, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi* ("Krasniqi Second Detention Review Decision"), 26 November 2021, paras 69-70 (a public redacted version was issued on the same day, F00582/RED). IA016/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention* ("Appeals Decision on Krasniqi Second Detention Review Decision"), 25 March 2022, confidential, para 28 (a public redacted version was issued on the same day, IA016-F00005/RED)

¹³⁹ Krasniqi Second Detention Review Decision, para. 71.

Registrar (or, acting on her behalf, the Chief Detention Officer) has the authority to refuse such a visit and/or to impose those measures that are proportionate and necessary to effectively addressing that risk.¹⁴⁰ The Panel finds merit in the SPO's argument that, [REDACTED].¹⁴¹

61. Similarly, the Panel considers that the assurances provided by the Kosovo Police would not sufficiently mitigate the risks associated with the potential leak of confidential witness-related information during visits with Mr Krasniqi. In particular, the Panel is mindful that [REDACTED].¹⁴² As such, the Panel considers that, were Mr Krasniqi and his visitors to use coded messages, [REDACTED].¹⁴³ The Panel is also of the view that the issue of coded messaging would persist even in [REDACTED]¹⁴⁴ [REDACTED]. As previously found by the Court of Appeals Panel, even considering that a Kosovo Police officer may [REDACTED].¹⁴⁵ Conversely, the Panel considers that the recording mechanisms in place at the SC Detention Facilities and the staff of the Registrar, seen as a whole provide robust assurances against the risk linked with illicit communications. Particularly, the Panel recalls the Court of Appeals' findings that the Chief Detention Officer, an official of the SC appointed by the Registrar, is in a better position to promptly bring to the Registrar's attention any communications that raise concerns, [REDACTED].¹⁴⁶ In addition, the Chief Detention Officer has broad authority to take further measures to restrict the communications of detainees, if deemed necessary.¹⁴⁷ Accordingly, even though the risk of illicit exchanges for the purpose

¹⁴⁰ See similarly, F02115, Panel, *Decision on Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977*, 9 February 2024, confidential, para. 32 (a public redacted version was issued on the same day F02115/RED).

¹⁴¹ Response, para. 35.

¹⁴² See Krasniqi Second Detention Review Decision, para. 74; Appeals Decision on Krasniqi Second Detention Review Decision, para. 31. See similarly, Third Decision on Veseli Interim Release, para. 88; Third Appeals Decision on Veseli Interim Release, para. 43.

¹⁴³ See Appeals Decision on Krasniqi Second Detention Review Decision, para. 32.

¹⁴⁴ [REDACTED].

¹⁴⁵ See Appeals Decision on Krasniqi Second Detention Review Decision, para. 32.

¹⁴⁶ See Appeals Decision on Krasniqi Second Detention Review Decision, para. 32.

¹⁴⁷ See Appeals Decision on Krasniqi Second Detention Review Decision, para. 32.

of obstructing the proceedings and/or committing further crimes cannot be fully eliminated, the Panel remains of the view that the measures in place at the SC Detention Facilities offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.¹⁴⁸

62. For these reasons, the Panel finds that, at this juncture, even after considering the information provided by the Kosovo Police, the Proposed Conditions are altogether insufficient to mitigate the risks of obstruction and commission of further crimes.¹⁴⁹ The Panel is of the view that no additional information it would seek to obtain directly from the Kosovo Police would assist on this matter, as the latter has been approached on multiple separate occasions by the Krasniqi Defence and the Pre-Trial Judge.¹⁵⁰ The Panel continues to find also that no additional condition imposed *proprio motu* by the Panel to those foreseen under Article 41(12) of the Law can sufficiently mitigate such risks at this juncture.¹⁵¹

63. The Panel maintains that it is only through the communication monitoring framework applicable at the SC 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.¹⁵² In the Panel view, based on the available information, and in the absence of any intervening developments regarding this matter, this conclusion continues to hold true up to this point.

64. In these circumstances, the Panel finds that Mr Krasniqi's continued detention is necessary in order to avert the risks in Article 41(6)(b)(ii) and (iii) of the Law.

¹⁴⁸ See, Twentieth Detention Decision, para. 26.

¹⁴⁹ See similarly, Twentieth Detention Decision, paras 26-28.

¹⁵⁰ See similarly, Fourth Detention Decision, para. 70. Appeals Decision on First Veseli Detention Review, para. 97.

¹⁵¹ See similarly, Twentieth Detention Decision, paras 26-28.

¹⁵² See similarly, Twentieth Detention Decision, paras 26-28.

D. REASONABLENESS OF THE DETENTION

65. The Krasniqi Defence submits that Mr Krasniqi has been detained for four years and six months and the significant duration of his pre-trial detention weighs heavily in favour of provisional release.¹⁵³ According to the Krasniqi Defence, the proportionality of continued detention must be assessed in light of his age and [REDACTED]¹⁵⁴ and, given the new stage of the proceeding which will require the Defence to prepare its case and conduct its investigations in Kosovo, Mr Krasniqi's right to adequate facilities to prepare his defence must also be considered.¹⁵⁵

66. The SPO argues that, taking all factors into consideration, Mr Krasniqi's detention remains proportional.¹⁵⁶ 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) of the Law 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 as outlined above; and (vi) the fact that the trial is ongoing.¹⁵⁷

67. 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) of the Law, in order to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.¹⁵⁸

¹⁵³ Response, para. 44. *See also* Reply, para. 15.

¹⁵⁴ Request, para. 46.

¹⁵⁵ Request, paras 3, 47.

¹⁵⁶ SPO Submissions, paras 27, 29.

¹⁵⁷ SPO Submissions, para. 28.

¹⁵⁸ Seventh Detention Decision, para. 43, referring to First Appeals Decision on Krasniqi's Interim Release, para. 69.

68. The Panel recalls the special features in this case, as highlighted in the Twentieth Detention Decision, and recalled by the SPO.¹⁵⁹ It also recalls that the risk that Mr Krasniqi will obstruct the progress of SC proceedings or that he will commit further crimes continue to exist.¹⁶⁰ Against this backdrop, the Panel finds that none of the arguments put forward by the Krasniqi Defence demonstrates that Mr Krasniqi's detention has become unreasonable.

69. The Panel is mindful that age and [REDACTED] are 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.¹⁶¹ Notwithstanding the Krasniqi Defence's submissions in this regard,¹⁶² and the supporting [REDACTED],¹⁶³ the Panel considers that Mr Krasniqi's [REDACTED] and his advancing age are issues that can be appropriately managed in the SC Detention Facilities and do not render his detention unreasonable or constitute compelling humanitarian grounds justifying such release at this stage. By the same token, as to the Krasniqi Defence's argument that Mr Krasniqi's family situation has evolved,¹⁶⁴ the Panel reiterates that Mr Krasniqi's right to family life is inherently limited to a certain extent by his detention and, in all cases, does not render his continued detention unreasonable, especially in light of the special features in this case.

70. Regarding the Krasniqi Defence's argument that the prolonged detention of Mr Krasniqi may well be perceived as an "anticipatory sentence",¹⁶⁵ the Panel recalls that any analysis of detention must take the presumption of innocence as

¹⁵⁹ See above, para. 66.

¹⁶⁰ See above at paras 44, 49, 50.

¹⁶¹ See Fourth Detention Decision, para. 83; ECtHR, *Mouisel v. France*, no. 67263/01, [Judgment](#), 14 November 2002, paras 38-40.

¹⁶² Request, paras 20, 21. See also Request, para. 46.

¹⁶³ See Annexes 1-2 to the Request.

¹⁶⁴ Request, paras 4, 22.

¹⁶⁵ Request, paras 1, 36, 42, 44.

its starting point.¹⁶⁶ Nevertheless, presumption of innocence is not determinative in assessing whether provisional release should be granted, as otherwise no accused would ever be detained.¹⁶⁷

71. The Krasniqi Defence also argues that the new phase of the case entails that the Defence will be actively engaged in preparing its case, and, in order to ensure Mr Krasniqi's meaningful participation in this phase of the trial, it is essential that he be permitted to return to Kosovo under appropriate conditions.¹⁶⁸ In this regard, the Krasniqi Defence indicates that there have been difficulties in securing privileged visits in the SC Detention Facilities, and that it is not possible to exchange and review documents in a video-conference.¹⁶⁹ The Panel has not found merits in Mr Krasniqi's argument that he needs to return to Kosovo to prepare for its potential Defence.¹⁷⁰ As to the issue of securing privileged visits, the Panel reiterates its considerations in paragraph 18 of the present decision. The Panel also considers that Mr Krasniqi has been able to meaningfully participate in these proceedings thus far while detained in the SC Detention Facilities. For these reasons, the Panel finds that the issues raised by the Krasniqi Defence do not render his detention unreasonable at this juncture.

72. 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.

73. 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,¹⁷¹ this will require the Panel as well as all Parties and

¹⁶⁶ See e.g., First Appeals Decision on Krasniqi's Interim Release, para. 23.

¹⁶⁷ ICTY, *The Prosecutor v. Milutinović*, Case No. IT-05-87-AR.65.2, Appeals Chamber, [Decision on Interlocutory Appeal of Denial of Provisional Release during Winter Recess, 14 December 2004](#), para. 12.

¹⁶⁸ Request, para. 47.

¹⁶⁹ Reply, para. 14.

¹⁷⁰ See above, para. 41.

¹⁷¹ See Twentieth Detention Decision, para. 33.

participants 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.¹⁷²

V. CLASSIFICATION

74. The Panel notes that the Reply has been filed confidentially. The Panel therefore orders the Krasniqi Defence to file a public redacted version of its Reply by Tuesday, 20 May 2025.

VI. DISPOSITION

75. For the foregoing reasons, the Panel:

- a) **DENIES** the Krasniqi Defence Request;
- b) **ORDERS** Mr Krasniqi's continued detention;
- c) **ORDERS** the SPO to file submissions on the next review of Mr Krasniqi's detention by no later than Friday, 20 June 2025 (at 16:00 hours), with subsequent written submissions following the timelines set out in Rule 76; and

¹⁷² Rule 56(3).

- d) **ORDERS** the Krasniqi Defence to file a public redacted version of its Reply by Tuesday, 20 May 2025.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath it.

Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 13 May 2025

At The Hague, the Netherlands.

Explanatory Note:

Typographical errors have been corrected in paragraphs 8, 10, 20, 34, 35, 39, 40, 41, 47, 61, and 68, and in footnotes 106, 133, and 140.

In paragraph 56, the word “no” has been added before the words “new circumstances”.

In footnote 81, the words “*See e.g.*” have been deleted and a reference has been added to “*Twentieth Detention Decision, para. 17, referring to, inter alia,*”.

In footnote 160, references to paragraphs 40, 41, 45, 49 have been substituted with references to paragraphs 44, 49, 50.