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KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In:	**KSC-BC-2020-06/IA035**
Before:	**A Panel of the Court of Appeals Chamber** Judge Michèle Picard Judge Kai Ambos Judge Nina Jørgensen
Registrar:	Fidelma Donlon
Date:	13 August 2025
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Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers ("Court of Appeals Panel", "Appeals Panel" or "Panel" and "Specialist Chambers", respectively),[1] acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 169 of the Rules of Procedure and Evidence ("Rules"), is seised of an appeal filed on 23 May 2025 by Mr Jakup Krasniqi ("Appeal" and "Krasniqi" or "Accused" or "Defence", respectively),[2] against the "Corrected Version of Consolidated Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi" ("Impugned Decision").[3] The Specialist Prosecutor's Office ("SPO") responded on 5 June 2025 that the Appeal should be rejected ("Response").[4] Krasniqi replied on 16 June 2025 ("Reply").[5]

I. BACKGROUND

1. On 4 November 2020, Krasniqi was arrested and transferred to the Detention Facilities of the Specialist Chambers ("Detention Facilities") pursuant to an arrest

[1] IA035/F00002, Decision Assigning a Court of Appeals Panel, 27 May 2025 (confidential, reclassified as public on 22 July 2025).
[2] IA035/F00001, Krasniqi Defence Appeal Against the 'Corrected Version of Consolidated Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi (F03176COR)', 23 May 2025 (confidential) ("Appeal").
[3] F03176/COR2/RED, 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, 11 June 2025 (further corrected confidential version filed on 11 June 2025, confidential corrected version filed on 14 May 2025, uncorrected confidential version filed on 13 May 2025) ("Impugned Decision").
[4] IA035/F00003, Prosecution response to 'Krasniqi Defence Appeal against the "Corrected Version of Consolidated Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi (F03176COR)'", 5 June 2025 (confidential) ("Response"), paras 2, 33.
[5] IA035/F00004, Krasniqi Defence Reply to "Prosecution response to 'Krasniqi Defence Appeal Against the "Corrected Version of Consolidated Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi (F03176COR)'", 16 June 2025 (confidential) ("Reply").

warrant issued by the Pre-Trial Judge,[6] further to the confirmation of an indictment against him.[7]

2. On 22 January 2021, the Pre-Trial Judge rejected Krasniqi's request for interim release ("First Detention Decision").[8] On 30 April 2021, the Court of Appeals Panel upheld the First Detention Decision.[9]

3. The Pre-Trial Judge, and then the Trial Panel, have subsequently reviewed and extended Krasniqi's detention on a bi-monthly basis until this stage. Some of these decisions were appealed and upheld by the Court of Appeals Chamber.[10]

4. On 13 March 2025, the Trial Panel issued a decision on the periodic review of the detention of Krasniqi, ordering his continued detention.[11]

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[6] F00027/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, 26 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, reclassified as confidential on 25 November 2020); F00027/A07/COR/RED, Public Redacted Version of Corrected Version of Arrest Warrant for Jakup Krasniqi, 5 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, corrected version filed on 28 October 2020); F00044, Notification of Arrest of Jakup Krasniqi Pursuant to Rule 55(4), 4 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020), para. 4.

[7] F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, confidential redacted version filed on 19 November 2020, confidential lesser redacted version filed on 21 September 2023, confidential further lesser redacted version filed on 5 June 2025).

[8] F00180/RED, Public Redacted Version of the Decision on Jakup Krasniqi's Application for Interim Release, 26 January 2021 (confidential version filed 22 January 2021) ("First Detention Decision").

[9] IA002/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) ("First Appeal Decision on Detention").

[10] IA006/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed 1 October 2021) ("Second Appeal Decision on Detention"); IA016/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022 (confidential version filed on 25 March 2022) ("Third Appeal Decision on Detention"); IA020/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention, 2 August 2022 (confidential version filed on 2 August 2022) ("Fourth Appeal Decision on Detention").

[11] F03005, Decision on Periodic Review of Detention of Jakup Krasniqi, 13 March 2025 ("Twentieth Detention Review Decision").

5. On 15 April 2025, the SPO filed a notice announcing the closure of its case.[12]

6. On 13 May 2025, after having received submissions from the Parties,[13] the Trial Panel issued the Impugned Decision,[14] denying Krasniqi's request for provisional release and ordering Krasniqi's continued detention on the basis that, *inter alia*, there is a grounded suspicion that he has committed crimes within the jurisdiction of the Specialist Chambers, and that the risks that he will obstruct the progress of the Specialist Chambers proceedings or commit further crimes against those perceived as being opposed to the Kosovo Liberation Army, including witnesses who have provide or could provide evidence in the case, continue to exist.[15] The Trial Panel further found that neither the conditional interim release proposed by Krasniqi as an alternative to unconditional release ("Proposed Conditions"), nor any additional reasonable conditions imposed by the Trial Panel, could sufficiently mitigate the risk of obstructing the progress of Specialist Chambers proceedings or the risk of committing further crimes.[16]

7. On 10 June 2025, the Defence indicated that Krasniqi waived his right to bi-monthly detention review until the Appeals Panel issues a decision on his appeal.[17]

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[12] F03121, Prosecution notice pursuant to Rule 129, 15 April 2025.
[13] F03086/RED, Public Redacted Version of 'Krasniqi Defence Request for Provisional Release with Confidential and *Ex Parte* Annexes 1 and 2 and Confidential Annex 3', 23 April 2025 (confidential redacted version filed on 4 April 2025, confidential and *ex parte* version filed on 4 April 2025) ("Provisional Release Request"); F03112/RED, Public redacted version of Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078, and F03086), 22 April 2025 (confidential version filed on 14 April 2025) ("SPO Response to Provisional Release Requests"); F03124, Prosecution submission pertaining to periodic detention review of Jakup Krasniqi, 16 April 2025 ("SPO Detention Submissions"); F03139/RED, Public Redacted Version of 'Krasniqi Defence Reply to Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03112)', 15 May 2025 (confidential version filed on 22 April 2025) ("Reply on Provisional Release Request").
[14] The Trial Panel indicated that it addressed Krasniqi's request for provisional release as well as the SPO's submissions on the Trial Panel's bi-monthly review of detention in one consolidated decision. See Impugned Decision, para. 15.
[15] Impugned Decision, paras 23, 44, 49-50, 75.
[16] Impugned Decision, paras 62-64.
[17] F03248, Krasniqi Defence Notification of Waiver of Detention Review, 10 June 2025 (confidential).

8. On 16 July 2025, the Trial Panel rejected the joint Defence motion for dismissal of the charges pursuant to Rule 130 of the Rules.[18] The same day Krasniqi indicated his intention to present a defence case pursuant to Rule 119(1) of the Rules.[19] The presentation of the case by Victims' Counsel took place from 16 to 17 July 2025.[20] The Defence case is set to start on 15 September 2025.[21]

9. In the Appeal, Krasniqi develops two grounds of appeal consisting of alleged errors of law and fact committed by the Trial Panel.[22] Krasniqi argues that the Trial Panel erred in finding that the risk that he will obstruct the progress of the Specialist Chambers proceedings continues to exist.[23] Krasniqi further argues that the Trial Panel erred in finding that no set of conditions could sufficiently mitigate the risks identified.[24] Krasniqi requests that the Court of Appeals Panel reverse the Impugned Decision and order his release.[25]

[18] See Transcript, 16 July 2025, pp. 26190-26196. See also F03329, Scheduling Order for the Pronouncement of the Decision on the Joint Defence Motion pursuant to Rule 130, 11 July 2025 ("Scheduling Order dated 11 July 2025"), para. 10. The Panel recalls that on 23 April 2025, the Trial Panel held a status conference where it, *inter alia*, ordered the Defence to file submissions pursuant to Rule 130 of the Rules by 2 June 2025, or within 14 days of the Trial Panel's last ruling on the admission of evidence, whichever occurs later. See Transcript, 23 April 2025, p. 26176. The Trial Panel further indicated that it expected the Victims' Counsel case to start in July 2025. See Transcript, 23 April 2025, p. 26175. On 12 June 2025, Krasniqi filed, jointly with the other co-Accused in Case KSC-BC-2020-06, a motion pursuant to Rule 130 of the Rules. See F03256, Joint Defence Motion Pursuant to Rule 130, 12 June 2025 (confidential) ("Rule 130 Motion").
[19] F03336, Krasniqi Defence Notification Pursuant to Rule 119(1), 16 July 2025, para. 1. The Panel notes that Thaçi also indicated that he intends to present a Defence case. See F03337, Thaçi Defence Notice pursuant to Rule 119(1), 16 July 2025.
[20] See Scheduling Order dated 11 July 2025, para. 11. See also Transcript, 16 July 2025, pp. 26207-26315; Transcript, 17 July 2025, pp. 26316-26367.
[21] F03371, Further Order on the Scheduling of the Defence Case and Related Matters, 25 July 2025, para. 42(a).
[22] Appeal, paras 3, 20-46.
[23] Appeal, paras 20-35.
[24] Appeal, paras 36-44.
[25] Appeal, paras 35, 46. See also Reply, paras 2, 14.

II. STANDARD OF REVIEW

10. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.[26]

III. PUBLIC FILINGS

11. The Appeals Panel notes that the Impugned Decision was initially filed confidentially. As a result, all submissions on appeal were also filed confidentially pursuant to Rule 82(4) of the Rules.[27] However, the Panel notes that a public redacted version of the Impugned Decision was subsequently filed. The Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel.[28] The Panel therefore orders the Accused and the SPO to file public redacted versions of the Appeal, the

[26] KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati* Appeal Decision on Matters Related to Arrest and Detention"), paras 4-14. See also KSC-BC-2023-12, IA001/F00005, Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, 28 January 2025 ("*Kilaj* Appeal Decision on Detention"), paras 15-17.
[27] The Panel notes that Krasniqi indicates that he will file a public redacted version "in due course". See Appeal, para. 45. See also Response, para. 32; Reply, para. 13.
[28] See e.g. IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("*Veseli* Second Appeal Decision on Detention"), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

Response and the Reply, or to indicate, through a filing, whether they can be reclassified as public within ten days of receiving notification of the present Decision.

IV. DISCUSSION

A. WHETHER THE TRIAL PANEL ERRED IN FINDING THAT THERE CONTINUED TO BE A RISK OF OBSTRUCTION (GROUND 1)

1. Submissions of the Parties

12. The Defence argues that the Trial Panel misinterpreted the relevant risk assessment standard as it relied on speculation rather than on any specific conduct attributable to Krasniqi to support its findings that the risk of obstruction of the Specialist Chambers proceedings continues to exist.[29]

13. Krasniqi submits that the risk that he would obstruct the progress of proceedings must be assessed in the context of his age, personal circumstances and the fact that since the beginning of his detention, there is no evidence that he ever attempted to obstruct the proceedings of the Specialist Chambers.[30] Krasniqi argues that despite these factors and despite acknowledging that renewed consideration was warranted by the closure of the SPO case, the Trial Panel erred in finding that the risk of obstruction continued to exist.[31] Krasniqi further argues that the Impugned Decision erred in continuing to rely on findings first made four years ago about a single Facebook post attributed to Krasniqi and his alleged predisposition to intimidation based on his possession of a single confidential document.[32] In Krasniqi's view, this position should be reassessed in light of his exemplary conduct throughout his detention and during compassionate release, and cannot be maintained after more

[29] Appeal, paras 20-25, 27-28, 34. See also Appeal, para. 2; Reply, paras 2-4, 12, 14. Krasniqi further underlines that the risk of obstruction was the only factor relied upon by the Trial Panel to find a risk of commission of further crimes. Appeal, para. 35.
[30] Appeal, paras 20, 22, 24, 29, 33-34; Reply, para. 5. See also Appeal, paras 2, 17, 34, where the Defence underlines that Krasniqi is a "74-year-old man in [REDACTED]".
[31] Appeal, para. 21. See also Appeal, para. 1; Reply, paras 10-11.
[32] Appeal, para. 33.

than 100 SPO witnesses testified without any evidence of attempted interference by him.[33]

14. Krasniqi alleges that, at the time the Impugned Decision was issued, the Trial Panel had no information as to whether Victims' Counsel intended to call any witness or as to whether any of these witnesses would be vulnerable to interference.[34] In addition, Krasniqi argues that the Trial Panel gave no reason for rejecting the submission that any risk of interference with the Victims' case is inherently lower than with the SPO case, because victims may only lead evidence about harm and not about the criminal responsibility of the Accused.[35]

15. Krasniqi further argues that the Trial Panel erred in finding that the risk of interference which detention seeks to prevent also includes risks of retaliation against witnesses who have testified, risks of incentivising witnesses to recant or attempts to interfere with witnesses in parallel proceedings.[36] In that regard, Krasniqi stresses that he is not involved in any parallel proceedings and that therefore, he has no reason to interfere with any witness in those proceedings.[37] According to Krasniqi, the Impugned Decision erred in failing to give due weight to Krasniqi's individual circumstances and in relying on "broad generic assertions".[38]

16. Krasniqi further impugns the Trial Panel's reliance on the general climate of witness and victim intimidation prevailing in Kosovo.[39] He underlines that this factor

[33] Appeal, para. 33; Reply, paras 10-11.
[34] Appeal, para. 25.
[35] Appeal, para. 25; Reply, paras 7-8.
[36] Appeal, para. 26. See also Appeal, paras 27-29; Reply, para. 9.
[37] Appeal, paras 27, 29.
[38] Appeal, para. 29. Krasniqi also argues that the Trial Panel erred in relying on factors relevant to his co-Accused. In Krasniqi's view, the Trial Panel's findings on potential interference with Victims' witnesses and witnesses in parallel proceedings are "materially identical" to equivalent findings regarding Veseli and Selimi. See Appeal, para. 29. Krasniqi further raises that paragraph 23 of the Impugned Decision, prior to its correction, actually referred to Veseli and not to Krasniqi. This, according to Krasniqi, strongly suggests that the decisions "were prepared together". See Appeal, para. 29.
[39] Appeal, paras 29-30. See also Appeal, para. 22.

is general and cannot be determinative of any risk posed by him as an individual.[40] In addition, Krasniqi argues that the Trial Panel erred in finding some merit in the SPO's submissions that his provisional release in Kosovo may have a "chilling effect" on the willingness of victims and/or potential witnesses to participate in proceedings.[41] Krasniqi further argues that the Trial Panel erred in finding that a risk of interference was "even more pertinent" in light of the Defence submissions about the beneficial effect of Krasniqi's presence in Kosovo, if released, on the preparation of the Defence case.[42]

17. The SPO responds that the Trial Panel's findings were reasonable, evidence-based, and that the Trial Panel correctly applied the prevailing jurisprudence in relation to Article 41(6)(b) of the Law. The SPO argues that Krasniqi misrepresents the Trial Panel's findings and fails to show any error or abuse of discretion.[43]

18. The SPO further responds that the Trial Panel's findings were multi-factored and holistic.[44] The SPO adds that the Court of Appeals Panel already confirmed that: (i) there are indications that Krasniqi is, at least, "predisposed to witness intimidation"; and (ii) in assessing whether there is a risk that Krasniqi will obstruct the proceedings if released, it was not unreasonable to take into account, among other factors, Krasniqi's public statements criticising the Specialist Chambers or the Facebook post of 24 April 2020.[45] The SPO contends that Krasniqi's submission that

[40] Appeal, para. 30. See also Appeal, para. 29.
[41] Appeal, para. 31.
[42] Appeal, para. 32. See also Reply, para. 6. Krasniqi emphasises that the Defence, being composed of "professional Counsel bound by ethical obligations", is entitled to investigate the case and that these investigations do not imply a risk of interference. See Appeal, para. 32.
[43] Response, paras 2, 11-12, 22, 25. See also Response, para. 31.
[44] Response, paras 2, 8, 14.
[45] Response, para. 9. In response to Krasniqi's argument that the finding of the Court of Appeals Panel in relation to this Facebook post was made four years ago, the SPO submits that the existence of "articulable grounds" is neither time-limited, nor circumscribed by an expiration date. See Response, para. 24.

there is no evidence of predisposition towards witness interference is a plain disagreement with the finding of the Court of Appeals Panel that held otherwise.[46]

19. The SPO argues that, contrary to Krasniqi's assertion, the Trial Panel expressly took into account his personal circumstances including his [REDACTED] situation and gave it appropriate weight.[47] In addition, in response to Krasniqi's contention that he never engaged in witness interference, the SPO argues that this as such "does not create a track record warranting interim release", nor does it "abate the attendant risks that come with release back into the very community where witnesses reside".[48] The SPO further submits that Krasniqi takes "out of context" the Trial Panel's reasoning regarding alleged risks of retaliation, attempts to incentivise witnesses to recant or to interfere with witnesses in parallel proceedings.[49]

20. Regarding whether the risk of interference extends to the Victims' case, the SPO submits that the Trial Panel's findings were entirely reasonable.[50] In the SPO's view, Krasniqi "wrongly downplays" the importance of the Victims phase of the proceedings.[51] The SPO adds that even accepting that Krasniqi has less incentive to interfere with Victims' witnesses, this in itself would not affect the finding that there are articulable grounds to believe that he will obstruct the progress of the proceedings if released.[52]

21. The SPO further responds that the Trial Panel referred to the climate of intimidation of witnesses in Kosovo as a background contextual factor that may apply to each of the co-Accused in these proceedings.[53] The SPO also argues that the

[46] Response, para. 24.
[47] Response, para. 23.
[48] Response, para. 25.
[49] Response, para. 20. See also Response, paras 21-22.
[50] Response, para. 18.
[51] Response, para. 19.
[52] Response, para. 19.
[53] Response, para. 15. The SPO also submits that it is incorrect for Krasniqi to assert that the climate of witness interference is "determinative" of his continued detention. See Response, para. 15.

potential "chilling effect" on victims and witnesses was only a further contextual factor that was considered.[54] Finally, the SPO submits that the Trial Panel's finding that Krasniqi's proposed presence in Kosovo to assist Defence investigations would have exacerbated the concerns related to the risk of witness interference was entirely reasonable.[55]

22. Krasniqi replies that, after the filing of the Appeal, Victims' Counsel confirmed that the Victims' case will include: (i) no oral testimony from the victims; (ii) Rule 153 statements which were long disclosed to the Defence; and (iii) expert evidence from witnesses based outside Kosovo.[56] Krasniqi adds that "the reality now confirms that the [Trial] Panel's findings about the risk of interference with Victims' witnesses were purely speculative".[57]

2. Assessment of the Court of Appeals Panel

23. At the outset, the Appeals Panel notes that the Trial Panel correctly identified the applicable standard to determine whether any of the grounds under Article 41(6)(b) of the Law warrant continued detention, namely, "less than certainty, but more than a mere possibility of a risk materialising".[58] The Panel further recalls that Article 41(6)(b) of the Law does not require the lower panel to be satisfied that the risks specified in subparagraphs (i) to (iii) will in fact occur in the event of provisional release being granted, or to be satisfied that they are substantially likely to occur.[59]

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[54] Response, para. 16.
[55] Response, para. 17. The SPO adds that an accused has a right to prepare a defence, but does not have a right to attend on-site investigations where there are articulable grounds to believe there is a risk of obstruction, thereby justifying continued detention. See Response, para. 17.
[56] Reply, para. 8.
[57] Reply, para. 8. With respect to the SPO's "attempt[] to dismiss" the Defence's argument that Krasniqi's presence in Kosovo would have assisted investigations, the Defence replies that the SPO's assertion is "not only factually false, but also illustrates the SPO's reliance on provocative hypotheticals", as nothing in the Defence submissions suggested that Krasniqi would have attended on-site investigations. See Reply, para. 6.
[58] Impugned Decision, para. 24. See also First Appeal Decision on Detention, para. 26.
[59] See e.g. First Appeal Decision on Detention, para. 28.

24. The Panel notes that the Trial Panel found that, at the stage of proceedings when the Impugned Decision was issued – at the close of the SPO case and before the litigation pursuant to Rule 130 of the Rules – the risk that Krasniqi would obstruct the progress of proceedings continued to exist.[60] In assessing the risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law, the Trial Panel considered, *inter alia*: (i) the Trial Panel's previous finding regarding Krasniqi's position of influence as well as his willingness and ability to obtain confidential information and the fact that he is predisposed to witness intimidation; (ii) Krasniqi's public statements criticising the Specialist Chambers and the content of a 2020 Facebook post targeting collaborators; (iii) the climate of witness and victim intimidation prevailing in Kosovo; (iv) the risk of interference relating to witnesses still to be heard in the case, namely, witnesses for Victims' Counsel and possibly witnesses for the Defence; and (v) the fact that the risk of interference includes attempts to retaliate against witnesses who already testified, attempts to incentivise witnesses to recant their testimony and attempts to interfere with witnesses in parallel proceedings.[61]

25. Turning to the arguments raised in the Appeal, the Panel first notes that although Krasniqi alleges that his age is a factor to consider in the context of the risk assessment,[62] he does not argue that the Trial Panel disregarded it. In any event, the Panel notes that the Trial Panel expressly considered Krasniqi's [REDACTED] and his advancing age in the Impugned Decision.[63]

26. While Krasniqi contends that he never attempted to obstruct the proceedings of the Specialist Chambers and that the Trial Panel failed to refer to any specific conduct attributable to him,[64] the Panel recalls that under Article 41(6)(b) of the Law,

[60] Impugned Decision, paras 43-44.
[61] Impugned Decision, paras 39-42.
[62] See Appeal, paras 20, 29.
[63] See Impugned Decision, para. 69.
[64] See Appeal, paras 20-25, 28, 34.

the question revolves around the possibility, not the inevitability, of a future occurrence,[65] and no proof that obstruction has actually occurred in the past is required.[66] The Panel therefore agrees with the Trial Panel's finding that the standard for assessing the risks under Article 41(6)(b) of the Law does not require a "concrete example" of a situation in which Krasniqi has personally intimidated or harassed a witness.[67] Krasniqi's argument that a concrete example is needed is rejected.

27. With respect to Krasniqi's argument that the Trial Panel's reliance on a single Facebook post from four years ago to find that he is predisposed to witness intimidation is unreasonable,[68] the Panel notes that Krasniqi specifically argues that the finding related to this Facebook post from 2020 must be reassessed in light of his exemplary conduct throughout his detention and during his compassionate release.[69] First, the Panel stresses that while it can be of some relevance, the absence of any misconduct attributable to the Accused does not mean that restrictions are necessarily no longer warranted. Refraining from prohibited conduct should be the norm.[70] In the Appeals Panel's view, the mere fact that there has been no incidents of concern regarding Krasniqi in the tightly controlled environment of the Detention Facilities or during his compassionate release is not sufficient to lead to the conclusion that his detention is no longer necessary.

[65] See e.g. First Appeal Decision on Detention, para. 26; *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 67.
[66] See IA001/F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2021, para. 38.
[67] Impugned Decision, para. 42.
[68] See Appeal, para. 33.
[69] See Appeal, para. 33; Reply, paras 10-11. The Panel recalls that before the Trial Panel, Krasniqi argued that the Trial Panel should re-evaluate the Court of Appeals Panel's finding from 2021 that he is predisposed to witness intimidation in light of his conduct to date, which instead demonstrates that he has not engaged in any behaviour resembling witness interference. See Impugned Decision, para. 37; Reply on Provisional Release Request, paras 8-9.
[70] See e.g. KSC-CA-2024-03, F00069/RED, Public Redacted Version of Appeal Judgment, 14 July 2025 (confidential version filed on 14 July 2025), para. 916.

28. Second, the Panel considers that when conducting the risk assessment pursuant to Article 41(6)(b) of the Law, nothing prevents a trial panel from relying on a factor that it previously relied upon, regardless of when the evidence underpinning this factor was first presented, as long as it is persuaded that the evidence, at the time of the decision, remains sufficient to justify the finding in question.[71] What matters is that the factors previously considered by the trial panel continue to be sufficient to demonstrate that such risk "still exist[s]", provided that there has been no new factor arising which would warrant reconsideration of these prior factors.[72]

29. While the Appeals Panel is mindful that the finding that Krasniqi was predisposed to witness intimidation was first made in the context of the First Appeal Decision on Detention that was issued in April 2021,[73] a review of the Trial Panel's findings clearly shows that the Trial Panel conducted its review in light of the stage of the proceedings when the Impugned Decision was issued, namely just after the close of the SPO case and the when the Rule 130 litigation was still pending.[74] The Trial Panel expressly stated that, in conducting its review, it would "assess whether the *new stage of the proceedings* impacts [its] previous findings on the matter".[75] The Trial Panel further recalled these considerations in reaching the conclusion that the risk that Krasniqi will obstruct the progress of the Specialist Chambers proceedings continues to exist.[76] In these circumstances, the Panel is satisfied that the Trial Panel did not err

[71] See e.g. ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-278-Red, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo", 26 October 2012, para. 69.
[72] See e.g. Second Appeal Decision on Detention, paras 14-16.
[73] First Appeal Decision on Detention, paras 30, 62.
[74] Impugned Decision, para. 43. The Panel recalls that, on 16 July 2025, after the Impugned Decision was issued, the Trial Panel issued an oral ruling in which it dismissed the Rule 130 Motion filed jointly by Krasniqi and his co-Accused in this case. See above, para. 8.
[75] Impugned Decision, para. 26 (emphasis added). See also Impugned Decision, paras 40, 43.
[76] See Impugned Decision, para. 44.

in continuing to rely on Krasniqi's Facebook post from 2020 in its assessment of the risks under Article 41(6)(b)(ii) of the Law.[77]

30. Regarding the Trial Panel's reference to the general climate of witness interference that persists in Kosovo,[78] the Panel recalls that while it is a relevant contextual factor to be taken into account in the determination of whether risks under Article 41(6)(b)(ii) of the Law exist, this factor alone is insufficient to justify continued detention. However, the Panel notes that this factor was only considered as a background contextual factor by the Trial Panel.[79] Although the Panel agrees with Krasniqi that this consideration does not implicate him personally, the Panel nonetheless considers that it was reasonable for the Trial Panel to be mindful of the climate of witness interference prevailing in Kosovo in conducting its assessment of the risk that Krasniqi would obstruct the proceedings of the Specialist Chambers.

31. As to Krasniqi's argument that the Trial Panel erred in finding that the risk of interference extends to witnesses in parallel proceedings,[80] the Panel acknowledges that Krasniqi is not involved in such proceedings.[81] That being said, the Panel considers that there is no requirement that an accused be expressly involved in proceedings concerning contempt allegations in order to be able to reach conclusions as to the existence of a risk of obstruction. In that regard, the Panel recalls that the standard for assessing the risks under Article 41(6)(b) of the Law does not require a demonstration that Krasniqi *has* intimidated or interfered with witnesses or that he *will* do so.[82] In addition, the Panel disagrees with Krasniqi's allegation that this reference of parallel contempt proceedings appears to have simply been copied from

[77] See Impugned Decision, paras 39, 42.
[78] See Appeal, para. 30.
[79] See Impugned Decision, para. 42. The Panel notes that similar findings were made in KSC-BC-2020-05, F00494/RED3/COR, Further redacted version of Corrected version of Public redacted version of Trial Judgment, 8 June 2023 (confidential version filed on 16 December 2022), para. 57; KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 438.
[80] See Appeal, paras 26-27.
[81] Appeal, para. 27.
[82] See above, paras 26, 31.

detention decisions regarding other co-Accused.[83] Rather, a review of the Impugned Decision shows that the Trial Panel was expressly addressing Krasniqi Defence's reliance on the initiation of proceedings in Case KSC-BC-2023-12 as a deterring factor.[84] In light of the Trial Panel's finding that there are indications that Krasniqi is predisposed to witness intimidation,[85] the Appeals Panel considers that it was within the Trial Panel's discretion to rely on the fact that parallel proceedings regarding allegations of interference in the present case were ongoing as one factor among others to reach its conclusion on the existence of a risk of obstruction.[86] Therefore, the Panel dismisses Krasniqi's argument in this regard.

32. With regard to the SPO witnesses, Krasniqi specifically argues that the risk of interference no longer exists because the SPO has closed its case.[87] The Panel notes that Krasniqi merely repeats similar arguments to those made before the Trial Panel,[88] and appears to ignore the Trial Panel's observation that it never advanced a finding that the end of the SPO case would exclude the risk of obstruction.[89]

33. In support of his contention that the Trial Panel's finding that the risk of interference included retaliation against or seeking recantation from SPO witnesses was erroneous,[90] Krasniqi only argues that the SPO's evidence is already on the record

[83] Appeal, para. 29.
[84] Impugned Decision, para. 42. See also Impugned Decision, para. 35. Krasniqi further raises that paragraph 23 of the Impugned Decision, prior to its correction, actually referred to Veseli and not to Krasniqi. See Appeal, para. 29. The Panel finds that, as explained in the present Decision, in making this observation, the Trial Panel was expressly addressing Krasniqi Defence's reliance on the initiation of the proceedings in Case KSC-BC-2023-12 as a deterring factor. See Impugned Decision, para. 42. See also Impugned Decision, para. 35. Accordingly, the Panel finds that the initial reference to "Veseli" in the context of the Trial Panel's assessment under Article 41(6)(a) of the Law was a clerical error. See F03176, Consolidated Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi, 13 May 2025 (confidential), para. 23. The Panel notes that the Trial Panel initially stated: "there continues to be a grounded suspicion that *Mr Veseli* has committed crimes within the subject-matter jurisdiction of the Specialist Chambers […]" (emphasis added).
[85] See Impugned Decision, para. 39.
[86] See Impugned Decision, para. 32.
[87] Appeal, paras 1, 21.
[88] See Provisional Release Request, paras 1-5, 33, 35, 47-48.
[89] See Impugned Decision, para. 40.
[90] See Appeal, para. 21.

and any recantation of testimony or attempt to manipulate that evidence "would be not only futile, but easily exposed under judicial scrutiny".[91] The Trial Panel underlined that the risk of interference which detention seeks to prevent includes, *inter alia*, any attempt to retaliate against witnesses who have testified in these proceedings or attempts to incentivise witnesses to recant their testimony.[92] The Panel understands that with respect to this finding, the Trial Panel refers to SPO witnesses.[93] The Panel notes that the reasoning in the Impugned Decision in this respect is relatively brief and that the Trial Panel does not set out in much detail how it reached its finding.[94] However, the Panel can still discern how the Trial Panel reached its factual conclusion, notably in light of its reference to the SPO's submissions that obstruction may occur at any stage of the proceedings, and, in particular, that witnesses can remain at risk of interference even after the end of their testimony and that obstruction is not temporally confined to the SPO case.[95]

34. Recalling the discretion of the lower panel to evaluate the circumstances militating for or against detention,[96] and in light of the Trial Panel's express consideration of the stage of the proceedings at the time it issued the Impugned Decision, the Panel finds that it was still within the discretion of the Trial Panel to consider that the risk that Krasniqi obstructs the proceedings of the Specialist Chambers under Article 41(6)(b)(ii) continues to exist despite the conclusion of the

[91] Appeal, para. 27.
[92] Impugned Decision, para. 41.
[93] See Impugned Decision, para. 41. See also SPO Response to Provisional Release Requests, paras 4, 23, 25-26.
[94] Impugned Decision, para. 41.
[95] See Impugned Decision, para. 36, referring to SPO Response to Provisional Release Requests, paras 22-24. The Panel notes that the SPO provided lengthy and detailed submissions demonstrating that witnesses can remain at risk of obstruction even after the end of their testimony and that the close of the SPO case does not obviate the risk. See SPO Response to Provisional Release Requests, paras 22-24.See also SPO Detention Submissions, paras 12 (fn. 28), 15.
[96] See e.g. KSC-BC-2018-01, IA007/F00007/RED, Public Redacted Version of Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention, 15 May 2024 (confidential version filed on 13 May 2024), para. 15. See also *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 49.

SPO case.[97] In that regard, the Appeals Panel is mindful of the fact that if the risk of obstruction will likely diminish with the passing of time,[98] such risk may not always be reduced significantly, depending on the circumstances of the case.[99]

35. The Panel will now turn to address Krasniqi's arguments regarding the risk of obstruction in relation to the Victims' case.[100] At the outset, the Panel finds that as a matter of principle, the determination of the existence of a risk of obstruction pursuant to Article 41(6)(b)(ii) of the Law does not distinguish among witnesses and whether they belong to a specific category.[101] Krasniqi is correct that the Trial Panel stated that "the rationale it applied in relation to SPO witnesses *applies equally* to witnesses to be called by Victims' Counsel".[102] However, the Panel considers that the Trial Panel's statement that the "rationale" for SPO witnesses applied equally to Victims' witnesses should be viewed as meaning, in essence, that a risk of obstruction may still exist with

[97] Impugned Decision, paras 43-44.
[98] KSC-BC-2020-07, IA007/F00004 & IA008/F00004, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, 6 April 2022 ("*Haradinaj* Consolidated Appeal Decision on Detention"), para. 42. See also ECtHR, *Letellier v. France*, no. 12369/86, Judgment, 26 June 1991, para. 39; ECtHR, *W. v. Switzerland*, no. 14379/88, Judgment, 26 January 1993, para. 35; ECtHR, *Clooth v. Belgium*, no. 12718/87, Judgment, 12 December 1991, para. 43.
[99] *Haradinaj* Consolidated Appeal Decision on Detention, para. 42. See also ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-1156-Red, Public Redacted Version of Decision on Mr Gbagbo's Request for Interim Release, 20 April 2018, para. 38, wherein the Trial Chamber found that the conclusion of the Prosecutor's case was not a change of circumstances warranting the release of the accused and further found that the accused had not demonstrated that the risks under Article 58(1)(b) of the Rome Statute no longer existed.
[100] See Appeal, para. 25; Reply, paras 7-8.
[101] Cf. IA024/F00019, Decision on Defence Appeals against "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", 27 December 2022, para. 77; F00854, 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, paras 133-134, 141 (regarding the fact that the 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 was designed to be implemented without distinction among witnesses from each Party and the fact that witnesses do not belong to a Party). Cf. also ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1049, Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial, 30 November 2007, para. 34 (where the ICC Trial Chamber found that witnesses are not attributable to parties, but rather are "witnesses of the Court"); Ambos, K., *Treatise on International Criminal Law: Volume III: International Criminal Procedure* (Second Edition), Oxford University Press 2025, p. 371 (on the concept of "witnesses of truth" rather than witnesses for a particular party at the ICTY).
[102] See Impugned Decision, para. 40 (emphasis added). See also Reply, para. 7; Appeal, para. 21.

respect to *any* witnesses who may still testify in proceedings, including Victims' witnesses, and does not amount to a factual determination as such. In addition, this holding by the Trial Panel has to be assessed in the context of what was known to the Trial Panel and in light of the stage of the proceedings at the time it issued the Impugned Decision. For these reasons, the Panel rejects Krasniqi's contention in this respect.

36. Krasniqi argues that any risk of interference with respect to Victims' witnesses is "inherently lower" because victims may only lead evidence about harm and not about the criminal responsibility of the Accused.[103] The Panel notes that the Trial Panel did not engage in an assessment of the particularities of the evidence to be provided by Victims' witnesses. The Panel is mindful that Victims' Counsel may submit evidence pursuant to Rule 114(5) of the Rules when the evidence already produced "does not adequately address the impact the alleged crimes have on the personal interests of victims participating in the proceedings." The Panel further recalls that by virtue of the Trial Panel's Order on the Conduct of Proceedings, Victims' Counsel is limited, in principle, to calling evidence in respect of the following issues: (i) the harm or injury done to the victim(s) and the circumstances in which this occurred; (ii) the consequences of those acts on the victim(s), their relatives, or the community to which they belong; and (iii) the appropriate relief to remedy the harm suffered by the victim(s). Where Victims' Counsel seeks to address other issues, he must seek leave from the Trial Panel.[104]

37. While the evidence to be put forward by Victims' Counsel needs to meet these requirements, the Panel considers that this in itself does not preclude Victims from adducing potentially incriminating evidence against the Accused. In addition, an

[103] Appeal, para. 25; Reply, paras 7-8.
[104] See F01226/A01, Annex 1 to Order on the Conduct of Proceedings ("Order on the Conduct of Proceedings"), 25 January 2023, paras 34-36. See also F03322/RED, Public redacted version of Decision on Victims' Counsel's Request for Admission of Evidence pursuant to Rule 153, 9 July 2025 (confidential version filed on 9 July 2025), para. 9.

accused may be found liable for reparations and ordered to pay a reparations award, the modalities of which are determined notably on the basis of evidence presented by victims as to the harm suffered as a result of the crimes of which the accused was ultimately convicted.[105] Therefore, the Panel rejects Krasniqi's argument that any risk of interference with the Victims' case is inherently lower than with the SPO case.

38. Krasniqi further contends that the Victims' case will include no oral testimony from the Victims but only expert evidence from witnesses based outside Kosovo.[106] The Panel notes that the only two *viva voce* witnesses called by Victims' Counsel are expert witnesses who testified mainly in public session and without protective measures.[107] While the Panel agrees with Krasniqi that any finding of risk with respect to these two individuals would clearly seem speculative or unsupported, the Panel is of the view that the Trial Panel did not limit its finding solely to witnesses testifying live at trial. The reference to "witnesses to be *called*" by Victims' Counsel[108] is to be understood as any witnesses listed by Victims' Counsel to provide evidence, be it live or in written form.[109]

[105] See e.g. KSC-BC-2020-04, F00866/RED, Public redacted version of Reparation Order against Pjetër Shala, 23 December 2024 (confidential version filed on 29 November 2024), paras 42, 81-82, 98-99, 146, 176-177, 203-207, 239; KSC-BC-2020-05, F00517/RED/COR, Corrected version of Public redacted version of Reparation Order against Salih Mustafa, 14 April 2023 (confidential version filed on 6 April 2023, uncorrected public redacted version filed on 6 April 2023), paras 209-210, 248-249, 283.
[106] See Reply, para. 8.
[107] F03209, Victims' Counsel's Submission of witness and exhibit lists and related requests, 28 May 2025 ("Victims' Counsel Submissions"), paras 1, 9, 20. See also Transcript, 16 July 2025, pp. 26207-26249, 26250-26259 (private session), 26260-26269, 26270-26278 (private session), 26279-26302, 26303-26315 (private session); Transcript, 17 July 2025, pp. 26321-26344, 26345-26348 (private session), 26349-26359, 26360-26361 (private session), 26362-26367.
[108] See Impugned Decision, para. 40 (emphasis added).
[109] See e.g. Rule 95(4)(b)(vi) and Rule 119(2)(vi) of the Rules, which both mention that witnesses providing evidence "through other means [than testifying in person]" have to be listed as among the witnesses the SPO and the Defence, respectively, "intend[] to call". The Panel also notes that Victims' Counsel listed witnesses to provide written evidence pursuant to Rule 153 of the Rules among the "list of proposed witnesses to be called". See Victims' Counsel Submissions, paras 2, 16. See also F03209/A01, Annex 1 to Victims' Counsel's Submission of witness and exhibit lists and related requests, 28 May 2025 (confidential) ("Victims' Counsel Witness List").

39. Furthermore, the Panel considers that the risk assessment under Article 41(6)(b) of the Law is not limited to *viva voce* witnesses and that witnesses who provide written evidence pursuant to Rules 153 and 155 of the Rules, and/or their families, may also be subject to interference by an accused. In the present case, the Panel notes that, ultimately, Victims' Counsel also sought to admit the evidence of six victims participating in the proceedings pursuant to Rule 153 of the Rules.[110] These witnesses were granted protective measures.[111]

40. The Panel agrees with Krasniqi that at the time the Impugned Decision was issued, the Trial Panel had no information as to whether Victims' Counsel intended to call any witness or as to whether any of these witnesses would be vulnerable to interference.[112] However, the Panel considers that the determination of the existence of risks under Article 41(6)(b) of the Law does not require an individual assessment of the specific risks and/or vulnerabilities of each particular witness. In that regard, the Panel recalls that at the time the Pre-Trial Judge in the present case issued his first decisions – upheld by the Court of Appeals Chamber – ordering the continued detention of Krasniqi, notably on the ground that there existed a risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law, neither the Pre-Trial Judge nor the Defence had been provided with the identities or potential vulnerabilities of SPO witnesses.[113]

41. That being said, the Panel finds some merit in Krasniqi's assertion that any findings of alleged risks of interference need to be substantiated and to rely on specific circumstances.[114] Indeed, the Panel recalls that the question posed by Article 41(6)(b)

[110] Victims' Counsel Submissions, paras 6, 16; Victims' Counsel Witness List, pp. 2-4.
[111] See Victims' Counsel Witness List, pp. 2-4. See e.g. Second Appeal Decision on Detention, paras 33, 35.
[112] See Appeal, para. 25.
[113] See First Detention Decision (issued on 22 January 2021). See also First Appeal Decision on Detention (issued on 30 April 2021); Second Appeal Decision on Detention (issued on 1 October 2021). The Panel notes that the SPO disclosed its preliminary list of witnesses in October 2021. See F00542, Prosecution submission of preliminary witness list, 22 October 2021.
[114] See Appeal, paras 23, 28-29.

of the Law is whether the SPO presented *specific reasoning based on evidence* supporting the belief of a sufficiently real possibility that (one or more of) the risks under Article 41(6)(b)(i)-(iii) of the Law exist.[115] The assessment as to whether the evidence presented by the SPO is sufficient is a question of fact depending on the individual circumstances of each case.[116]

42. In the present circumstances, the Panel notes that in support of its conclusion that there is a risk of interference in relation to Victims' witnesses, the Trial Panel mostly relied on the fact that Krasniqi will be exposed in a short amount of time to "sensitive information regarding the names and personal details of [Victims'] witnesses" and "information on the harm […] victims are alleged to have sustained".[117] The Trial Panel further held that due to the general climate of witness and victim intimidation prevailing in Kosovo, victims and witnesses participating in the proceedings are especially vulnerable.[118] In support of its latter finding, the Panel observes that the Trial Panel referred to a Trial Panel's decision granting the status of participating victim in the present case to an applicant, where it found that the applicant, "by virtue of his status as a victim participating in the proceedings", became "especially vulnerable".[119]

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[115] See First Appeal Decision on Detention, para. 28 (emphasis added); IA007/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("*Selimi* Second Appeal Decision on Detention"), para. 21 (emphasis in original); *Kilaj* Appeal Decision on Detention, para. 39. See also KSC-CC-PR-2017-01, F00004, 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, 26 April 2017 ("Constitutional Court Judgment on Referral of Rules of 26 April 2017"), para. 115 (where the Constitutional Court Chamber emphasised the importance of specific reasoning and concrete grounds which are required to be relied upon by any Panel in its decisions authorising detention on remand for a prolonged period of time).

[116] *Selimi* Second Appeal Decision on Detention, para. 21; First Appeal Decision on Detention, para. 28.

[117] Impugned Decision, para. 40.

[118] Impugned Decision, para. 41.

[119] See Impugned Decision, para. 41, fn. 90, referring to F02786/RED, Public Redacted Version of Decision on Seventeenth Registry Report on Victims' Applications for Participation in the Proceedings, 16 December 2024 (confidential version filed on 16 December 2024), para. 26.

43. The Appeals Panel recalls that an accused's access to and increased knowledge of confidential witness-related information, for instance through the disclosure of the identities of witnesses, may be a relevant factor to determine the existence of a risk of obstruction.[120] Nevertheless, the Panel also recalls that while disclosure of evidence may be a relevant factor, it is but one factor that may be taken into account when determining whether continued detention appears necessary, and it is not sufficient in itself to justify the denial of provisional release.[121] The Panel further notes that (i) the Trial Panel does not provide any additional reasoning beyond the mere fact that Krasniqi will soon have access to that information; and (ii) Krasniqi indicates that the Rule 153 statements of Victims' witnesses were "long disclosed" to the Defence.[122]

44. As to the existence of a general climate of witness and victim intimidation in Kosovo, as recalled above, this factor alone is insufficient to justify continued detention.[123] Consequently, the Panel finds that, in the absence of any further information supported by evidence, these two factors taken in combination, without more, are insufficient for the Trial Panel to reasonably conclude that there is a sufficiently real possibility that Krasniqi, if released, will interfere with Victims' witnesses. Accordingly, this finding must be set aside. As a result, the remainder of Krasniqi's arguments relating to Victims' witnesses are moot and will not be addressed.[124]

[120] See *Kilaj* Appeal Decision on Detention, para. 44.
[121] See e.g. IA010/F00008/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021 (confidential version filed on 27 October 2021), para. 38; *Veseli* Second Appeal Decision on Detention, para. 31.
[122] See Reply, para. 8. See also Appeal, para. 25.
[123] See above, para. 30.
[124] The Panel is referring here to Krasniqi's challenges to the Trial Panel's observation finding "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 proceedings" and to the Trial Panel's consideration that Krasniqi's provisional release in Kosovo "would increase the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence". See Appeal, paras 25, 31-32. See also Impugned Decision, para. 41.

45. While Krasniqi does not develop specific arguments in respect of Defence witnesses,[125] the Appeals Panel is likewise not convinced by the Trial Panel's conclusion that the risk of interference exists also in relation to witnesses which the Defence may choose to call.[126] The Panel observes that the Trial Panel provides no reasons as to why a risk of interference may exist in relation to witnesses the Defence may possibly call.[127] In light of the absence of any reference to any evidence that would support this conclusion, the Panel finds that the Trial Panel failed to comply with its obligation to provide a reasoned opinion in relation to this finding.[128] Accordingly, it must also be set aside.

46. Regarding the repercussion of the two findings of error made above, in light of the Trial Panel's reliance on other factors that support the existence of a risk of obstruction, and the fact that the Appeals Panel upheld such findings,[129] the Panel finds that the Trial Panel's erroneous reliance on the existence of risks of interference in relation to witnesses for Victims' Counsel and witnesses for the Defence does not invalidate the overall conclusion that there continues to be a risk that, if released, Krasniqi will obstruct the progress of the criminal proceedings.

47. In light of the above, the Appeals Panel finds that Krasniqi has failed to demonstrate that the Trial Panel erred in concluding that there are articulable grounds to believe that the risk that Krasniqi will obstruct the progress of proceedings of the

[125] See Appeal, para. 21, where Krasniqi merely argues that the Trial Panel's conclusion regarding, *inter alia*, the risk of interference in relation to Defence witnesses is "wrong in law and/or fact".
[126] Impugned Decision, para. 41.
[127] See Impugned Decision, para. 41.
[128] See e.g. First Appeal Decision on Detention, para. 29; IA004/F00005/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021), para. 27.
[129] See above, paras 31-34. The Appeals Panel has upheld the Trial Panel's reliance on the risks associated to retaliations, securing recantations and interferences with witnesses in parallel proceedings – factors which, in the Panel's view, alone support the existence of a risk of obstruction.

Specialist Chambers, if released, as set out in Article 41(6)(b)(ii) of the Law, continues to exist.[130] Therefore, the Panel dismisses Ground 1 of Krasniqi's Appeal.

B. WHETHER THE TRIAL PANEL ERRED IN THE ASSESSMENT OF THE CONDITIONS OF RELEASE (GROUND 2)

1. Submissions of the Parties

48. Krasniqi argues that, in evaluating whether conditions could sufficiently mitigate the alleged risks, the Trial Panel erred in disregarding the effectiveness of the measures imposed on him during his compassionate release.[131] In that regard, Krasniqi impugns the Trial Panel's finding that these conditions "might become impractical" over a lengthier period of time.[132]

49. Krasniqi further argues that the correct test does not permit the Trial Panel to deny release "based on vague concerns about logistical endurance" without any concrete evidence indicating that such impracticality is "likely, rather than a mere eventuality".[133] Rather, in Krasniqi's view, the burden is on the SPO to demonstrate that any proposed conditions are insufficient.[134] In any event, Krasniqi contends that if the duration of conditional release was deemed a critical factor, the Trial Panel had the power to order conditional release for a shorter period of time such as until the beginning of the Victims' case or prior to the start of the Defence case.[135]

50. In addition, Krasniqi argues that the Trial Panel failed to give sufficient weight to the measures proposed by the Kosovo Police.[136] In that regard, Krasniqi submits that the Trial Panel erred in finding that the conditions of release were inadequate because they were insufficient to monitor communications with close family members

[130] See Impugned Decision, para. 44.
[131] Appeal, para. 38.
[132] Appeal, para. 38.
[133] Appeal, para. 38.
[134] Appeal, para. 38.
[135] Appeal, para. 39.
[136] Appeal, para. 40.

and [REDACTED].[137] In Krasniqi's view, the Trial Panel had the power to impose any additional conditions it deemed necessary.[138] Further, Krasniqi argues that the Trial Panel erred in finding that conditions could not sufficiently mitigate the risk of coded messages being passed between him and his visitors, and that there is no evidence that he has ever done so.[139]

51. Krasniqi submits that the Trial Panel erred in concluding that no set of conditions could sufficiently mitigate any risk of interference and wrongly imposed an impossible threshold on the Defence, namely, one requiring the elimination of all risks.[140] According to Krasniqi, even if the Panel were to find a risk of interference persisting after the end of the SPO case, such risk pertaining to the Accused would be "low" and the issue regarding conditional release is "whether any available conditions can mitigate that already low risk to an acceptable level".[141] Krasniqi contends that the Impugned Decision – and the comparison made between conditions at the Detention Facilities and the conditions available in Kosovo – equals to requiring risks to be completely eliminated, while this is incompatible with the right to liberty.[142]

52. The SPO responds that a careful reading of the Impugned Decision shows that, contrary to Krasniqi's assertion, the Trial Panel did not impose a threshold that required the elimination of all risk.[143] In the SPO's view, the Trial Panel considered the sufficiency of the measures and surveillance regime proposed by the Kosovo Police, and rightly found they were inadequate to mitigate the risk of obstruction.[144] In addition, the SPO responds that the Trial Panel did not require the Kosovo Police to

[137] Appeal, para. 41.
[138] Appeal, para. 41.
[139] Appeal, para. 42. See also Reply, para. 12.
[140] Appeal, paras 36, 38. See also Appeal, para. 44.
[141] Appeal, para. 37.
[142] Appeal, para. 43. Krasniqi adds that the Trial Panel could order an appropriate officer of the Kosovo Police to take measures in the events concerns arose, and that even if the Chief Detention Officer is in a "better position" to bring concerns to the Registrar promptly, the Kosovo Police can still do so in a way that would reduce any remaining risk. See Appeal, para. 43.
[143] Response, para. 27. See also Response, para. 31.
[144] Response, para. 27.

meet the same standards as that in the Detention Facilities; instead, the Trial Panel merely recognised that the risks it identified could not be foreseeably managed by the Kosovo Police.[145]

53. In relation to Krasniqi's comparison with his compassionate release, the SPO responds that Krasniqi omits to mention that the security and logistical aspects of his compassionate release were directly managed by the Specialist Chambers' security and detention officers, not by the Kosovo Police.[146] The SPO argues that a short-term visit, with highly restrictive contact measures governed by Specialist Chambers' officials, is "qualitatively different" from [REDACTED] "with much lower levels of security and contact restrictions that would be placed on Krasniqi".[147] In the SPO's view, it was logical and reasonable for the Trial Panel to conclude that such measures would be "impractical" over time.[148]

54. Furthermore, the SPO responds that given that the Trial Panel's "core obstruction-related concern" revolved around the possible leakage of sensitive information, it was entirely reasonable for it to conclude that the range of technical measures proposed by Krasniqi were insufficient.[149]

2. Assessment of the Court of Appeals Panel

55. At the outset, the Appeals Panel recalls that in order to fully comply with the constitutional standards, a panel must consider more lenient measures when deciding whether a person should be detained.[150] This means that an accused can only be detained if such lesser measures would be insufficient to mitigate the risks of flight,

[145] Response, para. 30.
[146] Response, para. 28.
[147] Response, para. 28.
[148] Response, para. 28.
[149] Response, para. 29.
[150] See e.g. Third Appeal Decision on Detention, para. 23. See also KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020, para. 70 and jurisprudence cited therein; Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114.

obstruction or commission of further crimes.[151] Regarding whether any conditions could sufficiently mitigate the risks identified by the Trial Panel, the Appeals Panel notes Krasniqi's position that "any such risk pertaining to [him], is low".[152] In the Panel's view, this self-assessment of the level of risk is irrelevant for the purpose of the Panel's assessment as it does not reflect any findings made by the Trial Panel or the applicable standard under Article 41(6)(b) of the Law.[153]

56. As rightly recalled by the Trial Panel, when deciding whether a person should be released or detained, panels must consider alternative measures to prevent the risks foreseen under Article 41(6)(b) of the Law.[154] 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 the successful conduct of proceedings.[155] In this respect, the Trial Panel further recalled 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.[156] The Trial Panel emphasised that it must therefore consider all reasonable alternative measures that could be imposed and not only those raised by Krasniqi or the SPO.[157]

57. The Panel notes that in the Impugned Decision, the Trial Panel found that none of the measures foreseen in Article 41(12) of the Law, or any of Proposed Conditions

[151] Third Appeal Decision on Detention, para. 23. See also ECtHR, *Ilnseher v. Germany*, nos 10211/12 and 27505/14, Judgment, 4 December 2018, para. 137; ECtHR, *Stanev v. Bulgaria*, no. 36760/06, Judgment, 17 January 2012, para. 143. See also Kosovo Code of Criminal Procedure, Code No. 04/L-123, 13 December 2012, Article 187(1.3).
[152] Appeal, para. 37. See also Appeal, paras 43-44.
[153] The Panel further notes that Krasniqi raised similar arguments in the context of previous detention related appeals. See e.g. Fourth Appeal Decision on Detention, para. 28, referring to Krasniqi's argument that "in any sensible view", the risks identified by the Pre-Trial Judge were "relatively low".
[154] Impugned Decision, para. 55. See also Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114.
[155] Impugned Decision, para. 55; Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114.
[156] Impugned Decision, para. 55; Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114.
[157] Impugned Decision, para. 55; Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114.

put forward by the Defence,[158] nor any additional measure it may order, would sufficiently mitigate the risk that Krasniqi may obstruct the proceedings or commit further crimes, if released.[159]

58. Regarding Krasniqi's argument that the Trial Panel disregarded the effectiveness of the measures imposed on him during his compassionate release, the Panel notes that Krasniqi specifically impugns the Trial Panel's finding that these conditions "might become impractical" over a lengthier period of time and argues that this finding only relies on "vague concerns".[160] Contrary to Krasniqi's assertion, the Panel finds that the Trial Panel did not reject the effectiveness of the Proposed Conditions and ultimately deny Krasniqi's conditional release based on vague concerns, but rather based its decision to deny such release on grounded reasons. The Trial Panel clearly stated that it remained unpersuaded that the Proposed Conditions could sufficiently address the issue of dealing with [REDACTED], during a longer period of time.[161] In support of its finding, the Trial Panel specifically emphasised that compassionate release measures are directly managed by security and detention officers of the Specialist Chambers and that they are "designed to be enforced in short-term interim releases".[162]

59. In light of the above, the Panel finds that it is not the duration of conditional release that was deemed "a critical factor" by the Trial Panel, but rather the nature of

[158] The Panel notes that the conditions proposed by the Defence as an alternative to detention were a package of conditions modelled on those which were effective during Krasniqi's compassionate release. In particular, the Defence suggested that the Trial Panel could order that: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; and (viii) [REDACTED]. Moreover, the Defence provided additional proposed measures received from the Kosovo Police, which included: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED]. Alternatively, the Defence submitted that should the Trial Panel not consider the proposed measures sufficient, it could order further conditions, including [REDACTED]. See Impugned Decision, para. 51; Provisional Release Request, paras 38-40, 43.
[159] Impugned Decision, paras 56, 62-64.
[160] See Appeal, para. 38.
[161] See Impugned Decision, para. 58.
[162] See Impugned Decision, para. 59.

the institution in charge of its implementation.[163] The Panel further finds that the fact that compassionate release measures were directly managed by security and detention officers of the Specialist Chambers – while a conditional release would be managed by the Kosovo Police – is a factor that justifies the Trial Panel's finding that the circumstances were different.[164] The Panel sees no error in the Trial Panel's observation that measures that may sufficiently and adequately address risks over a short period of release might become impractical or unenforceable over a lengthier period of time.[165] In that regard, the Panel also recalls that the Court of Appeals Chamber found that the conditions surrounding "short fully-custodial visits" "do[] not compare with long-term house arrest in terms of exposure to the identified risks".[166] Krasniqi's argument is therefore rejected.

60. As to Krasniqi's argument that the Trial Panel failed to give sufficient weight to the measures proposed by the Kosovo Police,[167] Krasniqi specifically alleges that the Trial Panel erred in finding that the conditions of release were inadequate because they were insufficient to monitor communications with close family members and there would be [REDACTED].[168] First, the Panel observes that none of the Proposed Conditions involve any monitoring of the communications of Krasniqi's close family members [REDACTED]. The Panel recalls its previous finding that even if there were a legal basis for [REDACTED], such a measure would be unrealistic both in terms of resources required to [REDACTED] and of the scope of the [REDACTED].[169] The Court of Appeals Chamber previously found that, in the circumstances of

[163] Contra Appeal, para. 39.
[164] See Impugned Decision, para. 59.
[165] See Impugned Decision, para. 58.
[166] See IA022/F00005/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention, 22 August 2022 (confidential version filed on 22 August 2022) ("*Thaçi* Fourth Appeal Decision on Detention"), para. 29. In that decision, the Court of Appeals Chamber also addressed the difficulties linked to the deployment of Detention Facilities staff to Kosovo in the context of a long-term conditional release. See *Thaçi* Fourth Appeal Decision on Detention, paras 25-29.
[167] See Appeal, para. 40.
[168] See Appeal, para. 41. See also Impugned Decision, para. 60.
[169] See Third Appeal Decision on Detention, para. 28; Fourth Appeal Decision on Detention, para. 33.

[REDACTED].[170] In the Panel's view, Krasniqi merely asserts that the Trial Panel had the power to impose any additional conditions it deemed necessary,[171] but he fails to demonstrate that the Trial Panel's finding was erroneous. While Krasniqi claims that additional measures "could include [REDACTED]", the Panel notes that Krasniqi proposes this measure for the first time on appeal.[172] The Panel recalls that the obligation for lower panels to inquire and evaluate, *proprio motu*, all reasonable conditions is not limitless.[173] In addition, the Panel recalls that the Court of Appeals Chamber previously assessed such a measure and found that [REDACTED] would be inadequate to mitigate the identified risks.[174]

61. As to Krasniqi's allegation that the Trial Panel's finding "presumes bad faith" on the part of Krasniqi and his close family,[175] the Panel recalls that under Article 41(6)(b) of the Law, the question revolves around the possibility, not the inevitability, of a future occurrence.[176] In the Panel's view, the Trial Panel's finding has to be interpreted through the lens of this standard. Accordingly, it was reasonable for the Trial Panel to express concerns about the monitoring of Krasniqi's communications in light of its finding that Krasniqi presented risks of obstructing the proceedings.[177] It was further reasonable for the Trial Panel to extend its concerns to

[170] See Fourth Appeal Decision on Detention, para. 33.
[171] See Appeal, para. 41.
[172] Appeal, para. 41.
[173] See e.g. Third Appeal Decision on Detention, para. 42. Indeed, the Court of Appeals Chamber found that the Pre-Trial Judge's enquiry as to which measures could be reasonable shall be guided by the circumstances of each case and there was no requirement for the Pre-Trial Judge to consider *proprio motu* all possible conditions if these were, for example, not commonly ordered in the context of an interim release due to, *inter alia*, their complexity and requisite resources. See Third Appeal Decision on Detention, para. 42.
[174] See Fourth Appeal Decision on Detention, para. 29, where the Court of Appeals Chamber found that: (i) the communications between Krasniqi and his family members [REDACTED]; (ii) Krasniqi could use coded or obscure language that would not be recognised by the Kosovo Police; and (iii) Krasniqi could ask a family member to pass on a message, or that he could transmit covert messages for the purposes of obstructing the proceedings or committing further crimes. See also Fourth Appeal Decision on Detention, para. 29.
[175] Appeal, para. 41.
[176] See e.g. First Appeal Decision on Detention, para. 26. See also above, para. 26.
[177] See Impugned Decision, paras 43-44, 50. See also above, paras 31-34, 47.

Krasniqi's family members considering that [REDACTED],[178] and [REDACTED] and that, [REDACTED].[179] In the Panel's view, the Trial Panel did not "presume bad faith" on Krasniqi's family members in doing so. The Panel further notes that, after reaching this finding, the Trial Panel also found that the measures proposed by Krasniqi would not be sufficient to monitor the Accused's exchanges with his close family members.[180]

62. As to Krasniqi's argument that the Trial Panel erred in finding that conditions could not sufficiently mitigate the risk of coded messages being passed between him and his visitors despite the fact that he never did so,[181] the Panel recalls here again that the applicable standard is about the possibility, not the inevitability, of a future occurrence.[182] In the Panel's view, the fact that no evidence was adduced that Krasniqi engaged in such conduct in the tightly controlled environment of the Detention Facilities does not render the Trial Panel's finding unreasonable. Furthermore, the Trial Panel's use of the terms "*were* Mr Krasniqi and his visitors to use coded messages",[183] clearly shows that it considered that Krasniqi *could* use coded language, not that he *would*. The Panel further notes that the Trial Panel's reference to the risk of use of coded language was specifically addressed in relation to its assessment of the assurances provided by the Kosovo Police.[184]

63. In these circumstances, the Panel sees no error in the Trial Panel considering [REDACTED] and whether the assurances provided by the Kosovo Police would sufficiently mitigate the risks associated with the potential leak of confidential witness-related information during visits with Krasniqi. In this context,

[178] See e.g. Impugned Decision, para. 51, referring to the fact that [REDACTED].
[179] Impugned Decision, para. 60.
[180] Impugned Decision, para. 60.
[181] See Appeal, para. 42.
[182] See e.g. First Appeal Decision on Detention, para. 26. See also above, para. 26.
[183] Impugned Decision, para. 61 (emphasis added).
[184] Impugned Decision, para. 61.

[REDACTED],[185] the Panel finds that it was reasonable for the Trial Panel to consider that, were Krasniqi and his visitors to use coded messages, [REDACTED].[186]

64. In reaching the above finding, the Trial Panel further observed that "conversely", the recording mechanisms in place at the Detention Facilities and the staff of the Registrar, seen as a whole "provide robust assurances against the risk linked with illicit communications".[187] Krasniqi argues that in doing so, the Trial Panel is, in fact, requiring all risks to be completely eliminated.[188]

65. First, the Panel notes that the Trial Panel clearly acknowledged that the risk of illicit exchanges for the purpose of obstructing the proceedings and/or committing further crimes cannot be fully eliminated.[189] Second, the Court of Appeals Chamber previously upheld similar findings that the Kosovo Police would not [REDACTED]. The Court of Appeals Chamber notably found that: (i) the Kosovo Police do not have the [REDACTED];[190] and (ii) the Chief Detention Officer is in a better position to promptly bring to the attention of the Registrar any communications which raise concerns, [REDACTED].[191] Third, the Panel considers that it was within the Trial Panel's discretion to compare the protection offered by the Kosovo Police to that of the Detention Facilities when assessing the adequacy of the Proposed Conditions.[192] The Panel is satisfied that, in doing so, the Trial Panel did not set a standard that would be satisfied only when the protection offered by the Kosovo Police was equivalent to

[185] See Impugned Decision, para. 61.
[186] Impugned Decision, para. 61. The Trial Panel further found that the issue of coded messaging would persist even in [REDACTED].
[187] See Impugned Decision, para. 61.
[188] See Appeal, paras 36, 43.
[189] See Impugned Decision, para. 61.
[190] See Third Appeal Decision on Detention, para. 35. The Court of Appeals Chamber also found that knowing the public contours of the case is inadequate to identify confidential information, as the Kosovo Police would [REDACTED]. See Third Appeal Decision on Detention, para. 31.
[191] See Third Appeal Decision on Detention, para. 32.
[192] See e.g. Third Appeal Decision on Detention, para. 26.

that of the Detention Facilities, but used it as a method to assess the adequacy of the proposed conditions in terms of mitigating the identified risks.

66. In addition, the Appeals Panel considers that the Trial Panel's finding that "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",[193] is fully in line with the scope of the assessment of the Proposed Conditions and with the correct legal standard when assessing the necessity of detention, which requires less than certainty, but more than a mere possibility of a risk materialising.[194] In the Appeals Panel's view, the Trial Panel's finding that the Proposed Conditions or any additional condition to those foreseen under Article 41(12) of the Law cannot sufficiently mitigate such risks at this juncture,[195] does not contradict this legal standard.

67. In view of the foregoing, the Appeals Panel therefore dismisses Krasniqi's arguments related to the alleged erroneous assessment of the Proposed Conditions. Ground 2 of Krasniqi's Appeal is dismissed accordingly.

[193] Impugned Decision, para. 62.
[194] See above, para. 23.
[195] Impugned Decision, para. 62.

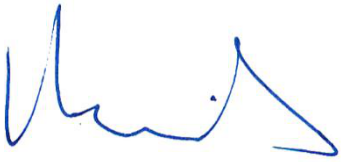
V. DISPOSITION

68. For these reasons, the Court of Appeals Panel:

DENIES the Appeal in its entirety;

ORDERS the Defence and the SPO to submit public redacted versions of the Appeal, Response and Reply or to indicate, through a filing, whether they can be reclassified as public, within ten days of receiving notification of the present Decision; and

INSTRUCTS the Registry to execute the reclassification as public of the Appeal, Response and Reply upon indication by the Defence and SPO, if any, that they can be reclassified.



Judge Michèle Picard,
Presiding Judge

Dated this Wednesday, 13 August 2025

At The Hague, the Netherlands.