

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith III, Presiding  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

**Filing Participant:** Defence Counsel for Jakup Krasniqi

**Date:** 31 December 2025

**Language:** English

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**Krasniqi Defence Response**  
**to Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi (F03642)**

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## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s (“Prosecution”) submissions supporting Jakup Krasniqi’s (“Mr. Krasniqi”) ongoing detention.<sup>1</sup> Now that the evidentiary proceedings have been formally completed, the risks alleged by the Prosecution are plainly no longer sufficient to establish that Mr. Krasniqi’s detention is necessary or that the Panel should maintain Mr. Krasniqi’s detention for any longer than the five years for which he has already been detained. The Defence requests his release, subject to such conditions as the Panel deems appropriate.

## II. PROCEDURAL HISTORY

1. The procedural background concerning the periodic review of the detention of Mr. Krasniqi has been set out extensively in previous decisions concerning the same issue.<sup>2</sup>

2. On 3 April 2023, the trial commenced.<sup>3</sup>

3. On 15 April 2025, the SPO closed its case pursuant to Rule 129.<sup>4</sup>

4. On 15 September 2025, the Defence cases commenced.<sup>5</sup>

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<sup>1</sup> F03642, Specialist Prosecutor, *Prosecution Submission pertaining to periodic detention review of Jakup Krasniqi* (“Prosecution Submission”), 19 December 2025, public.

<sup>2</sup> F03587, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 18 November 2025, public, para. 1.

<sup>3</sup> Transcript of Hearing (Opening Statements), 3 April 2023.

<sup>4</sup> F03121, Specialist Prosecutor, *Prosecution notice pursuant to Rule 129*, 15 April 2025, public.

<sup>5</sup> Transcript of Hearing, 15 September 2025, pp 26475-26478.

5. On 2 December 2025, the Defence closed its case.<sup>6</sup>
6. On 19 December 2025, the Panel closed the evidentiary proceedings.<sup>7</sup>
7. On 19 December 2025, the Prosecution filed its submission pertaining to periodic detention review of Jakup Krasniqi, in which it requests the Trial Panel to maintain Mr. Krasniqi's detention.<sup>8</sup>

### III. SUBMISSIONS

8. Mr. Krasniqi has now been held in detention for a period of five years and two months.<sup>9</sup> In light of the very substantial time he has already been separated from his family, the Defence submits that the evidence relied upon to justify continued detention – now exceeding five years in age – is no longer sufficient to warrant the ongoing denial of conditional release, particularly when assessed against the individual circumstances of Mr. Krasniqi and the availability of strict conditions of supervision by the Kosovo Police during Mr. Krasniqi's provisional release.<sup>10</sup> After more than five years, the length of time Mr. Krasniqi has already spent in detention is no longer a neutral circumstance. It is a factor of decisive weight militating against the continuation of custody.

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<sup>6</sup> F03609, *Thaçi Defence, Thaçi Defence Notice pursuant to Rule 131*, 2 December 2025, public; F03611, *Krasniqi Defence, Krasniqi Defence Notice of the Closure of Its Case Pursuant to Rule 131*, 2 December 2025, public.

<sup>7</sup> F03639, *Trial Panel II, Notice Regarding the Close of Evidentiary Proceedings ("Closure Notice")*, 18 December 2025, public.

<sup>8</sup> Prosecution Submission.

<sup>9</sup> Mr. Krasniqi was placed in KSC's detention on 4 November 2020.

<sup>10</sup> F00548/eng, *Court Management Unit, Answer to the Request Number KSC-BC-2020-06, dated 13 October 2021*, 3 November 2021, confidential.

9. The longer an Accused person remains in detention, the Prosecution's burden does not merely remain - it intensifies.<sup>11</sup> The Prosecution must now demonstrate that the risks identified under Article 41(6)(b)<sup>12</sup> still exist in fact, not merely in theory, and further that they remain sufficiently compelling to justify the ongoing deprivation of Mr. Krasniqi's liberty, an individual who is entitled to the presumption of innocence and the right to be tried within a reasonable time.<sup>13</sup> An essential component of the assessment of whether the continued detention of an accused is justified is the obligation on the Prosecution to establish that the detention remains necessary.

10. Article 41(6)(b) sets out three grounds upon which detention may be deemed necessary: there must be a risk of flight; a risk of obstruction of the proceedings; and a risk of further commission of the crimes. These grounds must be "articulable", in the sense that they must be specified with sufficient precision and supported by reference to relevant information or evidence.

11. It is not sufficient for the Prosecution to rely on historic assertions or generalised speculation. In light of Mr. Krasniqi's detention exceeding five years, his continued detention can only be justified if the Prosecution establishes clearly, specifically and with proof that is contemporaneous with the present stage of the proceedings that detention remains necessary. The applicable standard requires more than a speculative or abstract possibility that such risks might arise.<sup>14</sup>

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<sup>11</sup> See KSC-BC-2023-12, IA004-F00005, Court of Appeals Panel, *Decision on Isni Kilaj's Appeal Against Third Decision on Review of Detention*, 1 September 2025, public, para. 47.

<sup>12</sup> Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), 3 August 2015. All references to 'Article(s)' in this submission refer to the Law.

<sup>13</sup> Article 21(4)(d).

<sup>14</sup> F01212, Trial Panel II, *Decision on Periodic Detention Review of Jakup Krasniqi*, 17 January 2023, confidential, para. 15

*a) Risk of Flight*

12. With respect to the alleged risk of flight, the Prosecution advances arguments that are substantially identical to those previously considered and rejected by the Panel.<sup>15</sup> The Court of Appeals Panel has held that the Pre-Trial Judge should not be expected to entertain submissions that merely reiterate arguments already addressed and resolved in prior decisions.<sup>16</sup> That principle applies with equal force at the present stage of the proceedings.<sup>17</sup> The Panel should therefore conclude that the risk of flight has not been sufficiently established.<sup>18</sup> In any event, the alleged flight risk (if indeed any) can be effectively mitigated through the imposition of appropriate conditions on release thus rendering continued detention unnecessary and disproportionate.

*b) Risk of Obstruction of Proceedings*

13. The Prosecution's submissions in support of an alleged risk that Mr. Krasniqi would obstruct the proceedings or commit further crimes rely on a combination of material that, at this stage, is more than five years old.<sup>19</sup> It is notable that the Prosecution's most recent submissions purporting to substantiate a risk of obstruction are, in substance, an almost verbatim repletion of its earlier submissions concerning Mr. Krasniqi. In respect of these factors, the Defence maintains its previous advanced submissions that: the frequently cited Facebook post authored by Mr. Krasniqi in 2020, does not constitute sufficient evidence to suggest that Mr. Krasniqi would, at this

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<sup>15</sup> F03484, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 18 September 2025, public, paras 21-22. See also, F03005, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, public, para. 13

<sup>16</sup> KSC-BC-2020-04, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention*, 11 February 2022, para. 18.

<sup>17</sup> F03587, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Twenty-third Detention Decision"), 18 November 2025, public, para.13.

<sup>18</sup> Twenty-third Detention Decision, para.14.

<sup>19</sup> Prosecution Submission, para 15.

stage, obstruct the proceedings;<sup>20</sup> and that Mr. Krasniqi's public statements represent an exercise of his right to freedom of expression and are not, in and of themselves, indicative of a propensity to interfere with witnesses.<sup>21</sup> The Prosecution advances no substantive new submissions and relies on historic assertions that are detached from the present procedural reality. Accordingly, the Defence submits that at this point in time – five years and two months after his initial detention – any risks identified are no longer sufficiently likely to justify ongoing detention. The Defence requests that the Panel reassess the necessity of detention afresh, based on current circumstances rather than on outdated allegations.

14. Contrary to the Prosecution's submission,<sup>22</sup> there has been a material and decisive change of circumstances since the last detention review. The presentation of evidence in this case is now complete, and the evidential phase of proceedings has been formally closed.<sup>23</sup> The Panel's earlier conclusion that only detention at the KSC facilities could adequately manage risks of obstruction and further crimes<sup>24</sup> was reached in a context where witnesses had yet to testify and evidentiary processes were ongoing. That context has now fundamentally changed. With the evidentiary record complete, there are no remaining witnesses whose testimony could conceivably be influenced, intimidated, or otherwise impacted by Mr. Krasniqi's conduct. Similarly, there is no ongoing evidentiary process that could be compromised, and any suggestion of potential recantations, is now procedurally irrelevant and without evidential consequence. As such, the very risk that detention on the basis of obstruction is intended to prevent can no longer arise in any realistic manner. The

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<sup>20</sup> F01181, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, confidential, para. 28.

<sup>21</sup> IA0002-F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Jakup Krasniqi's Application for Interim Release*, 3 February 2021, confidential, paras 21-25.

<sup>22</sup> Prosecution Submission, para. 10.

<sup>23</sup> Closure Notice.

<sup>24</sup> Twenty-third Detention Decision, para. 30.

Prosecution can only rely on the alleged risk of retaliation or pressuring a witness to recant in support of the alleged risk of obstruction.

15. Importantly, the Single Trial Judge in Case 2023-12 has clearly held, in analogous circumstances, that the opportunity for any such risk to manifest is substantially lower than in respect of witnesses who have yet to testify.<sup>25</sup> The Single Trial Judge recalled the Court of Appeal Panel's finding that, even the existence of "serious risks" could be outweighed in a particular case by an accused's "fundamental right to liberty", and determined that the imminent closure of the hearing of evidence reduces the risks under Article 41(6)(b)(ii) and (iii) relied upon to justify continued detention.<sup>26</sup>

16. The same reasoning applies with equal force in the present proceedings and necessarily means that, once the evidentiary proceedings have concluded, the weight accorded to alleged risks under Article 41(6)(b)(ii) and (iii) must be reassessed afresh. Thus, Mr. Krasniqi's detention cannot be maintained by reference to risks that are no longer procedurally meaningful, nor by the mere persistence of generalised concerns unconnected to the current phase of the case.

17. The only alleged risk which remains, at most, is a speculative concern relating to potential retaliation.<sup>27</sup> That issue is substantively distinct from obstruction of proceedings as contemplated under Article 41(6)(b)(ii) and the Prosecution has failed to substantiate it by concrete and individualised evidence. Article 41(6)(b)(ii) relates to the risk of "obstruct[ing] the progress of the criminal proceedings". Procedurally, these criminal proceedings now concern only the submission of Final Trial Briefs,

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<sup>25</sup> KSC-BC-2023-12, F00599/RED, Single Trial Judge, *Public Redacted Version of Sixth Decision on Review of Detention of Isni Kilaj* ("Kilaj Decision"), 3 December 2025, public, para. 26.

<sup>26</sup> Kilaj Decision, para. 47, with reference to KSC-BC-2023-12/INV/F00273/RED, Court of Appeals Panel, *Public Redacted Version of Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention*, 13 May 2024, public, para. 22.

<sup>27</sup> Prosecution Submission, para. 14.

closing submissions and judgment. Any alleged risk of retaliation is not capable of obstructing the remaining progress of these proceedings. The determination of the reasonableness of continued detention “must be assessed on the facts of each case and according to its special features”.<sup>28</sup> In the absence of specific, articulable and current facts demonstrating a real and present risk, the Prosecution’s abstract concerns can no longer lawfully sustain the continued deprivation of liberty.

18. The factors relied upon to substantiate the alleged risk of commission of further crime pursuant to Article 41(6)(b)(iii) have always been co-extensive to those relied upon pursuant to Article 41(6)(b)(ii).<sup>29</sup> Accordingly, for the same reasons set out above, the Defence submits that there is no ongoing risk relating to Article 41(6)(b)(iii) which renders ongoing detention necessary.

19. Therefore, when viewed against the completed state of the evidentiary record, the extensive duration of Mr. Krasniqi’s detention, and the availability of stringent conditions to mitigate any residual concerns, the continued reliance by the Prosecution on Article 41(6)(b) is no longer justified. Conditional release, subject to appropriate safeguards, is both legally warranted and proportionate in the circumstances.

*c) The Continued Detention is not Proportionate*

20. Finally, the Defence submits that continued detention is no longer proportionate. The determination of the reasonableness of continued detention must be assessed by weighing various considerations, including the duration of detention at the time of

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<sup>28</sup> IA017/F00011/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention*, 5 April 2022, public, para. 65.

<sup>29</sup> Kilaj Decision, para. 28.

review.<sup>30</sup> Whilst seriousness of the charges and the potential sentence are relevant considerations, they cannot either individually or cumulatively, justify prolonged detention in the absence of demonstrable and current risks that cannot be mitigated by less restrictive measures. Nor can the complexity of the case or the fact that the trial remains ongoing – but is rapidly nearing its completion – outweigh the substantial period, now exceeding five years, that Mr. Krasniqi has already spent in detention. It is no longer reasonable to prolong Mr. Krasniqi’s detention in the light of the period that he has already been detained.

#### IV. CONCLUSION

21. Mr. Krasniqi has been detained for five years and two months. For all the reasons set out above, the Defence requests Mr. Krasniqi’s immediate release, subject to such conditions as the Panel deems appropriate. If released, Mr. Krasniqi will abide by conditions imposed on him by the Panel and is willing to offer undertakings, which would limit any risks to an acceptable level.

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<sup>30</sup> See, IA003-F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi’s Appeal Against Decision on Interim Release*, public, paras 79-81.



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