

**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

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**Public Redacted Version of 'Krasniqi Defence Response  
to Prosecution Submission Pertaining to Periodic Detention Review of Jakup  
Krasniqi (F03683)'**

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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 ongoing detention.<sup>1</sup> The evidentiary proceedings have now closed and the parties’ closing submissions have concluded. The Prosecution has failed to demonstrate that Mr. Krasniqi still presents a concrete and unmanageable risk under Article 41(6)(b) of the Law, or that continued detention remains necessary and proportionate under Rule 56(2), particularly where strict conditions are available to address any residual concern.

2. Mr. Krasniqi has already been detained for five years and four months.<sup>2</sup> At this late stage, the material the Prosecution relies upon to justify continued detention — much of it now more than five years old — cannot satisfy the intensified burden required to keep him in custody. The Panel must assess necessity against Mr. Krasniqi’s individual circumstances and the availability of stringent, enforceable conditions, including Kosovo Police supervision, capable of addressing any residual concerns.<sup>3</sup>

3. After more than five years, the time already served is no longer a neutral circumstance but a factor of decisive weight militating against the continuation of custody. Importantly, Mr. Krasniqi’s advanced age [REDACTED] require a time-sensitive proportionality assessment, because the period pending judgment may be his last meaningful opportunity to spend time with his family in Kosovo in the event of conviction. Accordingly, the Defence respectfully requests that the Panel

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<sup>1</sup> F03683, Specialist Prosecutor, *Prosecution Submission pertaining to periodic detention review of Jakup Krasniqi* (“Prosecution Submission”), 19 February 2026, public.

<sup>2</sup> Mr. Krasniqi was brought to the KSC’s detention on 4 November 2020.

<sup>3</sup> F03086/A03, Krasniqi Defence, *Annex 3 to Krasniqi Defence Request for Provisional Release with Confidential and Ex Parte Annexes 1 and 2 and Confidential Annex 3*, 4 April 2025, confidential.

order Mr. Krasniqi's provisional release, subject to strict and enforceable conditions, until the pronouncement of the Judgement.

4. Pursuant to Rule 82(4) of the Rules,<sup>4</sup> this filing is classified as confidential and *ex parte* as it refers to confidential information of a third party.

## II. PROCEDURAL HISTORY

2. The procedural background concerning the periodic review of the detention of Jakup Krasniqi has been set out extensively in previous decisions concerning the same issue.<sup>5</sup>

3. On 3 April 2023, the trial commenced.<sup>6</sup>

4. On 15 April 2025, the Prosecution closed its case.<sup>7</sup>

5. On 15 September 2025, the Defence case commenced.<sup>8</sup>

6. On 2 December 2025, the Defence closed its case.<sup>9</sup>

7. On 19 December 2025, the Panel closed the evidentiary proceedings.<sup>10</sup>

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<sup>4</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules").

<sup>5</sup> F03660, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("January Decision"), 16 January 2026, para. 1.

<sup>6</sup> Transcript (Opening Statements), 3 April 2023.

<sup>7</sup> F03121, Specialist Prosecutor, *Prosecution notice pursuant to Rule 129*, 15 April 2025, public.

<sup>8</sup> Transcript of Hearing, 15 September 2025, pp.26475-26478.

<sup>9</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>10</sup> F03639, Trial Panel II, *Notice Regarding the Close of Evidentiary Proceedings*, 18 December 2025, public.

8. The closing arguments commenced on 9 February 2026 and concluded on 18 February 2026.

9. On 19 February 2026, the Prosecution filed its submission pertaining to Mr. Krasniqi's periodic detention review, in which it requests the Panel to maintain his detention.<sup>11</sup>

### III. SUBMISSIONS

#### A. Provisional Release Pending Judgment

10. With the evidentiary record complete, the closing submissions concluded and the case formally closed, this review concerns a narrow interval before the judgment is rendered. Unless the Prosecution can demonstrate a current and unmanageable risk under Article 41(6)(b) of the Law<sup>12</sup> that cannot be addressed through strict conditions and Kosovo Police guarantees, continued remand is not justified at this stage. International tribunal practice managed any residual concern pending judgment through strict, enforceable conditions and guarantees rather than continued remand, where the Chamber is satisfied the Accused will return, and will not endanger victims and witnesses. For instance, in *Prlić et al.*, the Trial Chamber granted post-closing provisional releases precisely because proceedings had concluded and the hearings were closed – so that “from now until the delivery of the judgement, there will be no judicial activity requiring the presence” of the Accused.<sup>13</sup> The same post-closing

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<sup>11</sup> Prosecution Submission.

<sup>12</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (“Law”).

<sup>13</sup> ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, *Decision on Jadranko Prlić's Motion for Provisional Release (“Prlić Decision”)*, 24 November 2011, para. 33; see also para. 34; *Prosecutor v. Prlić et al.*, IT-04-74-T, *Decision on Motion for Provisional Release of the Accused Milivoj Petković (“Petković Decision”)*, 30 November 2011, para. 33.

reasoning was applied to Co-Accused Petković<sup>14</sup> and the Chamber then managed the period pending judgment through extensions and variations for other Co-Accused.<sup>15</sup>

11. The ICTY Appeals Chamber reaffirmed that provisional release may be ordered “at any stage of the trial proceedings prior to the rendering of the final judgement”.<sup>16</sup> Similarly, on appeal in *Kvočka et al.*, the ICTY Appeals Chamber granted provisional release pending delivery of its judgment and reinstated it after the appeal hearing.<sup>17</sup> Those authorities are directly apposite: once evidence and closing submissions are complete, detention cannot be extended on the Prosecution’s generic assertions; it requires a current, concrete, and unmanageable risk that cannot be mitigated by strict conditions.

## **B. Mr. Krasniqi Does Not Present a Risk Under Article 41(6)(b)**

### *a) Risk of Flight*

12. The recent review decisions in Case 12 underscore that flight risk findings must be current, individualised, and evidence-based, and that the Prosecution’s recycled

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<sup>14</sup> *Petković Decision*, para. 33.

<sup>15</sup> *Prosecutor v. Prlić et al.*, IT-04-74-T, *Public Redacted Version of Order on Motion to Extend Provisional Release of Accused Ćorić*, 6 March 2012, p. 2, noting Decision on Valentin Ćorić’s Request for Provisional Release, 29 November 2011, and Decision on Prosecution Appeal of Decision on Valentin Ćorić’s Provisional Release, 20 December 2011; *Prosecutor v. Prlić et al.*, IT-04-74-T, *Public Redacted Version of “Order to Vary Terms of Provisional Release for Accused Slobodan Praljak”*, 27 August 2012, p. 2, noting Decision on Slobodan Praljak’s Motion for Provisional Release, 30 November 2011, and subsequent extensions.

<sup>16</sup> ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR65.31, *Decision on the Prosecution’s Appeal of the Decision on Further Extension of Jadranko Prlić’s Provisional Release (“Prlić Appeal Decision”)*, 23 April 2012, para. 5; Also Article 41(10) of the Law.

<sup>17</sup> ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, *Judgement*, 28 February 2005, para. 738; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, *Decision on the Request for Provisional Release of Miroslav Kvočka*, 17 December 2003; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, *Order Varying the Provisional Release of Miroslav Kvočka and for his Return to the Tribunal During the Appeal Hearing*, 11 March 2004.

assertions are insufficient.<sup>18</sup> In both Fazliu and Smakaj decisions, the Single Judge reassessed risk dynamically and gave weight to concrete disincentives to flee (e.g., security, settled ties), while assigning little or no weight to unsubstantiated prosecutorial claims.<sup>19</sup> Importantly, in both cases, the Single Judge held there was no flight risk justifying detention when assessed holistically, with conditions.<sup>20</sup> That reasoning applies here: the Panel must test actual, present incentives and capacity to flee, not rely on abstract severity arguments alone. The applicable standard requires more than a speculative or abstract possibility that such risks might arise.<sup>21</sup>

13. The Panel has repeatedly found that Mr. Krasniqi does not present a flight risk.<sup>22</sup> Contrary to the Prosecution's submission, the Panel has emphasised, in its last detention review, that the closure of the evidentiary proceedings does not affect Mr. Krasniqi's presumption of innocence and does not in itself make the possible imposition of a sentence more concrete.<sup>23</sup> The Prosecution advances a general argument that Mr. Krasniqi presents a flight risk, unsupported by any specific reasoning, evidentiary foundation or newly arising factors capable of being

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<sup>18</sup> KSC-BC-2023-12, F00719, Single Trial Judge, *Public Redacted Version of Seventh Decision on Review of Detention of Bashkim Smakaj* ("Smakaj Decision"), 3 February 2026, public, paras 17-24; F00720, Single Trial Judge, *Public Redacted Version of Seventh Decision on Review of Detention of Fadil Fazliu* ("Fazliu Decision"), 3 February 2026, public, paras 19-27.

<sup>19</sup> Smakaj Decision, paras 18-25; Fazliu Decision, paras 20-24.

<sup>20</sup> Smakaj Decision, para. 25; Fazliu Decision, para. 24.

<sup>21</sup> F01212, Trial Panel II, *Decision on Periodic Detention Review of Jakup Krasniqi*, 17 January 2023, confidential, para. 15.

<sup>22</sup> January Decision, para. 21; F03005, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 March 2025, public, para. 23; F02313, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 May 2024, public, para. 16; F02183, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 March 2024, public, para. 18; F02059, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 January 2024, public, para. 17; F01926, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 November 2023, public, para. 17; F01795, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 September 2023, confidential, para. 13; F01679, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 July 2023, confidential, para. 18; F01530, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 May 2023, confidential, para. 15.

<sup>23</sup> January Decision, para. 19.

sufficiently compelling to displace the Panel's previous findings.<sup>24</sup> This evidentiary deficiency is dispositive. The Panel should therefore conclude that, at this stage, the Prosecution has failed to establish any real or present risk of flight and that, in any event, any speculative residual risk (if indeed any) can be comprehensively and effectively mitigated through the imposition of appropriate conditions on release.

*b) Risk of Obstruction of Proceedings*

14. The Prosecution's submissions in support of the alleged risk that Mr. Krasniqi would obstruct the proceedings or commit further crimes are, in substance, an almost verbatim repetition of its earlier submissions relying on material that is now more than five years old and incapable of establishing any present risk.<sup>25</sup> In respect of these factors, the Defence maintains its previous advanced submissions that the repeatedly cited Facebook post authored by Mr. Krasniqi in 2020<sup>26</sup> does not constitute sufficient evidence to suggest that Mr. Krasniqi would, at this stage, obstruct the proceedings;<sup>27</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>28</sup> This post must now be also reassessed in light of Mr. Krasniqi's exemplary conduct throughout his detention.

15. The Prosecution fails to identify any new, concrete, and case-specific facts capable of establishing any current risk at this judgment stage. Instead, the Prosecution advances a generalised and speculative assertion that the closure of the case and impending trial judgment has heightened public scrutiny of the case and

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<sup>24</sup> Prosecution Submission, para. 12.

<sup>25</sup> *Idem*, paras 13-16.

<sup>26</sup> *Idem*, para 15.

<sup>27</sup> F01181, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, confidential, para. 28.

<sup>28</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.

increased pressure on witnesses.<sup>29</sup> Such conjecture devoid of evidentiary support, is untenable. The Prosecution's reliance on a single recent televised remark by Hysni Gucati, convicted in separate Case 07, is irrelevant absent any evidence linking that remark to Mr. Krasniqi, and cannot support a finding that Mr. Krasniqi currently presents a risk of obstructing these proceedings. Treating this remark, which was made nearly two months after the Panel closed the evidentiary proceedings,<sup>30</sup> as evidence of any present obstruction risk is speculative and misconceived.

16. The Defence reiterates that throughout the trial and the full period of Mr. Krasniqi's detention, the Prosecution has not identified any attempt of Mr. Krasniqi, nor has submitted any allegation against Mr. Krasniqi, of interference with any judicial proceedings at any time.<sup>31</sup> Such has not been disputed by a response to this Defence submission in the closing arguments. The Prosecution had ample time to identify and submit any such evidence, if it was found to exist. It has not done so. Such evidence does not exist.

17. Contrary to the Prosecution's submission,<sup>32</sup> there has been a material and decisive change of circumstances since the last detention review. The Panel's earlier conclusion that only detention at the KSC facilities could adequately manage risks of obstruction and further crimes were reached in a materially different context when witnesses had yet to testify and evidentiary processes were ongoing,<sup>33</sup> and well before the closure of the evidentiary phase and the completion of the Parties' closing submissions.<sup>34</sup> That procedural landscape has now been fundamentally transformed. With the evidentiary

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<sup>29</sup> Prosecution Submission, para 16, with reference to Prosecution response to 'Selimi Defence Request for Rescission of Contact Restrictions' (F03671), KSC-BC-2020-06/F03675, 11 February 2026, para.13.

<sup>30</sup> F03639, Trial Panel II, *Notice Regarding the Close of Evidentiary Proceedings*, 18 December 2025, public.

<sup>31</sup> Transcript of Hearing (Closing Arguments), 13 February 2026, p.28939.

<sup>32</sup> Prosecution Submission, paras 1, 10.

<sup>33</sup> F03587, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 18 November 2025, public, para. 30.

<sup>34</sup> January Decision, para. 41.

record complete and the case formally closed,<sup>35</sup> there are no remaining witnesses whose testimony could conceivably be influenced, intimidated, or otherwise impacted by Mr. Krasniqi's conduct. There is no ongoing evidentiary process that could be compromised, and any suggestion of potential recantations is now procedurally irrelevant and without evidential consequence. Furthermore, across the entirety of five years and three months of proceedings, there has not been a single instance of Mr. Krasniqi influencing, intimidating or otherwise impacting witness testimony. The Prosecution advances no evidence nor any concrete basis to even remotely suggest that such conduct plausibly arises now, particularly at the judgement stage.

18. In Case 12, the Single Judge accepted that some obstruction risk could remain, yet found that opportunities for meaningful interference materially reduced because the evidentiary phase in Case 06 had closed and any attempted interference would be more detectable.<sup>36</sup> The same reasoning applies *a fortiori* here: with the proceedings now at the judgment stage, opportunities for meaningful interference are at their narrowest and any attempted interference would be more readily detectable, yet the Prosecution identifies no current, concrete, case-specific evidence establishing a risk attributable to Mr. Krasniqi, relying instead on generalised allegations of an alleged "climate of intimidation" and historic concerns unconnected to the present procedural stage.<sup>37</sup> Consistent with the decisions in Case 12, the Panel should weigh any residual risk in light of narrowed opportunities, heightened detectability, and available conditions on release.

19. Further, the Panel has determined, in its last periodic review decision, that the closure of evidentiary proceedings indeed constitutes a change of circumstances, which needs to be taken into account when assessing the risks under Article 41(6)(b)

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<sup>35</sup> Transcript of Hearing (Closing Arguments), 18 February 2026, p. 29238.

<sup>36</sup> Smakaj Decision, paras 52-54; Fazliu Decision, paras 57-59.

<sup>37</sup> Prosecution Submission, paras 16, 25.

of the Law and that, relative to the previous detention review, the closure of the evidentiary proceedings reduces the risk of obstruction.<sup>38</sup> Moreover, the Single Judge in Case 12 has clearly held that, in analogous circumstances, the opportunity for any such risk to manifest is substantially lower than in respect of witnesses who have yet to testify.<sup>39</sup> The Single Judge also recalled the Court of Appeal Panel's finding that, even the existence of "serious risks" could be outweighed 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) of the Law.<sup>40</sup>

20. The same reasoning applies with equal force here and necessarily means that, once the case has been formally closed, the weight accorded to substantially lower risks under Article 41(6)(b)(ii) and (iii) of the Law must be reassessed afresh. Deprivation of liberty cannot be justified on speculation or conjecture. For over five years, the Prosecution has repeatedly advanced predictive assertions of risk, none of which have ever materialised. Any continued reliance on such unfulfilled predictions would impermissibly subordinate the fundamental right to liberty to hypothetical/speculative concerns. Detention predicated solely on repeated, consistently unrealised risks cannot justify the continued deprivation of liberty.

21. The only alleged risk which remains, at most, is the Prosecution's speculative concern relating to potential retaliation.<sup>41</sup> That issue is substantively distinct from obstruction of proceedings as contemplated under Article 41(6)(b)(ii) of the Law, yet the Prosecution has failed to substantiate it by concrete and individualised evidence. These proceedings are now limited solely to the delivery of the judgment, and any

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<sup>38</sup> January Decision, para. 28.

<sup>39</sup> KSC-BC-2023-12, F00599, Single Trial Judge, *Public Redacted Version of Sixth Decision on Review of Detention of Isni Kilaj* ("Kilaj Decision"), 3 December 2025, para. 26.

<sup>40</sup> Kilaj Decision, para. 47, with reference to KSC-BC-2023-12, F00273RED, Panel of the Court of Appeals Chamber, *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>41</sup> Prosecution Submission, para. 13.

alleged risk of retaliation is incapable of obstructing or otherwise affecting the completion of these proceedings.

22. The factors relied upon to substantiate the alleged risk of commission of further crimes pursuant to Article 41(6)(b)(iii) of the Law have always been co-extensive with those relied upon pursuant to Article 41(6)(b)(ii).<sup>42</sup> The Smakaj and Fazliu decisions confirm that Article 41(6)(b)(iii) cannot be treated as an abstract additional factor: in both decisions, the analysis of the risk of committing further offences tracked the obstruction analysis and, even where a moderate residual concern remained, it did not justify ongoing detention once proportionality was assessed.<sup>43</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 the continued detention necessary.

23. Therefore, when viewed against the formal closure of the case, 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) of the Law is no longer justified. The Single Judge in both Smakaj and Fazliu treated strict conditions (e.g., travel restrictions, surrender of travel documents, reporting, communication limitations, and financial security) as a workable framework for managing residual risks.<sup>44</sup> Thus, Mr. Krasniqi's conditional release, subject to appropriate safeguards, is legally warranted in the circumstances.

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<sup>42</sup> Kilaj Decision, 3 December 2025, para. 28.

<sup>43</sup> See Smakaj Decision, paras 33-34, 49-54; Fazliu Decision, paras 33-34, 55-59.

<sup>44</sup> See Smakaj Decision, paras 57-58; Fazliu Decision, paras 60-64.

### **C. Mr. Krasniqi's Continued Detention Is No Longer Proportionate or Reasonable Under Rule 56(2)**

24. The Defence recognises the distinction between Case 12 and Case 06, including the gravity of the charged offences. This distinction however does not displace the governing legal standard applied in Fazliu and Smakaj, which equally applies here: Rule 56(2) proportionality is an autonomous, mandatory inquiry and detention is not automatic merely because Article 41(6)(b) risks exist.<sup>45</sup> In regards to Smakaj and Fazliu, the Single Judge rejected the Prosecution's proposition that non-mitigable Article 41(6)(b) risks necessarily compel continued detention and reaffirmed that detention duration must be assessed "along with" the degree of risk in each review.<sup>46</sup> This approach is consistent with the guidance of the Court of Appeals which emphasises that the longer detention continues, the greater the evidentiary and legal burden on the Prosecution to justify continuation.<sup>47</sup>

25. The determination of the reasonableness of continued detention "must be assessed on the facts of each case and according to its special features".<sup>48</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. The Prosecution's position in Case 12 that non-mitigable risk automatically dictates detention was rejected as legally untenable.<sup>49</sup> The controlling test remains whether all factors considered as of the review date, continued detention

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<sup>45</sup> See Smakaj Decision, paras 40-45; Fazliu Decision, paras 45-50.

<sup>46</sup> *Ibid.*

<sup>47</sup> See Smakaj Decision, paras 41-44; Fazliu Decision, paras 46-50; KSC-BC-2020-07, IA001/F00005, Appeals Chamber, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, para. 51.

<sup>48</sup> IA017/F00011RED, 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>49</sup> See Smakaj Decision, para. 40; Fazliu Decision, para. 45.

is still reasonable.<sup>50</sup> The Single Judge further reaffirmed that proportionality is time-sensitive: as detention lengthens, liberty interests increase and the burden on the Panel to justify continued detention rises.<sup>51</sup> For Mr. Krasniqi – who is entitled to the presumption of innocence and the right to be tried within a reasonable time<sup>52</sup> – the Prosecution’s burden to provide concrete, current, and compelling justification for continued detention is correspondingly elevated.

26. Furthermore, the Panel cannot extend detention on abstract reasoning while treating Mr. Krasniqi’s personal factors as an afterthought. At this pre-judgment stage, the assessment must be carefully individualised and it must give significant weight to the humanitarian realities of Mr. Krasniqi’s circumstances, including the fundamental right to liberty, his age, [REDACTED], the time already spent in custody and the complete absence of any concrete risk to the integrity of the case.<sup>53</sup>

27. Mr. Krasniqi’s personal circumstances should not be disregarded as marginal. They constitute compelling humanitarian grounds in support of his provisional release.<sup>54</sup> Mr. Krasniqi is 75 years old. He has been now detained for over five years, [REDACTED].<sup>55</sup> He is married and is a father of four children. His detention has prevented him from attending the weddings of two of his children, irreplaceable

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<sup>50</sup> See IA021/F00005, Panel of the Court of Appeals Chamber, *Decision on Selimi Appeal Against “Decision on Periodic Review of Detention of Rexhep Selimi*, 29 July 2022, confidential, paras 79-81.

<sup>51</sup> See Smakaj Decision, paras 41-46, 50-54; Fazliu Decision, paras 46-56, 57-59. See also KSC-BC-2023-12, IA004-F00005, Panel of the Court of Appeals Chamber, *Decision on Isni Kilaj’s Appeal Against Third Decision on Review of Detention*, 1 September 2025, public, para. 47.

<sup>52</sup> Article 21(4)(d) of the Law.

<sup>53</sup> “Prlić Appeal Decision”, para. 5; ICTY, *Prosecutor v Šešelj*, IT-03-67-T, Trial Chamber III, *Order on the Provisional Release of the Accused Proprio Motu (“Šešelj Order”)*, 6 November 2014, pp 2,3; *Prosecutor v. Šainović et al.*, IT-05-87-A, *Decision on Sreten Lukić’s Motion for Provisional Release (“Lukić Decision”)*, 30 March 2012, p.2.

<sup>54</sup> “Prlić Appeal Decision, para.5; Šešelj Order, pp 2,3; Lukić Decision, p.2.

<sup>55</sup> F03086/A01, Krasniqi Defence, *ANNEX 1 to Krasniqi Defence Request for Provisional Release with Confidential and Ex Parte Annexes 1 and 2 and Confidential Annex 3*, 4 April 2025, *ex parte*; F03086/A02; Krasniqi Defence, *ANNEX 2 to Krasniqi Defence Request for Provisional Release with Confidential and Ex Parte Annexes 1 and 2 and Confidential Annex 3*, 4 April 2025, *ex parte*; F02330/A01, Registrar, [REDACTED], 22 May 2024, *ex parte*.

milestones in family life. During this period, three grandchildren were born, with whom he has been able to interact only within the restrictive environment of detention, [REDACTED]. For a man from a close-knit family, the cumulative absence from pivotal family moments has been profoundly difficult for Mr. Krasniqi. It shall not be dismissed that Mr. Krasniqi has previously suffered a decade long separation from his family when serving a prison sentence as a political prisoner in the former Yugoslavia.<sup>56</sup> A similar situation during the period of his rightful presumption of innocence cannot be acceptable.

28. In addition, the Defence has previously submitted [REDACTED].<sup>57</sup> During Mr. Krasniqi's detention, [REDACTED], whilst also [REDACTED], a long travel away from home, as often as physically possible. It must be acknowledged that detentions under international jurisdiction bring additional layers of specificity, including transfer of the accused from their home countries to possibly a very remote place. The Hague is nearly a full-day travel time away from Kosovo and certainly seemingly even further away [REDACTED]. Even a short period of provisional release would allow Mr. Krasniqi [REDACTED] to spend some time together in the circumstances of normality and without surrounding difficulties that have become part of their every-day lives.

29. Interim release, subject to stringent and enforceable conditions, would allow Mr. Krasniqi, especially given his age, to spend meaningful time with his family and to make memories with his grandchildren outside the prison facilities. Mr. Krasniqi is also significantly older than the other Accused. The Panel's review must reflect that difference and recognise that these compelling humanitarian circumstances decisively weigh in favour of conditional release pending delivery of the judgment.

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<sup>56</sup> See Transcript of Hearing (Statement of Mr Krasniqi), 18 February 2026, p.29233.

<sup>57</sup> F03668/A04, Krasniqi Defence, *Annex 4 to Krasniqi Defence Final Trial Brief*, 19 January 2026, confidential and *ex parte*.

30. The Defence therefore submits that, whilst the seriousness of the charges, the potential sentence, and the complexity of the case are relevant considerations, they cannot, either individually or cumulatively, render Mr. Krasniqi's continued detention pending judgment reasonable or proportionate under Rule 56(2) in the absence of demonstrable and current risks that cannot be mitigated by less restrictive measures. None of these factors outweighs the substantial period that Mr. Krasniqi has already spent in detention and the compelling humanitarian circumstances. Granting Mr. Krasniqi provisional release would provide Mr. Krasniqi with a meaningful opportunity to spend time with his children and grandchildren [REDACTED], while remaining subject to strict conditions that the Panel considers appropriate to impose.

#### IV. CONCLUSION

31. The Prosecution has not met its burden of justifying the continued deprivation of Mr. Krasniqi's liberty at this pre-judgment stage. The Panel must reassess risk dynamically and conduct an independent proportionality review under Rule 56(2), because detention is not automatic and the passage of time increases the weight of the right to liberty. The Prosecution has failed to show that any Article 41(6)(b) risk remains concrete, current, and incapable of being managed by less restrictive measures. In conducting the Rule 56(2) assessment, the Panel must also give decisive weight to the contemporaneous humanitarian realities of this case: Mr. Krasniqi's advanced age [REDACTED] mean that the period pending judgment may be his last meaningful opportunity to spend time with his family in Kosovo.

32. International tribunal practice confirms that, at this stage, any residual concerns pending judgment are managed through strict, enforceable conditions and

State guarantees, not by continued remand as a default.<sup>58</sup> Any remaining risk can be effectively mitigated through stringent conditions of release, including robust Kosovo Police supervision and any additional measures the Panel deems necessary.<sup>59</sup>

33. For the foregoing reasons, the Defence respectfully requests that the Panel order Mr. Krasniqi's provisional release for the period until the Judgment is rendered. If released, Mr. Krasniqi expressly undertakes to comply fully, strictly and without reservation with all conditions the Panel deems fit and proper to impose which would serve to reduce any potential risks to an acceptable level, including the periodic review of his release, the imposition of additional conditions or should it be deemed necessary, his return to KSC custody.

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Friday, 27 February 2026

Kuala Lumpur, Malaysia.

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<sup>58</sup> *Prlić* Decision, paras 26, 36, 44; *Petković* Decision, paras 27, 36, 44; ICTY, *Prosecutor v. Prlić et al*, IT-04-74-T, Trial Chamber III, Judgement, Vol. 5 of 6, 29 May 2013, paras 79, 83.

<sup>59</sup> See F03086/A03, Krasniqi Defence, *Annex 3 to Krasniqi Defence Request for Provisional Release with Confidential and Ex Parte Annexes 1 and 2 and Confidential Annex 3*, 4 April 2025, confidential; also, possible conditions previously proposed by the Defence, see F03086/CONFRED, Krasniqi Defence, *Krasniqi Defence Request for Provisional Release with Confidential and Ex Parte Annexes 1 and 2 and Confidential Annex 3*, 4 April 2025, confidential, paras 38-40.



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Friday, 27 February 2026

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