



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

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

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 22 December 2020

**Language:** English

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**Public redacted version of Prosecution response to Application for Interim  
Release on behalf of Mr Jakup Krasniqi**

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## I. INTRODUCTION

1. The KRASNIQI Release Request<sup>1</sup> should be rejected, and Mr KRASNIQI ('KRASNIQI') should remain in detention. As found in the Arrest Warrant Decision,<sup>2</sup> the criteria for detention under Article 41(6) of the Law<sup>3</sup> are satisfied. Those criteria continue to be met and, as discussed below, subsequently discovered information only underscores the seriousness of the risks presented. No alternative measures are sufficient to address these risks.

## II. SUBMISSIONS

### A. THE APPLICABLE LEGAL FRAMEWORK IN PROPER CONTEXT

2. The Pre-Trial Judge must be satisfied<sup>4</sup> that: (i) there is a grounded suspicion that KRASNIQI has committed a crime within the jurisdiction of the Specialist Chambers ('KSC'); and (ii) there are articulable grounds to believe that: (1) there is a risk of flight; (2) KRASNIQI will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; or (3) the seriousness of the crime, or the manner or circumstances in which it was committed and KRASNIQI's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the

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<sup>1</sup> Application for Interim Release, KSC-BC-2020-06/F00122, 7 December 2020, Confidential (with three annexes) ('KRASNIQI Release Request').

<sup>2</sup> Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027, 26 October 2020 ('Arrest Warrant Decision'). *See also* Confidential Redacted Version of 'Request for arrest warrants and related orders', filing KSC-BC-2020-06/F00005 dated 28 May 2020, KSC-BC-2020-06/F00005/CONF/RED, 15 November 2020 ('Arrest Warrant Application').

<sup>3</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

<sup>4</sup> Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, Public, ('Appeals Decision'), para.51.

criminal offence, complete an attempted crime or commit a crime which he has threatened to commit.<sup>5</sup>

3. There are no requirements beyond the statutory criteria; proposing additional or different thresholds does not advance the matter.<sup>6</sup> What is required is that the Pre-Trial Judge is satisfied that the Article 41(6)(b) criteria are met. If so, KRASNIQI shall continue to be detained.<sup>7</sup>

4. The KRASNIQI Defence relies on the language of Article 41(6),<sup>8</sup> but its reading is incomplete. Although the Law includes the terms ‘is’ and ‘will’ when describing the Article 41(6) criteria, these terms are surrounded by language making it clear that certainty is not remotely required. The Pre-Trial Judge need not conclude that KRASNIQI ‘will’ obstruct the investigation, but rather that ‘there are articulable grounds to believe’ this. Equally, it is not necessary to establish that KRASNIQI ‘will flee’ or ‘will commit’ further crimes, but that there are articulable grounds to believe there is a *risk* of these. As recently confirmed by the Court of Appeals, the relevant assessment is as to the possibility –as opposed to the inevitability –of such future occurrences.<sup>9</sup>

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<sup>5</sup> Article 41(6)(b)(i)-(iii).

<sup>6</sup> *Contra* KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.30 (the language of Article 41(6)(b) ‘suggests a high standard of proof requiring more than a mere possibility must be established’).

<sup>7</sup> Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, Public, (‘Appeals Decision’), para.51.

<sup>8</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.30.

<sup>9</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.67; Arrest Warrant Decision, para.27.

5. On 26 October 2020, the Pre-Trial Judge found the Article 41(6) criteria to be met and KRASNIQI's detention to be necessary. Pursuant to the KRASNIQI Release Request and Rule 57(2),<sup>10</sup> the matter now to be addressed is a review of that decision.<sup>11</sup>

#### B. THE ARTICLE 41(6) RISKS ARE ESTABLISHED

6. For the reasons set out in the Confirmation Decision,<sup>12</sup> there is a well-grounded suspicion that KRASNIQI committed multiple crimes within the jurisdiction of the KSC.

7. Further, and although just one would suffice, all three Article 41(6)(b) risks are present and no conditions sufficiently mitigate them. The KRASNIQI Defence's attempts to undermine the grounds alleged in the Arrest Warrant Application—relying heavily on KRASNIQI's devotion to Kosovo and retired status—are flawed and unconvincing. Considered together, the evidence presented amply demonstrates the considerable risks that Jakup KRASNIQI at liberty presents.

8. Before turning to the risks themselves, two preliminary considerations must be addressed.

9. First, the KRASNIQI Defence argue that the trial commencement date is a relevant consideration for interim release.<sup>13</sup> However, the KRASNIQI Defence makes no attempt to link the Article 41(6)(b) risks to its estimated length of pre-trial

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<sup>10</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>11</sup> *See similarly*, Appeals Decision, KSC-BC-2020-07/IA001/F00005, paras 37-38.

<sup>12</sup> Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026, 26 October 2020, Strictly Confidential and *Ex Parte* ('Confirmation Decision').

<sup>13</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, paras 15-16, 18.

detention. Instead, the estimated length is presented as its own independent justification for release.

10. The present detention review falls under Rule 57. A different provision—Rule 56(2)—governs the possibility of releasing an accused due to being detained for an unreasonable period prior to the opening of the case. It would be meritless for the KRASNIQI Defence to claim relief under Rule 56(2) when the Accused was arrested only last month, and it does not attempt to do so. The KRASNIQI Defence has set out its views on the anticipated length of the pre-trial process, and the SPO has explained why it considers these views unreasonable.<sup>14</sup> But resolving this dispute has no bearing on the matters currently before the Pre-Trial Judge, especially where the legal framework contemplates periodic review of detention every two months.<sup>15</sup>

11. Secondly, the KRASNIQI Defence challenges the factors relied upon as being incompatible with an individualised assessment of the risks posed by the accused.<sup>16</sup> Such arguments proceed from a flawed premise, namely that evidence of context or the actions of others cannot inform a proper, individualised assessment of the risks posed by an accused. On the contrary, an accused's position or contacts may be considered when determining the likelihood of his returning for trial, threatening witnesses if released, or committing further crimes.<sup>17</sup> Extensive and active support networks can also increase the risk that an accused would use the resources of a

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<sup>14</sup> Prosecution submission further to the status conference of 18 November 2020, KSC-BC-2020-06/F00097, 23 November 2020.

<sup>15</sup> Rule 57(2).

<sup>16</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, paras 31, 43, 49.

<sup>17</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.63 (finding no error in reliance upon a person's position as indicating contacts and a network that 'could create the risk that Gucati may obstruct the proceedings or that he may commit further offences'); ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-824, Judgment on the Appeal of Mr. Lubanga Dyilo Against the Decision of Pre-Trial Chamber 1 Entitled "*Decision sur la demande de mise en liberte provisoire de Thomas Lubanga Dyilo*", 13 February 2007, paras 136-37.

support network to flee.<sup>18</sup> Relatedly, where multiple accused have common circumstances, discussing such circumstances together—as done, where relevant, in the Arrest Warrant Application and Arrest Warrant Decision—remains compatible with an individualised assessment.

12. Risks posed by one accused can increase due to his personal actions or to circumstances equally applicable to him and all co-accused. In particular, as acknowledged by the KRASNIQI Defence,<sup>19</sup> the problem of witness intimidation in Kosovo is a relevant factor to be considered when assessing continued detention.<sup>20</sup> This persistent climate of witness intimidation, while undeniably a significant concern, is by no means the only circumstance alleged in support of KRASNIQI's detention.

### **1. Risk of flight**

13. It has been established that a risk of flight exists because: (a) convictions of senior KLA in other cases create an incentive to flee; (b) KRASNIQI's former positions allow for mobilisation of supporters; (c) of KRASNIQI's access to significant funds; (d) of KRASNIQI's ability to travel to places with no obligation to transfer him; and (e) the incentive to flee would increase once KRASNIQI was informed of the confirmed charges.<sup>21</sup>

14. KRASNIQI is charged with war crimes and crimes against humanity across over 40 detention sites, including murder and torture. The crimes charged against

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<sup>18</sup> ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-180-Red, Decision on the “*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*”, 13 July 2012, para.62.

<sup>19</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.44.

<sup>20</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.44.

<sup>21</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.28. *See also* Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 31-33 (incorporated by reference).

KRASNIQI entail a potential sentence of life-long imprisonment.<sup>22</sup> This prospect creates a persistent risk of flight that will only increase as KRASNIQI learns the full scope of the evidence against him.<sup>23</sup> As the Court of Appeals recently emphasised: ‘the nature of the offence as well as the severity of the penalty are important factors to consider when deciding whether detention is necessary in the circumstances of a particular case.’<sup>24</sup> The ECtHR Grand Chamber also recognises them as relevant in assessing the risk an accused might abscond,<sup>25</sup> and they are particularly pertinent in cases alleging war crimes and crimes against humanity, like this one.<sup>26</sup>

15. It is unpersuasive for KRASNIQI to argue that the decade he previously spent in prison means that a potential life sentence ‘holds no terror for him’.<sup>27</sup> Such hypothetical assertions should carry no weight. KRASNIQI’s argument works equally well in reverse, namely that his previous incarceration increases the risk he would flee to avoid experiencing it for a second time, this time possibly permanently.

16. KRASNIQI’s age and connections to Kosovo<sup>28</sup> do not change the reality that, as a Kosovo institution, the KSC can only seek binding cooperation to surrender him from Kosovo or a country which recognises Kosovo and has an extradition agreement with it, or other enabling legislation.<sup>29</sup> There are only a limited number of countries with such agreements.<sup>30</sup> This situation is markedly different from other jurisdictions

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<sup>22</sup> Article 44(1).

<sup>23</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.28.

<sup>24</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.72.

<sup>25</sup> ECtHR (Grand Chamber), *Idalov v. Russia*, 5826/03, 22 May 2012, para.145.

<sup>26</sup> The ECtHR has found that, in cases concerning war crimes against the civilian population, detention may be justified and extended solely on the gravity of the charges, and attached particular significance to the seriousness of the crime at issue and the nature and gravity of the charges. See ECtHR, *Šuput v. Croatia*, 49905/07, Judgment, 31 May 2011, paras 101-110; ECtHR, *Getoš-Magdić v. Croatia*, 56305/08, Judgment, 2 December 2010, paras 80-91.

<sup>27</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.39.

<sup>28</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, paras 4, 33.

<sup>29</sup> Article 55(2); Rule 208.

<sup>30</sup> Including Albania, Austria, Belgium, Croatia, the Czech Republic, Germany, Hungary, Italy, Macedonia, Turkey, the United Kingdom, and the United States. Most of these countries have entered KSC-BC-2020-06



and other institutions such as the former ICTY, which could seek broader binding cooperation on the basis of its powers derived from the United Nations Security Council.<sup>31</sup> KRASNIQI can travel to over 180 countries in the world and potentially place himself permanently beyond the reach of the KSC.

17. The KRASNIQI Defence significantly understates KRASNIQI's influence in Kosovo by attempting to present him as a retiree linked to a 'small' political party.<sup>32</sup> Jakup KRASNIQI is the former Chairman of the Kosovo Assembly and former Acting President of Kosovo. He is also the former Deputy Commander of the KLA. A lifetime of KLA and government contacts are not forgotten simply through retirement. KRASNIQI has access to the same vast support network as the other accused in this case, including those with security, police, and intelligence expertise. This network is clearly capable of hiding KRASNIQI within Kosovo or securing his escape to another country.

18. That KRASNIQI did not flee Kosovo when he was at risk of imprisonment at earlier points in his life does not deserve much weight in the analysis.<sup>33</sup> KRASNIQI's means and motive to flee must be assessed on the opportunities currently available to him as a senior KLA leader and successful politician. That KRASNIQI did not flee at times in his life when flight was more difficult<sup>34</sup> is not an accurate measure of the current risk.

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into extradition agreements with Kosovo itself. Others have formally agreed with Kosovo on the continued application of extradition agreements reached with the Federal Republic of Yugoslavia.

<sup>31</sup> United Nations Security Council, S/RES/827 (1993), Resolution 827, 25 May 1993, para.4.

<sup>32</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, paras 5, 40, 50.

<sup>33</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.34.

<sup>34</sup> For at least 10 years of his life, flight was impossible. Paragraph 15 above.



19. The KRASNIQI Defence asserts that no evidence has been disclosed as to his significant funds,<sup>35</sup> mere pages after submitting that [REDACED].<sup>36</sup> The larger issue is the funds which KRASNIQI's broad network of supporters can avail to him. KRASNIQI's focus on his own personal assets obscures the reality that KRASNIQI has *access* to significant funds.

20. KRASNIQI's testimony when summonsed in prior cases and his voluntary appearance at an SPO interview do not negate the flight risk,<sup>37</sup> and such facts were available to the Pre-Trial Judge at the time of the Arrest Warrant Decision.

## **2. Risk of obstructing the investigation**

21. It has been established that a risk of obstructing the investigation exists because: (a) KRASNIQI's former positions allow for mobilisation of a vast support network; (b) KRASNIQI has publicly attacked the KSC and attempted to delegitimize it; and (c) there is a prevailing climate in Kosovo of intimidation of witnesses who testify against KLA members.<sup>38</sup> As outlined below, further factors supporting the existence of this risk have been revealed.

### **(a) Statements and actions**

22. The KRASNIQI Defence argues that his many public comments opposing the creation of the KSC, criticising its operations, or branding any prosecution of KLA members as absurd, are political opinions that he is entitled to freely express. But whether or not they are expression of his political opinions is beside the point. They are relevant to the risk assessment that KRASNIQI will attempt to obstruct justice or

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<sup>35</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.41.

<sup>36</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.6.

<sup>37</sup> *Contra* KRASNIQI Release Request, KSC-BC-2020-06/F00122, paras 7-8, 37-38.

<sup>38</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.41. See also Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 34-38 (incorporated by reference).

interfere with witnesses. Taken together, they establish—if nothing else—that KRASNIQI believes the KSC is an unfair threat to the legacy of the KLA. Of course, the evidence substantiating the likelihood that KRASNIQI will obstruct justice or interfere with witnesses goes well beyond his repeated condemnations of the KSC.

23. First, the heart of the joint criminal enterprise in this case is the targeting of the KLA's opponents, defined in the Confirmed Indictment as those who were or were perceived to have been collaborating or associating with the KLA's enemies or otherwise not supporting the aims or means of the KLA leadership.<sup>39</sup> As KLA spokesperson and a Deputy General Commander, KRASNIQI was a key architect of that common purpose. KRASNIQI gave various interviews as spokesperson representing the General Staff, including in July 1998, where, while denying that the KLA 'go[es] in for kidnapping', he stated that '[e]ven if some people have suffered, these have been more Albanian collaborators than Serbian civilians', and added '[t]hose we have kidnapped are either announced in a list or reported to be executed, but we do not behave in a base fashion like Serbia'.<sup>40</sup> KRASNIQI calling out collaborators for punishment gave voice to the joint criminal enterprise, and his subsequent statements must be understood in this light.

24. In a Facebook post less than eight months ago, KRASNIQI branded Shkëlzen Gashi a 'collaborator' for daring to state publicly that members of the KLA committed crimes, thereby subjecting Gashi to death threats and confirming that KRASNIQI's views about targeting perceived collaborators remain unchanged.

25. The KRASNIQI Defence attempts to diminish the significance of the Facebook post with a series of unpersuasive observations.<sup>41</sup> It claims that the post does not 'call

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<sup>39</sup> Confirmed Indictment, KSC-BC-2020-06/F00034/A01, 30 October 2020, para.32.

<sup>40</sup> Interview of Jakup KRASNIQI, Koha Ditore, U003-8586-U003-8590, p.U003-8589.

<sup>41</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.47.

for any individual to interfere with witnesses, accomplices, or victims'. However, only by disregarding a mountain of evidence already before the Court about what it means to label someone a 'collaborator' — not to mention pronouncing them 'in the service of MILOŠEVIĆ's policy of genocide' — could one argue that KRASNIQI was not making a call to action. The KRASNIQI Defence further argues that '[t]here is no evidence directly linking that post to Mr. Gashi,' but the timing (KRASNIQI's post appeared on the same day as GASHI's remarks), and context—including KRASNIQI's mention of individuals 'either in the service of the prime minister or any other position' (a complete *non sequitur* unless referring to GASHI, who at the time worked for the then Prime Minister)—confirm beyond question that Mr GASHI was among those KRASNIQI was specifically targeting. Finally, the KRASNIQI Defence argues that '[t]here is no evidence [...] that Mr. Gashi was a victim or witness or otherwise connected with the procedures of the KSC,' as if effectively inciting death threats against individuals only counts for detention purposes if those individuals are directly connected with the KSC. As noted in the SPO's Application,<sup>42</sup> the GASHI episode reflects a climate of impunity and intimidation that KRASNIQI and his co-Accused have actively facilitated and encouraged.

26. Some recently obtained material further illuminates KRASNIQI's mindset. [REDACTED].<sup>43</sup> [REDACTED] [REDACTED] [REDACTED].

27. [REDACTED]:<sup>44</sup>

[REDACTED].

[REDACTED]. [REDACTED]. [REDACTED].

[REDACTED].<sup>45</sup>

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<sup>42</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, para.6.

<sup>43</sup> [REDACTED].

<sup>44</sup> [REDACTED].

<sup>45</sup> [REDACTED].

28. [REDACTED],<sup>46</sup> [REDACTED].

29. This individualised evidence as to KRASNIQI far exceeds reliance on the general climate of intimidation alone as justifying his continued detention. His own statements and actions—at the time of the charged acts, much more recently, and in the interim—confirm not only that he is willing to make use of the climate, but that he is in significant measure responsible for it.

(b) Support network and the climate of intimidation

30. In September 2020, collections of SITF/SPO-related materials were provided without authorisation to the KLA War Veterans Association ('KLA WVA'), which then distributed or otherwise made them available to the public. There is evidence that these documents were delivered as part of a campaign to intimidate witnesses, and the KLA WVA head and deputy have since been arrested for violating the secrecy of proceedings and intimidating/retaliating against potential witnesses.<sup>47</sup>

31. The KLA WVA has long had a particularly active network of supporters hostile to the SPO's investigation.<sup>48</sup> There is a significant risk the KLA WVA and others will continue such activities, and a prime potential source of leaks is material to be disclosed to the Accused. What the KLA WVA has already done has intimidated or frightened several of the SPO's potential witnesses. Such actions demonstrate – again – that conducting legal proceedings in The Hague or offering a comprehensive witness

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<sup>46</sup> See Prosecution response to Application for Interim Release on behalf of Mr Rexhep Selimi, 17 December 2020.

<sup>47</sup> See generally *Prosecutor v. Gucati and Haradinaj*, Redacted indictment, KSC-BC-2020-07/F00075, 14 December 2020 (confirmed 11 December 2020).

<sup>48</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 4-5.

protection program are best seen not as a panacea for mitigating interference risks so much as a concrete reflection of the deadly seriousness of the problem.<sup>49</sup>

32. By virtue of his past role as a senior KLA leader—indeed, as the KLA Deputy Commander — Jakup KRASNIQI is in a position of particular influence over this network.<sup>50</sup>

### 3. Risk of committing further crimes

33. It has been previously established that a risk of committing further crimes exists because: (a) the nature of the joint criminal enterprise charge concerned targeting opponents of the accused; (b) KRASNIQI has publicly attacked the KSC and attempted to delegitimise it; and (c) there is a prevailing climate in Kosovo of intimidation of witnesses who testify against KLA members.<sup>51</sup>

34. In relation to Article 41(6)(b)(iii), KRASNIQI has argued that ‘repeat the criminal offense’ must be interpreted to carry with it the contextual elements of war crimes and crimes against humanity.<sup>52</sup> But it had to be plain to the drafters that any armed conflict or attack against the civilian population from the jurisdictional period would have ceased by the time of an accused’s arrest some 15-20 years later. The more logical interpretation of the provision is that there must be a risk of the accused repeating the underlying criminal acts. In the present case those include murder, torture, and cruel treatment, and therefore a conclusion that ‘there is a risk that Mr KRASNIQI may resort to physical violence or threats of physical violence against

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<sup>49</sup> See *Obstructing the Investigation – Too Many Obstacles, Too Little Evidence*, in Sense Agency, ICTY: The Kosovo Case, 1998-1999, available at <https://kosovo.sense-agency.com/>; Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 21-22.

<sup>50</sup> *Contra* KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.40.

<sup>51</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.42. See also Arrest Warrant Application, KSC-BC-2020-06/F00005, para.40 (incorporated by reference).

<sup>52</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.51.

those perceived as being opposed to the KLA, including victims and witnesses<sup>53</sup> is squarely within the scope of Article 41(6)(b)(iii).<sup>54</sup>

35. The heart of the joint criminal enterprise in this case is the targeting of perceived opponents of the KLA.<sup>55</sup> For as much as KRASNIQI insisted at the time that ‘as an army we [the KLA] abide by all international rules of warfare’, he also asserted that ‘[c]ollaborators are warned that we will kill them if they continue on the wrong path’.<sup>56</sup> For these former KLA leaders, these methods persist.<sup>57</sup>

36. The KRASNIQI Defence attempts to rely upon the fact that the alleged offences were committed 20 years ago as a factor that should be considered.<sup>58</sup> That there is a well-grounded suspicion that KRASNIQI committed a wide range of war crimes and crimes against humanity<sup>59</sup> is a serious indicator, amongst others, of the risk that he is willing to commit further violent acts, even many years later.

### C. NO CONDITIONS SUFFICIENTLY MITIGATE THESE RISKS

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<sup>53</sup> Arrest Warrant Decision, para.42.

<sup>54</sup> See Arrest Warrant Application, KSC-BC-2020-06/F00005/CONF/RED, para.40.

<sup>55</sup> Confirmed Indictment, KSC-BC-2020-06/F00034/A01, 30 October 2020, para.32.

<sup>56</sup> June 1998 Interview of Jakup KRASNIQI, Der Spiegel, 043619-043620-ET, p.3 (each quote appears in consecutive sentences).

<sup>57</sup> To reference a prominent example from 2020 involving former KLA commander Sami LUSHTAKU: on 11 April 2020, lawyer Gazmend HALILAJ posted on Facebook that Sami LUSHTAKU is behind the misuse of 1.4 million German marks during the war. LUSHTAKU then called HALILAJ on the phone, asking him to remove the writing while cursing and threatening him. Three days later, and with the intent to avenge Sami LUSHTAKU, his cousin Ibrahim LUSHTAKU and Xhelal ZEQRIRI allegedly crashed into HALILAJ’s car on the afternoon of 14 April 2020 and then shot after HALILAJ as he fled from his car. They did not hit him. Sami LUSHTAKU plead guilty for committing criminal harassment against HALILAJ on 28 October 2020 and was fined 2000 euros. Ibrahim LUSHTAKU and Xhelal ZEQRIRI have been charged with attempted murder, and their case remains pending. Annex 1 to Prosecution response to Application for Interim Release on behalf of Mr Hashim Thaçi, KSC-BC-2020-06/F00149/A01, 16 December 2020.

<sup>58</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.50.

<sup>59</sup> Confirmation Decision, KSC-BC-2020-06/F00026, paras 474, 478, 482, 491.

37. The KRASNIQI Defence presents a list of conditions which could be applied in the event of his release.<sup>60</sup> No combination of the conditions proposed comes close to mitigating the array of risks KRASNIQI poses if released.<sup>61</sup> Detention is the only means by which they can be adequately managed, with the communications monitoring framework of the KSC Detention Centre being particularly important to ensure that no confidential information disclosed to him is disseminated to the outside world.<sup>62</sup> [REDACTED].<sup>63</sup>

38. The KSC/SPO does not have the resources to adequately monitor provisionally released accused in Kosovo. Further, EULEX's monitoring mandate does not extend to monitoring conditions of release, nor does it have the resources to do so. Regardless of where located if released, KRASNIQI has the means and network to realise each of the risks foreseen in Article 41(6)(b).

39. The Kosovo Police have been of assistance to the SPO when called upon, particularly in the recent arrests of the Accused. But there are good reasons to believe that the Kosovo authorities are limited in their ability to monitor an accused of KRASNIQI's stature, resources, and authority in a case like this one.<sup>64</sup>

40. *Remzi SHALA*.<sup>65</sup> A war crimes indictment was filed against former KLA commander Remzi SHALA on 19 October 2016. The trial opened on 12 May 2017. During the portion of SHALA's trial conducted in 2018, he was granted provisional

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<sup>60</sup> KRASNIQI Release Request, KSC-BC-2020-06/F00122, paras 19, 35.

<sup>61</sup> Decision on Application for Bail, KSC-BC-2020-07/F00059, 27 October 2020, para.21. *See also* Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

<sup>62</sup> *See especially* Articles 4.2, 6-8 and 17 of the Registry Practice Direction on Detainees – Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020.

<sup>63</sup> *See* KRASNIQI Release Request, KSC-BC-2020-06/F00122, para.6.

<sup>64</sup> *Contra* KRASNIQI Release Request, KSC-BC-2020-06/F00122, paras 20, 35.

<sup>65</sup> Humanitarian Law Center Kosovo, HLC Kosovo Annual Report 2019: War Crimes Trials – Still at the Beginning, 2020, p.414; Humanitarian Law Center Kosovo, War Crimes: A discouraging Transition, 2019, p.297; Humanitarian Law Center Kosovo, HLC Kosovo Annual Report 2017: War Crimes Trials – What Comes Next?, March 2018, p.402 ('HLC 2018 Report').



release on the condition that he appear in court when summoned. The last court session in 2018 was held on 16 November 2018, and SHALA was released during the court adjournment on the condition that he be present at the scheduled continuation of the trial on 9 January 2019. SHALA did not appear in court that day, nor did he inform the court of his intended absence. The competent domestic authorities were unable to apprehend SHALA, so an international warrant was issued for his arrest. SHALA was not arrested until 24 May 2019, and he was placed in detention on remand from that point forward.

41. *Sami LUSHTAKU*. Sami LUSHTAKU, former Drenica Zone commander in the KLA, was tried alongside named JCE members Sabit GECI and Syljeman SELIMI in the *Drenica* case. Before that trial commenced, LUSHTAKU was being treated at the University Clinical Centre in Priština/Prishtinë in lieu of detention on remand.<sup>66</sup> In May 2014, he and two other detainees escaped from the hospital for a two-day period. During the summer after LUSHTAKU's 2015 conviction in his main case, he, Sylejman SELIMI, and another of those convicted used false medical excuses to be placed in private apartments within the Priština/Prishtinë Medical Centre so as to avoid serving time in detention.<sup>67</sup> On 21 August 2015, LUSHTAKU again escaped the hospital for several hours to go to his house in Priština/Prishtinë.<sup>68</sup> On 22 September 2015, EULEX Police re-arrested LUSHTAKU after he escaped correctional custody for a third time. Indictments were filed against LUSHTAKU and twenty-three others concerned in these three escapes. In April 2020, LUSHTAKU was acquitted in relation to the May 2014 escape and convicted for the others.

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<sup>66</sup> Humanitarian Law Center Kosovo, HLC Kosovo Report 2014: High-Profile Trials: Justice Delayed, 2014, p.325.

<sup>67</sup> U.S. Department of State, '2015 Country Reports on Human Rights Practices – Kosovo', 13 April 2016, available at <https://www.refworld.org/docid/5716124d15.html>.

<sup>68</sup> HLC 2018 Report, p.389.

42. *Sabit GECI*. Sabit GECI was also detained in a hospital following his 2011 conviction,<sup>69</sup> and evidently had enormous authority over the conditions of his imprisonment. [REDACTED] reveal that he could come and go whenever he wanted.<sup>70</sup> In one particularly telling 10 March 2012 exchange, a [REDACTED] reported GECI saying the following in response to a question about the behaviour of his guards:

Good, very good...imagine one night was another new guard and he was scared that I may escape through the window ... (offending the guard due to his way of thinking for S.G) ... if I really would like to escape I could do it at any time and I would order the guard to escort me, and just because of him thinking for me this way, I did went out to have dinner near here at "[REDACTED]" and didn't came back for four hours, I did it in purpose...<sup>71</sup>

43. These prominent examples demonstrate Kosovo's lack of capacity to effect arrests or monitor conditions of former KLA leaders.

#### D. THE ADDITIONAL RELIEF SOUGHT IS UNNECESSARY

44. As to the KRASNIQI Defence request for an oral hearing, the Pre-Trial Judge has already determined he has enough information to resolve this request on the written filings alone.<sup>72</sup>

### III. CLASSIFICATION

45. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version will be filed.

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<sup>69</sup> *Sabit Geci et al.*, 45/2010, Trial Verdict, 29 July 2011.

<sup>70</sup> Annex 2.8 to Prosecution response to Application for Interim Release on behalf of Mr Hashim Thaçi, KSC-BC-2020-06/F00149/A02, 16 December 2020, Confidential.

<sup>71</sup> [REDACTED].

<sup>72</sup> Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions, KSC-BC-2020-06/F00150, 16 December 2020.

IV. RELIEF REQUESTED

46. For the foregoing reasons, the relief sought by the KRASNIQI Defence should be rejected in full.

Word count: 4,738



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**Jack Smith**

**Specialist Prosecutor**

Tuesday, 22 December 2020  
At The Hague, the Netherlands.