



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**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

**Date:** 22 January 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of the  
Decision on Jakup Krasniqi's Application for Interim Release**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 41(2), (6) and (12) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 4 November 2020, Jakup Krasniqi ("Mr Krasniqi") was arrested pursuant to a decision<sup>2</sup> and an arrest warrant issued by the Pre-Trial Judge,<sup>3</sup> further to the confirmation of an indictment against him.<sup>4</sup>
2. On 7 December 2020, the Defence for Mr Krasniqi ("Defence") filed an application for interim release ("Request"), seeking at the same time an expedited time-table and an oral hearing to address the Request.<sup>5</sup>
3. On 16 December 2020, the Pre-Trial Judge rejected the request for an expedited time-table and an oral hearing.<sup>6</sup>
4. On 17 December 2020, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response").<sup>7</sup> On the same day, the Accused requested an extension

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders* ("Decision on Arrest and Detention"), 26 October 2020, public.

<sup>3</sup> KSC-BC-2020-06, F00027/A07/COR/RED, *Public Redacted Version of Corrected Version of Arrest Warrant for Jakup Krasniqi*, 26 October 2020, public.

<sup>4</sup> KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, public.

<sup>5</sup> KSC-BC-2020-06, F00122, Defence for Mr Krasniqi, *Application for Interim Release* ("Request"), 7 December 2020, confidential, para. 54, with Annexes 1 ("F00122/A01"), 2 ("F00122/A02"), confidential, and Annex 3 ("F00122/A03"), public; *see also* F00122/RED, Defence for Mr Krasniqi, *Public Redacted Version of Application for Interim Release*, 18 December 2020, public.

<sup>6</sup> KSC-BC-2020-06, F00150, Pre-Trial Judge, *Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions*, 16 December 2020, public, para. 30(a)-(b).

<sup>7</sup> KSC-BC-2020-06, F00153, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Jakup Krasniqi* ("Response"), 17 December 2020, confidential, with Annex 1 ("F00153/A01"), confidential; *see also* F00153/RED, Specialist Prosecutor, *Public Redacted Version of Prosecution Response to Application for Interim Release on behalf of Mr Jakup Krasniqi*, 22 December 2020, public.

of the time limit to reply and waived his right to have detention reviewed within two months.<sup>8</sup>

5. On 5 January 2021, the Pre-Trial Judge authorised a word limit of 6,000 words for all Defence replies.<sup>9</sup>

6. On 6 January 2021, further to an order extending the time limit for replies,<sup>10</sup> the Defence replied to the Response (“Reply”).<sup>11</sup>

## II. SUBMISSIONS

7. The Defence submits that the SPO has not established the criteria for detention set out in Article 41(6) of the Law, because it has notably not been proven that: (i) Mr Krasniqi is a flight risk; (ii) he will destroy, hide, change or forge evidence; (iii) he will obstruct the proceedings by influencing witnesses, victims or accomplices; and (iv) he will commit any further specified criminal offence.<sup>12</sup> According to the Defence, Mr Krasniqi should be released subject to a number of specific conditions proposed and any other conditions that the Pre-Trial Judge deems necessary (“Proposed Conditions”).<sup>13</sup>

8. The SPO opposes the Request and submits that Mr Krasniqi should remain in detention, as the criteria under Article 41(6) of the Law are satisfied and continue to be met. The SPO further avers that subsequently discovered information underscores the seriousness of the risks presented.<sup>14</sup>

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<sup>8</sup> KSC-BC-2020-06, Transcript, 17 December 2020, public, p. 227, lines 9-14.

<sup>9</sup> KSC-BC-2020-06, F00162, Pre-Trial Judge, *Decision on Thaçi Defence Request for Extension of the Reply Word Limit*, 5 January 2021, public, para. 12(a)-(b).

<sup>10</sup> KSC-BC-2020-06, F00155, Pre-Trial Judge, *Decision on Defence Requests to Vary Time Limits*, 18 December 2020, public, para. 23.

<sup>11</sup> KSC-BC-2020-06, F00163, Defence for Mr Krasniqi, *Krasniqi Defence Reply to Prosecution Response to Application for Interim Release (“Reply”)*, 6 January 2021, confidential.

<sup>12</sup> Request, para. 2.

<sup>13</sup> Request, paras 2, 19; F00122/A01.

<sup>14</sup> Response, para. 1.

9. The Defence replies to four new factual arguments submitted by the SPO in the Response.<sup>15</sup>

### III. APPLICABLE LAW

10. Article 41(2) of the Law provides that any person deprived of his or her liberty by arrest or detention shall be entitled to challenge the lawfulness of his or her arrest and such challenge shall be decided speedily by the Specialist Chambers (“SC”).

11. Article 41(6) of the Law provides that the SC shall only order the arrest and detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC and there are articulable grounds to believe that: (i) the person is a flight risk; (ii) the person will destroy, hide, change or forge evidence or specific circumstances indicate that he or she will obstruct the progress of criminal proceedings; or (iii) the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that the person will repeat the criminal offence, complete an attempted crime, or commit a crime which the person has attempted to commit.

12. Pursuant to Rule 57(2) of the Rules, after the assignment of a Pre-Trial Judge and until a judgment is final, the Panel seized with a case shall review a decision on detention upon the expiry of two months from the last ruling on detention or at any time upon request by the Accused or the Specialist Prosecutor, or *proprio motu*, where a change in circumstances since the last review has occurred.

13. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the Accused, to prevent

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<sup>15</sup> Reply, para. 2.

reoffending or to ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion. Pursuant to Rule 56(5) of the Rules, a Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

#### IV. DISCUSSION

##### A. APPLICABLE STANDARDS

14. The Defence files its Request pursuant to Article 41(6) of the Law and Rule 57(2) of the Rules. It further submits that the choice of words “is” in sub-paragraph (i) and “will” in sub-paragraphs (ii) and (iii) of Article 41(6)(b) of the Law suggests a high standard of proof requiring more than a mere possibility to be established.<sup>16</sup> The Defence further avers that such determination must be based on the specific facts of the case and the applicant’s personal circumstances as an individual, and it cannot be general or abstract.<sup>17</sup>

15. The SPO responds that the language surrounding the terms “is” and “will” does not require certainty, but the existence of articulable grounds to believe that there is a risk of flight, obstruction of the investigation or commission of further crimes.<sup>18</sup> The SPO further responds that an individual assessment does not exclude taking into account the context or actions of others, and that an Accused’s position or contacts, related networks of support and common circumstances applying to multiple accused are relevant for and remain compatible with an individualised assessment.<sup>19</sup>

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<sup>16</sup> Request, para. 30.

<sup>17</sup> Request, paras 26-27.

<sup>18</sup> Response, para. 4.

<sup>19</sup> Response, paras 11-12.

16. The Pre-Trial Judge recalls that while the arrest warrant, pursuant to Article 41(6) of the Law, was issued *ex parte*, without participation of the Defence, Article 41(2) of the Law provides the detained person with an early opportunity to challenge the lawfulness of his or her arrest, including the grounds set out in Article 41(6) of the Law. Accordingly, the Pre-Trial Judge is called upon to inquire anew into the existence of facts justifying detention in light of the arguments advanced by the Parties.<sup>20</sup> In this context, it is noted that any request for provisional release must be considered in the context of the detained person's right to be presumed innocent.<sup>21</sup>

17. The SPO bears the burden of establishing that the detention of the Accused is necessary.<sup>22</sup>

18. As regards the evidentiary threshold under Article 41(6)(b) of the Law, the Pre-Trial Judge recalls that, once the standard in Article 41(6)(a) of the Law is met, the grounds that allow deprivation of liberty must be *articulable* in the sense that they must be specified in detail.<sup>23</sup> In this regard, Article 41(6)(b) of the Law echoes the principle

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<sup>20</sup> KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj* ("Haradinaj First Decision on Detention"), 27 October 2020, public, paras 12-13.

<sup>21</sup> KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, para. 113. Similarly, ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-2151-Red, Appeals Chamber, [Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo Against the Decision of Trial Chamber III of 6 January 2012 Entitled "Decision on the Defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'"](#), 5 March 2012, para. 40.

<sup>22</sup> SCCC 26 April 2017 Judgment, para. 115. Similarly, for example, ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-208, Appeals Chamber, [Judgment on the Appeal of Mr Laurent Gbagbo Against the Decision of Trial Chamber I of 8 July 2015 Entitled "Ninth Decision on the Review of Mr Laurent Gbagbo's Detention Pursuant to Article 60\(3\) of the Statute"](#), 8 September 2015, para. 36; *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, Appeals Chamber, [Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo Against the Decision of Trial Chamber III of 28 July 2010 Entitled "Decision on the Review of the Detention of Mr Jean-Pierre Bemba Gombo Pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, para. 51; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-330, Pre-Trial Chamber I, [Decision on the Powers of the Pre-Trial Chamber to Review Proprio Motu the Pre-Trial Detention of Germain Katanga](#), 18 March 2008, p. 7.

<sup>23</sup> Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon".

that continued detention of a person can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.<sup>24</sup> Accordingly, a Panel must rely on specific reasoning and concrete grounds in deciding to continue detention;<sup>25</sup> *i.e.* it must find that there are specific, concrete grounds to believe that the Accused poses public interest risks that can only be mitigated through continued detention. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>26</sup> that the risks under any of the three limbs of Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.<sup>27</sup> In simple terms, while suspicion simpliciter is not enough, certainty is not required.

19. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Pre-Trial Judge recalls that, while the evaluation involves an element of discretion,<sup>28</sup> it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of each Accused.<sup>29</sup> Accordingly, the same

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<sup>24</sup> SCCC 26 April 2017 Judgment, para. 113

<sup>25</sup> SCCC 26 April 2017 Judgment, para. 115.

<sup>26</sup> See chapeau of Article 41(6)(b) of the Law.

<sup>27</sup> KSC-BC-2020-07, IA001/F00005, Court of Appeals Chamber, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention* ("Gucati Appeal Decision"), 9 December 2020, public, paras 63, 67. See also Haradinaj First Decision on Detention, para. 18. Similarly, ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-558, Appeals Chamber, [Judgment on the Appeal of Mr Aimé Kilolo Musamba Against the Decision of Pre-Trial Chamber II of 14 March 2014, Entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba'"](#) ("Bemba et al. Appeal Judgment"), 11 July 2014, paras 107, 117; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-572, Appeals Chamber, [Judgment in the Appeal by Mathieu Ngudjolo of 27 March 2008 Against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release](#) ("Katanga Appeal Judgment"), 9 June 2008, para. 21; *Prosecutor v. Lubanga*, ICC-01/04-01/06-824, Appeals Chamber, [Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision of Pre-Trial Chamber I Entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo"](#) ("Lubanga Appeal Judgment"), 13 February 2007, para. 137.

<sup>28</sup> Gucati Appeal Decision, para. 49. Similarly, ICTY, *Prosecutor v Popović et al.*, IT-05-88-AR65.2, Appeals Chamber, [Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release](#) ("Borovčanin Appeal Decision"), 30 June 2006, para. 5.

<sup>29</sup> Similarly, ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR65.5, Appeals Chamber, [Decision on Prosecution's Consolidated Appeal Against Decision to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić](#) ("Prlić et al. Appeal Decision"), 11 March 2008, para. 7; *Prosecutor v. Lukić and Lukić*, IT-98-32/1-AR65.1, Appeals Chamber, [Decision on Defence Appeal Against Trial Chamber's Decision on Sredoje Lukić's](#)

factors, when applied to another case, in relation to another Accused, may result in a different conclusion by the Pre-Trial Judge or may be considered irrelevant.<sup>30</sup> When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.<sup>31</sup> These factors may be individual, such as the nature and scope of the crimes allegedly committed by the Accused and the potential punishment that he or she is facing,<sup>32</sup> his or her age, (past) position(s), occupation, family ties, health condition, assets, conduct and statements,<sup>33</sup> international contacts and ties,<sup>34</sup> and the existence of support networks that may facilitate the materialisation of a risk.<sup>35</sup> Relevant factors may also be contextual, such as the environment and conditions in which the Accused lives,<sup>36</sup> or the particular stage

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[Motion for Provisional Release](#) (“Lukić Appeal Decision”), 16 April 2007, para. 7; ICC, [Bemba et al. Appeal Judgment](#), para. 111.

<sup>30</sup> Similarly, ICTY, [Borovčanin Appeal Decision](#), para. 15.

<sup>31</sup> *Gucati* Appeal Decision, para. 61; Similarly, ICTY, *Prosecutor v. Šainović and Ojdanić*, IT-99-37-AR65, Appeals Chamber, [Decision on Provisional Release](#) (“Šainović and Ojdanić Appeal Decision”), 30 October 2002, para. 6; [Prlić et al. Appeal Decision](#), para. 7; [Lukić Appeal Decision](#), para. 7; *Prosecutor v. Bemba et al.*, ICC-01/05-01/08-323, Appeals Chamber, [Judgment on the Appeal of Mr. Jean-Pierre Bemba Gombo Against the Decision of Pre-Trial Chamber III Entitled “Decision on Application for Interim Release”](#), 16 December 2008, para. 55; *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-970, Appeals Chamber, [Judgment on the Appeal of the Prosecutor Against the Decision of Pre-Trial Chamber II of 23 January 2015 Entitled “Decision on ‘Mr Bemba’s Request for Provisional Release’](#), 29 May 2015, para. 27; *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-969, Appeals Chamber, [Judgment on the Appeals Against Pre-Trial Chamber II’s Decisions Regarding Interim Release in Relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and Order for Reclassification](#), 29 May 2015, para. 45.

<sup>32</sup> *Gucati* Appeal Decision, para. 72. Similarly ICTY, [Borovčanin Appeal Decision](#), paras 9, 14-15; ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-278-Red, Appeals Chamber, [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”](#) (“Gbagbo Appeal Judgment”), 26 October 2012, para. 54; *Prosecutor v. Bemba*, ICC-01/05-01/08-323, Appeals Chamber, [Judgment on the Appeal of Mr. Jean-Pierre Bemba Gombo Against the Decision of Pre-Trial Chamber III Entitled “Decision on Application for Interim Release”](#), 16 December 2008, para. 55.

<sup>33</sup> See, ECtHR, *Gábor Nagy v. Hungary*, Application No. 73999/14, [Judgment](#), 11 April 2017, para. 70; *Yegorychev v. Russia*, Application No. 8026/04, [Judgment](#), 17 May 2016, para. 54; *Aleksandr Novikov v. Russia*, Application No. 7087/04, [Judgment](#), 11 July 2013, para. 46. Similarly, ICTY, [Šainović and Ojdanić Appeal Decision](#), paras 6-7, 9-10; ICC, [Bemba et al. Appeal Judgment](#), para. 111.

<sup>34</sup> Similarly, ICC, [Lubanga Appeal Judgment](#), paras 136-137.

<sup>35</sup> *Gucati* Appeal Decision, para. 63; Similarly, 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>36</sup> See Article 41(6)(b)(iii) of the Law.



of the ongoing proceedings.<sup>37</sup> In any event, contextual factors alone are not sufficient to demonstrate a risk. Any relevant factor may support one or more grounds under Article 41(6)(b) of the Law.<sup>38</sup> Lastly, the Pre-Trial Judge must consider the relevant factors not only as they exist at the time of the decision, but also, as much as it can be foreseen, at the time the Accused is expected to return for trial, if released.<sup>39</sup>

20. Three articulable grounds are listed in Article 41(6)(b) of the Law:

- (i) the risk of flight;
- (ii) the risk of destroying, hiding, changing or forging evidence or obstructing the progress of the proceedings by influencing witnesses, victims or accomplices;
- (iii) the risk of repeating the criminal offence, completing an attempted crime or committing a crime which the Accused has threatened to commit.

21. In relation to the third ground, the Pre-Trial Judge holds that the future crime need not be identical to those included in the charges or occurring in the same (possibly no longer existing) context as the one for which the Accused is prosecuted. Rather, on the basis of available information, the Pre-Trial Judge must assess whether there is a likelihood that the Accused, if released, will, under any form of responsibility, engage in or contribute to crimes similar to the underlying acts charged. The crimes predicted to be committed in the future need not be specified in detail.<sup>40</sup>

22. In relation to the second and third grounds, the Pre-Trial Judge emphasises that the risks may materialise as a result of the Accused's acts or omissions, but do not require physical execution on his or her part.

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<sup>37</sup> Similarly, ICTY, [Prlić et al. Appeal Decision](#), paras 19-20.

<sup>38</sup> Similarly, ICC, [Gbagbo Appeal Judgment](#), para. 63.

<sup>39</sup> Similarly, ICTY, [Šainović and Ojdanić Appeal Decision](#), paras 6-7; [Prlić et al. Appeal Decision](#), para. 7; [Lukić Appeal Decision](#), para. 7.

<sup>40</sup> Similarly, ICC, [Bemba et al. Appeal Judgment](#), para. 116; [Gbagbo Appeal Judgment](#), para. 70.

23. Furthermore, the three grounds are in the alternative, the existence of one ground suffices to determine the necessity of detention of the Accused.<sup>41</sup>

24. Lastly, the Pre-Trial Judge may refer to previous decisions and material or evidence already before him, without this affecting the *de novo* character of the present decision.<sup>42</sup>

## B. NECESSITY OF DETENTION

25. The Pre-Trial Judge notes that the Defence rejects the existence of a grounded suspicion, but bases the Request solely on the second limb of Article 41(6) of the Law.<sup>43</sup> The Pre-Trial Judge will therefore assess the Request only against the risks under Article 41(6)(b) of the Law.

### 1. Risk of Flight

26. The Defence submits that Mr Krasniqi is not a flight risk, because: (i) he is an elderly retired man [REDACTED], with deep roots in Kosovo and close family ties;<sup>44</sup> (ii) he has three times refused to leave Kosovo, including [REDACTED];<sup>45</sup> (iii) he has a history of respecting summonses and cooperating with international courts, including with the SC;<sup>46</sup> (iv) he has provided a written guarantee and is otherwise determined to face the charges against him, despite the prospect of a lengthy sentence;<sup>47</sup> and (v) his former positions, his purported, but

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<sup>41</sup> Similarly, ICC, [Lubanga Appeal Judgment](#), para. 139; [Katanga Appeal Judgment](#), para. 20; *Prosecutor v. Bemba*, ICC-01/05-01/08-321, Pre-Trial Chamber III, [Decision on Application for Interim Release](#), 16 December 2008, para. 35.

<sup>42</sup> Similarly, ICC, [Bemba et al. Appeal Judgment](#), para. 60; [Gbagbo Appeal Judgment](#), paras 27, 69.

<sup>43</sup> Request, para. 28.

<sup>44</sup> Request, para. 33.

<sup>45</sup> Request, para. 34.

<sup>46</sup> Request, paras 37-38.

<sup>47</sup> Request, paras 35, 39.

unsubstantiated, access to significant funds and his general ability to travel do not demonstrate a risk of flight.<sup>48</sup>

27. The SPO responds that the arguments advanced by the Defence do not stand, because: (i) the prospect of a sentence of life-long imprisonment creates a risk of flight;<sup>49</sup> (ii) Mr Krasniqi's previous incarcerations increase the risk that he would flee to avoid re-experiencing the same;<sup>50</sup> (iii) his support network can ensure his access to significant funds and hide him within Kosovo or secure his escape to another country;<sup>51</sup> (iv) despite his age, Mr Krasniqi can travel to over 180 countries and potentially place himself permanently beyond the reach of the SC;<sup>52</sup> and (v) his refusal to flee in the past is not an accurate measure of the current risk.<sup>53</sup>

28. The Defence replies that no evidence suggests that Mr Krasniqi has any connection with or any inclination to travel to a country that has no extradition agreement with Kosovo.<sup>54</sup>

29. As regards risk of flight, the Pre-Trial Judge considers that some factors support a finding that Mr Krasniqi has an incentive to flee. In particular, Mr Krasniqi is now aware of the gravity of the confirmed charges against him and the possible lengthy prison sentence that may result therefrom. Additionally, Mr Krasniqi's influence as a former political leader and a Kosovo Liberation Army ("KLA") deputy commander cannot be ignored in assessing the risk that individuals in his support network, who share his firm opposition to the SC, may be willing to give him access to assets and/or help him abscond.

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<sup>48</sup> Request, paras 40, 41.

<sup>49</sup> Response, para. 14.

<sup>50</sup> Response, para. 15.

<sup>51</sup> Response, paras 17, 19.

<sup>52</sup> Response, para. 16.

<sup>53</sup> Response, para. 18.

<sup>54</sup> Reply, para. 22.

30. The Pre-Trial Judge is also mindful that Mr Krasniqi's age, [REDACTED] and strong family ties in Kosovo, coupled with his repeated previous refusals to leave Kosovo<sup>55</sup> and his public statements opposing fleeing from justice<sup>56</sup> are factors diminishing, but not eliminating, the risk of flight.

31. The Pre-Trial Judge accordingly finds that a moderate risk of flight exists in relation to Mr Krasniqi.

## **2. Risk of Obstructing the Progress of SC Proceedings**

32. The Defence submits that there is no evidence that Mr Krasniqi has or will destroy, hide, change or forge evidence or that he has attempted to obstruct the proceedings or interfere with witnesses, victims or accomplices,<sup>57</sup> because: (i) there is no grounded suspicion that Mr Krasniqi has undertaken efforts to interfere with the administration of justice;<sup>58</sup> (ii) the SPO adduces no evidence of Mr Krasniqi's influence and ability to mobilise his base of support;<sup>59</sup> (iii) the "climate of witness intimidation and fear" cannot establish, in itself, that Mr Krasniqi will influence witnesses, victims or accomplices;<sup>60</sup> and (iv) his public statements criticising the SC and his Facebook post of 24 April 2020 do not establish that he will influence witnesses, victims or accomplices.<sup>61</sup> More specifically, as regards the public statements criticising the SC, the Defence maintains that such statements are Mr Krasniqi's political opinions that he is entitled to express freely, and that concomitantly with some of those statements he also stated that no one should flee from justice.<sup>62</sup> As regards his Facebook post of 24 April 2020, the Defence avers

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<sup>55</sup> Request, para. 34; F00122/A02.

<sup>56</sup> Request, para. 46; F00122/A03.

<sup>57</sup> Request, para. 43.

<sup>58</sup> Request, para. 43.

<sup>59</sup> Request, para. 49.

<sup>60</sup> Request, para. 44.

<sup>61</sup> Request, para. 45.

<sup>62</sup> Request, para. 46.

that it does not identify any individual by name, does not call for anyone to interfere with witnesses, accomplices or victims and there is no evidence that the purported target of the post, Shkëlzen Gashi (“Mr Gashi”), was a victim or witness or otherwise connected with SC proceedings.<sup>63</sup>

33. The SPO responds that the arguments advanced by the Defence do not stand, because: (i) Mr Krasniqi’s statements calling out collaborators for punishment must be understood in the light of his contribution to the joint criminal enterprise targeting KLA opponents;<sup>64</sup> (ii) it is beside the point whether these and other statements of Mr Krasniqi are political opinions; taken together, they establish that Mr Krasniqi believes that the SC is an unfair threat to the legacy of the KLA;<sup>65</sup> (iii) the Facebook post of 24 April 2020 confirmed that Mr Krasniqi’s views about targeting perceived collaborators remain unchanged;<sup>66</sup> (iv) [REDACTED],<sup>67</sup> [REDACTED];<sup>68</sup> and (v) Mr Krasniqi, as a former KLA deputy commander, is in a position of particular influence over the “active network of supporters hostile to the SPO’s investigation” of the KLA War Veterans’ Association (“KLA WVA”).<sup>69</sup>

34. The Defence replies that [REDACTED]: (i) [REDACTED];<sup>70</sup> (ii) [REDACTED];<sup>71</sup> and (iii) [REDACTED].<sup>72</sup> Secondly, the Defence submits that the SPO has presented no evidence to substantiate its claim that Mr Krasniqi has influence over the KLA WVA support network.<sup>73</sup>

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<sup>63</sup> Request, para. 47.

<sup>64</sup> Response, para. 23.

<sup>65</sup> Response, para. 22.

<sup>66</sup> Response, para. 24.

<sup>67</sup> [REDACTED].

<sup>68</sup> [REDACTED].

<sup>69</sup> Response, paras 30-32.

<sup>70</sup> [REDACTED].

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

<sup>72</sup> [REDACTED].

<sup>73</sup> Reply, paras 14-16.

35. As regards the absence of grounded suspicion that Mr Krasniqi has undertaken efforts to interfere with the administration of justice, the Pre-Trial Judge notes that Article 41(6)(b) of the Law does not require grounded suspicion of previous efforts to obstruct proceedings. As said above, the evidentiary threshold under Article 41(6)(b) of the Law requires specific, concrete grounds to believe that a risk of obstructing proceedings exists. While evidence of previous efforts can be a strong indicator of such a risk, it is not a requirement thereof.

36. As regards the risk to obstruct SC proceedings, the Pre-Trial Judge recalls that Mr Krasniqi, as a KLA spokesperson, was involved in the development and dissemination of KLA policies through the drafting and/or issuance of General Staff communiqués and political statements, many of which specifically targeted KLA opponents.<sup>74</sup> As previously found, Mr Krasniqi's statements at the time sought to justify KLA actions taken against such persons, who were designated as "collaborators" and in many instances were harmed or killed.<sup>75</sup> The Pre-Trial Judge is mindful that twenty years have passed since such statements were made and that Mr Krasniqi is now retired and no longer holds public positions.<sup>76</sup> Nonetheless, his Facebook post of 24 April 2020 shows that, even after twenty years, Mr Krasniqi still labels as "collaborators" in the "service of Milošević's policy of genocide" any person who dares to state that KLA members had committed crimes,<sup>77</sup> in full knowledge of the aforementioned implications of these terms. It is immaterial whether this statement is directed against Mr Gashi specifically; its language clearly targets anyone who expresses agreement with allegations, including those contained in the 2010 report prepared by Special Rapporteur Dick Marty ("Marty Report"), that KLA

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<sup>74</sup> Confirmation Decision, para. 469.

<sup>75</sup> Confirmation Decision, paras 128, 471.

<sup>76</sup> Request, paras 5, 18, 49.

<sup>77</sup> KSC-BC-2020-06, F00005/RED/A02, Specialist Prosecutor, *Annex 2 to Public Redacted Version of 'Request for Arrest Warrants and Related Orders', Filing KSC-BC-2020-06/F00005 Dated 28 May 2020 ("F00005/A02")*, 17 November 2020, public, p. 22.

members had committed crimes during and after the armed conflict. Part and parcel of this standpoint are Mr Krasniqi's public statements criticising the SC,<sup>78</sup> as the institution that was created further to the Martyr Report and which is expected to hear witnesses on alleged crimes committed by KLA members. The Pre-Trial Judge readily accepts that every person is entitled to his or her political opinions, including criticising the SC.<sup>79</sup> However, Mr Krasniqi has continued to play a significant role in Kosovo as a prominent KLA figure, a Kosovo politician and a seasoned and influential speaker,<sup>80</sup> whose opinions, including those opposing the SC, whether publicly or privately expressed, are heard and may mobilise his support network.<sup>81</sup> The Pre-Trial Judge accepts that there is no concrete evidence of Mr Krasniqi's specific influence over the KLA WVA support network.<sup>82</sup> That does not, however, remove the risk that Mr Krasniqi, through his public or private statements, will instigate, assist or otherwise engage others, who share his aforementioned views, in influencing or intimidating any person who alleges that crimes were committed by KLA members, including witnesses who provided or could provide evidence in the case and/or are due to appear before the SC. This risk may further increase as Mr Krasniqi is progressively informed of the evidence underpinning the charges against him, including the identity of witnesses who provided or could provide evidence in the case and/or are due to appear before the SC. Notably, [REDACTED]. Accordingly, taken together, these factors militate in favour of a risk that Mr Krasniqi will obstruct SC proceedings.

37. The Pre-Trial Judge considers that Mr Krasniqi's statements that no one should flee from justice<sup>83</sup> do not negate the above-mentioned pattern.

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<sup>78</sup> Decision on Arrest and Detention, para. 41; F00005/A02, pp. 11-23.

<sup>79</sup> Request, para. 46.

<sup>80</sup> Decision on Arrest and Detention, para. 41. *See also* F00005/A02, pp. 11-23.

<sup>81</sup> *See supra* para. 29.

<sup>82</sup> Reply, paras 14-16. *Per a contrario*: Response, paras 30-32.

<sup>83</sup> Request, para. 46.

38. Lastly, the Pre-Trial Judge considers that the above findings must be placed in the context of a general, well-established, and ongoing climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.<sup>84</sup> While this factor alone is not determinative of a risk of obstruction of the criminal proceedings, it constitutes a framework that must be taken into due consideration by the Pre-Trial Judge, along with the other factors addressed above.

39. The Pre-Trial Judge accordingly finds that there is a risk that Mr Krasniqi will obstruct the progress of SC proceedings.

### **3. Risk of Committing Further Crimes**

40. The Defence submits that: (i) no evidence is presented that Mr Krasniqi will repeat the crimes allegedly committed twenty years ago in connection with a conflict that has long since ended;<sup>85</sup> (ii) the SPO's allegations as to Mr Krasniqi's ability to commit further crimes are based entirely on allegations underlying the indictment itself, which Mr Krasniqi denies;<sup>86</sup> (iii) Mr Krasniqi is old and there is no evidence of criminality in the intervening years;<sup>87</sup> and (iv) no evidence is presented that Mr Krasniqi will complete an attempted crime or commit a crime which he has threatened to commit.<sup>88</sup>

41. The SPO responds that the arguments advanced by the Defence do not stand, because: (i) the requirement of committing further crimes refers to the underlying crime, *e.g.* murder, torture and cruel treatment, and not necessarily to the armed

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<sup>84</sup> Decision on Arrest and Detention, para. 41; KSC-BC-2020-06, F00005/RED, Specialist Prosecutor, *Public Redacted Version of 'Request for Arrest Warrants and Related Orders' Filing KSC-BC-2020-06/F00005 dated 28 May 2020*, 17 November 2020, public, paras 18-26, 34-35, 40, with Annexes 1-3, public .

<sup>85</sup> Request, para. 51.

<sup>86</sup> Request, para. 50.

<sup>87</sup> Request, para. 50.

<sup>88</sup> Request, para. 51.



conflict context;<sup>89</sup> (ii) the methods used at the time of the alleged joint criminal enterprise in targeting opponents of the KLA persist;<sup>90</sup> and (iii) the existence of a well-grounded suspicion that Mr Krasniqi committed the charged crimes is a serious indicator, amongst others, of the risk that he is willing to commit further violent acts.<sup>91</sup>

42. As regards the risk of committing further crimes, the Pre-Trial Judge recalls his above finding that there is a risk that Mr Krasniqi will obstruct SC proceedings.<sup>92</sup> While the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, in the present case the factors underpinning the former are of relevance to the assessment of the latter. In this regard, the Pre-Trial Judge considers that Mr Krasniqi's prominent position in Kosovo and his enduring standpoint regarding "collaborators", in full knowledge of the implications of the term in the context of a prevalent practice of witness intimidation, show that there is a likelihood that Mr Krasniqi will, under any form of responsibility, engage in or contribute to crimes, similar to the underlying acts charged, against those who allege that KLA members committed crimes, including witnesses who provided or could provide evidence in the case and/or are due to appear before the SC. Such contribution need not materialise in Mr Krasniqi physically executing such crimes. It suffices that Mr Krasniqi, through his statements, either public or private, may instigate or assist individuals in his support network to commit such crimes or may contribute in any other way to their commission. The Pre-Trial Judge considers that the lack of evidence of criminality in the intervening years,<sup>93</sup> his age [REDACTED]<sup>94</sup> do not negate the above-mentioned pattern, especially with Mr Krasniqi being progressively informed

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<sup>89</sup> Response, para. 34.

<sup>90</sup> Response, para. 35.

<sup>91</sup> Response, para. 36.

<sup>92</sup> *See supra* paras 36-39.

<sup>93</sup> Request, para. 50.

<sup>94</sup> Request, paras 6, 50.

in the coming months of the evidence underpinning the charges against him, including the identity of witnesses who provided or could provide evidence in the case and/or are due to appear before the SC.

43. The Pre-Trial Judge accordingly finds that there is a risk that Mr Krasniqi will commit further crimes.

#### **4. Conclusion**

44. The Pre-Trial Judge concludes that there is a risk that Mr Krasniqi will abscond, obstruct the progress of SC proceedings or commit further crimes against those who allege that KLA members committed crimes, including witnesses who provided or could provide evidence in the case and/or are due to appear before the SC. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by the Proposed Conditions.

#### **C. PROPOSED CONDITIONS**

45. The Defence submits a written undertaking signed by Mr Krasniqi, containing the Proposed Conditions, according to which, if granted interim release, Mr Krasniqi will: (i) return to the SC to face the charges against him at the trial or whenever summonsed by the KSC to appear; (ii) indicate the address at which he would be staying [REDACTED] and adhere to any conditions imposed by the KSC including not to change his place of residence; (iii) report regularly to the authorities as may be required by the SC; (iv) not contact and/or interfere with any witnesses or persons connected with the case; (v) not travel to other municipalities and locations at which crimes are alleged to have been committed; (vi) refrain from making public statements on matters relating to the case in the media, using

social media or in any manner whatsoever; and (vii) abide by all other conditions that the KSC may impose in granting interim release.<sup>95</sup>

46. The SPO responds that no combination of the Proposed Conditions could mitigate the risks Mr Krasniqi would pose if released and that detention, with the ensuing communication monitoring framework, is the only means by which these risks can be adequately managed.<sup>96</sup> The SPO further avers that the SC and EULEX do not have the possibility to monitor conditions of release,<sup>97</sup> and that at least three past incidents in Kosovo demonstrate the Kosovo Police's lack of capacity to effect arrests or monitor release conditions of former KLA leaders.<sup>98</sup>

47. The Defence replies that the SPO fails to establish that the Kosovo authorities would be unable to monitor Mr Krasniqi effectively, as: (i) the provided examples actually show the capacity of Kosovo authorities to re-arrest and to bring proceedings against members of the KLA;<sup>99</sup> and (ii) any operational difficulties in monitoring would be eliminated by Mr Krasniqi's willingness to abide by any additional conditions imposed.<sup>100</sup>

48. As regards the risk of flight, the Pre-Trial Judge finds that the Proposed Conditions can mitigate such a risk in relation to Mr Krasniqi. In this regard, the Pre-Trial Judge notes favourably Mr Krasniqi's undertakings to return to the SC whenever summonsed, not to change his place of residence and report regularly to the relevant authorities.<sup>101</sup>

49. As regards the risk of obstructing the progress of SC proceedings or committing further crimes, the Pre-Trial Judge considers that none of the Proposed

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<sup>95</sup> Request, para. 19; F00122/A01.

<sup>96</sup> Response, para. 37.

<sup>97</sup> Response, para. 38.

<sup>98</sup> Response, paras 39-43.

<sup>99</sup> Reply, paras 19-20.

<sup>100</sup> Reply, para. 21.

<sup>101</sup> Response, para. 19(a)-(c); F00122/A01.

Conditions, including any additional limitations imposed by the Pre-Trial Judge, could restrict Mr Krasniqi's ability to communicate with his community or support network. In particular, while Mr Krasniqi undertakes to refrain from making public statements on matters relating to the case, his ability to make public statements on seemingly unrelated, political or historical topics cannot be effectively limited. Through such public statements Mr Krasniqi could instigate, assist or otherwise engage others in intimidating or harming any person who alleges that crimes were committed by KLA members. Moreover, none of the Proposed Conditions could restrict or monitor Mr Krasniqi's private communications, through which he could inconspicuously influence, intimidate, threaten or harm witnesses, directly or through others. In particular, restricting Mr Krasniqi's movements or public activity would not limit his ability to communicate privately, from his home. Crucially, prohibiting Mr Krasniqi from contacting witnesses, persons connected to the case or, for that matter, any person in Kosovo can neither be enforced nor monitored, whether such bar refers to in-person contacts or communication through electronic devices. It is only through the communication monitoring framework applicable at the SC detention facilities that Mr Krasniqi's communications can be effectively restricted and monitored, thereby mitigating the risks of him obstructing SC proceedings or engaging in or contributing to crimes.

50. The Pre-Trial Judge accordingly finds that the Proposed Conditions, including any additional limitations imposed by the Pre-Trial Judge, would insufficiently mitigate the risks of obstructing SC proceedings or committing further crimes.

#### D. CLASSIFICATION

51. The Pre-Trial Judge notes that the Defence filed its Reply confidentially only, while the Request and the Response were also submitted in public redacted version.

Pursuant to Rule 82 of the Rules, the Pre-Trial Judge considers it appropriate to order the Defence to file a public redacted version of its Reply.

V. DISPOSITION

52. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **REJECTS** the Request; and
- b) **ORDERS** the Defence to file a public redacted version of its Reply by Friday, 29 January 2021.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Friday, 22 January 2021  
At The Hague, the Netherlands