

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: Defence Counsel for Jakup Krasniqi

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**Public Redacted Version of
Krasniqi Defence Reply to Prosecution Response to Application for Interim
Release, KSC-BC-2020-06/F00163, dated 6 January 2021**

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I. INTRODUCTION

1. Pursuant to the Decision on Defence Requests to Vary Time Limits,¹ and Rule 76 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), the Defence for Jakup Krasniqi (“Defence”) hereby reply to the SPO’s Prosecution Response to Application for Interim Release on behalf of Mr. Jakup Krasniqi (“SPO Response”).²

2. The SPO response contends that ongoing detention is justified on four principal new grounds:

- a. [REDACTED];³
- b. the SPO alleges that Mr. Krasniqi has “a position of particular influence” over a support network including the Kosovo Liberation Army War Veterans Association (KLAWVA). It is said that this relationship gives Mr. Krasniqi access to funds and that KLAWVA may work as a proxy to interfere with witnesses;⁴
- c. three cases are said to establish that the Kosovo national authorities are limited in their ability to monitor an accused of Mr. Krasniqi’s “stature, resources and authority”;⁵
- d. Finally, that there is a risk that Mr. Krasniqi will abscond to a country which does not have an extradition agreement with Kosovo.⁶

¹ KSC-BC-2020-06, F00155, Pre-Trial Judge, *Decision on Defence Requests to Vary Time Limits*, 18 December 2020, public, para. 20.

² KSC-BC-2020-06, F00153, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Jakup Krasniqi*, 17 December 2020, confidential, with Annex 1, confidential.

³ SPO Response, paras 26-28.

⁴ SPO Response, paras 19, 30-32.

⁵ SPO Response, paras 39-42.

⁶ SPO Response, para. 16.

3. These new factual averments by the SPO were not addressed in Mr. Krasniqi's Application for Interim Release.⁷ Accordingly, the Defence are entitled to reply to these contentions. The Defence is further cognisant of the Pre-Trial Judge's decision rejecting requests for an oral hearing to determine the critical issue of interim release.⁸ Given the length of time the trial in this matter is expected to take, and Mr. Krasniqi's age, in the absence of an oral hearing it is particularly important that the Defence are able to appraise the Pre-Trial Judge of relevant matters which have not hitherto been addressed in writing, in order to refute the Prosecution's spurious or speculative assertions and to demonstrate that interim release (or interim release with conditions) should be ordered.

4. The presumption of innocence is underscored as a fundamental right in international human rights law and in the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("the Law").⁹ The corollary of the right is that restrictions on the liberty of a subject must be based on real, not fanciful, contrived, or speciously constructed grounds. The Defence submit that the new material put forward by the SPO is flimsy and fails to withstand the barest scrutiny.

5. A common flaw running throughout the SPO's responses to interim release, including the new matters, is the SPO's complete failure to address the individual circumstances of each accused. With respect, the Defence expected more than "a one size fits all" approach to an issue as important as the liberty of an individual. A bespoke or tailored set of submissions evidencing careful consideration of the rights and alleged risks surrounding each Accused would have been expected. Instead the

⁷ KSC-BC-2020-06, F00122, Defence for Mr Krasniqi, *Application for Interim Release* ("Application for Interim Release"), 7 December 2020, confidential, with Annexes 1-2, confidential, and Annex 3, public.

⁸ 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. 19.

⁹ Article 21(3) of the Law.

SPO repeats the same generic allegations in relation to each Accused.¹⁰ An objective review of the SPO Response seems to disclose a decision to oppose in principle and then an attempt to squeeze arguments and raise grounds to meet that predetermined agenda.

6. Before refuting the new matters individually, one unanswerable fact stands out which is relevant to each of them: the complete lack of any evidence, including in the new material, implicating Mr. Krasniqi in any past obstruction of justice or interference with any witnesses. The absence of any such evidence relates not only to the current proceedings, or to the factual matrix of the present charges, but to *any* charges, in *any* case, *anywhere*, at *any* time. Given that criminal investigations regarding the conduct of KLA members have been carried out by the ICTY, the UNMIK Courts, the EULEX Courts and domestic investigations in Kosovo, over what is now a period of more than twenty years, the absence of any evidence of interference by Mr. Krasniqi with the process of justice resonates strongly and should inform the approach to interim release.

7. None of the new material can counter the fundamental fact that in the twenty years since the conflict in Kosovo, until this present Indictment, Mr. Krasniqi has never been accused of any wrongdoing. As spokesperson of the KLA, Mr. Krasniqi's actions during 1998 – 1999 were carried out in public; he has not sought to hide his role or his actions. Indeed, he has previously testified about the KLA in the ICTY, not

¹⁰ Compare, for instance, KSC-BC-2020-06, F00154, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Rexhap Selimi*, 17 December 2020, confidential, paras 36-40, KSC-BC-2020-06, F00149, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Hashim Thaçi*, 16 December 2020, confidential, paras 44-48, and KSC-BC-2020-06, F00161, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Kadri Veseli*, 4 January 2021, confidential, para. 46 with SPO Response paras 39-43. See also KSC-BC-2020-06, F00154, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Rexhap Selimi*, 17 December 2020, confidential, para. 21, KSC-BC-2020-06, F00149, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Hashim Thaçi*, 16 December 2020, confidential, para. 17, KSC-BC-2020-06, F00161, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on behalf of Mr Kadri Veseli*, 4 January 2021, confidential, para. 26 and SPO Response para. 32.

as a suspect but as a witness called by the Prosecution.¹¹ He served his Country and attempted to build a new, democratic and inclusive Kosovo. He was not mentioned in the Council of Europe Parliamentary Assembly Report on 'Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo'.¹² During his long and distinguished public service, he has never been accused of any wrongdoing or abuse of office. Rather, he has a record of complying with the law and serving the democratic institutions of Kosovo. Detailed scrutiny of the new material advanced by the SPO reveals nothing of substance to contradict this record. Generalisations and speculation cannot prove the necessity of continuing to detain Mr. Krasniqi.

II. THE NEW [REDACTED] DOES NOT ESTABLISH THAT THERE ARE ARTICULABLE GROUNDS TO BELIEVE THAT MR. KRASNIQI WILL INTERFERE WITH WITNESSES IN THIS CASE

8. Perhaps conscious of the dearth of evidence demonstrating articulable grounds that Mr. Krasniqi will interfere with witnesses, the SPO Response attempts to fortify its position by relying [REDACTED]. [REDACTED].¹³ [REDACTED]. [REDACTED]. Nor has any conduct of Mr. Krasniqi been seriously impugned to show any past action that may constitute witness interference.

9. [REDACTED]. [REDACTED].¹⁴ [REDACTED]. [REDACTED]. [REDACTED].

10. [REDACTED]. [REDACTED].¹⁵ [REDACTED]. [REDACTED].¹⁶ [REDACTED].

¹¹ See ICTY, *Prosecutor v. Limaj et al.*, IT-03-66, Transcript, 10 February 2005, p. 3292.

¹² Council of Europe, Parliamentary Assembly, Report 'Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo', Doc. 12462, 7 January 2011.

¹³ SPO Response, paras 26-28.

¹⁴ [REDACTED].

¹⁵ SPO Response, para. 26.

¹⁶ [REDACTED].

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

12. [REDACTED].¹⁷ [REDACTED]. [REDACTED].

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

III. THE SPO HAS NOT ESTABLISHED THAT MR. KRASNIQI HAS PARTICULAR INFLUENCE OVER A SUPPORT NETWORK INCLUDING KLAWVA

14. Throughout the SPO Response, the SPO relies on unsubstantiated allegations, generalisations and speculations. An egregious example, is the new submission that Mr. Krasniqi has “a position of particular influence” over the KLAWVA.¹⁸ In the submission of the Defence, the SPO’s repetition of this and similar arguments do not make the argument any better or any more persuasive. In the absence of even one piece of evidence proving that Mr. Krasniqi actually still has influence over the KLAWVA (or any network of supporters) (or even the nature, extent and consequence of any alleged past influence), this speculation adds nothing. It certainly does not constitute evidence of an articulable ground to deny interim release.

15. Mr. Krasniqi certainly accepts that, in his official capacity as an MP, he would have had some contact with the KLAWVA whilst dealing with political issues relevant to veterans. As set out in his application for interim release, he retired at least four years ago.¹⁹ He holds no state office. He has had no significant contact with the KLAWVA since his retirement (and the SPO adduces no evidence to the contrary). The only evidence before the Pre-Trial Judge about his current standing in Kosovo

¹⁷ SPO Response, para. 28.

¹⁸ SPO Response, para. 32.

¹⁹ Application for Interim Release, para. 5.

more broadly is that the political party which he is associated with secured only 5% of the seats in recent elections, hardly consistent with the substantial influence that the SPO ascribes to him.

16. There is thus not a shred of evidence that Mr. Krasniqi has had any significant contact with the KLA WVA in the last four years. Absent that evidence, the submission that he has “particular influence” over the KLA WVA and any associated network must be summarily rejected. The absence of this evidence about Mr. Krasniqi’s access to any such ‘network’ removes the evidential foundation for the SPO submission that a ‘network’ could assist Mr. Krasniqi to abscond or to interfere with witnesses, revealing it to be no more than unsubstantiated speculation.

IV. THE SPO HAS NOT ESTABLISHED THAT THE RELEASE CONDITIONS PROPOSED BY MR. KRASNIQI WOULD BE INEFFECTIVE DUE TO THE LIMITATIONS OF THE KOSOVO AUTHORITIES

17. The SPO relies on three examples to suggest that it is necessary to detain Mr. Krasniqi because the Kosovo authorities would not be able to monitor him effectively.

18. The SPO’s examples all fail to establish that the Kosovo authorities would be unable to monitor Mr. Krasniqi effectively. The SPO considerably underestimates the Kosovo Police Service, which has been cited as an example of a successful campaign by the international community to create a multi-ethnic and gender-inclusive police force in a post-conflict state.²⁰

²⁰ Greene, M. et al., “Building the Police Service in a Security Vacuum: International Efforts in Kosovo, 1999 – 2011” (2012) *Innovation for Successful Societies Princeton University* available at https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID121.pdf.

19. In relation to Remzi Shala and Sami Lushtaku, it is certainly correct that both these persons absconded having been released on conditions or released to hospitals.²¹ Importantly, however, both were re-arrested and detained. No legal system in the world can guarantee that every individual who is released on bail conditions will comply with those conditions. What matters is how the legal system responds to a breach of bail conditions. In this light, the cases of Remzi Shala and Sami Lushtaku are consistent with an effective police force because both were re-arrested and brought back before the relevant Courts. In any event, Mr. Krasniqi is not Remzi Shala or Sami Lushtaku. His antecedents, service to Kosovo, age and family ties must be considered independently. The risk of flight posed by Mr. Krasniqi is fundamentally different from and lower than the cases cited by the SPO.

20. The SPO's example of Sabit Geci is, if anything, even less compelling. The SPO quotes one occasion in 2012 in which Mr. Geci apparently boasted of going out for dinner whilst in detention. That exchange occurred more than eight years ago. It has no relevance to the situation in Kosovo today. Moreover, there is no evidence verifying that Mr. Geci was actually allowed out of detention to go to dinner. Certainly no prison records or photographs have been supplied to lend credence to such a contention. What is irrefutable is that the justice process continued to completion in that case in Kosovo; Mr. Geci was convicted by the District Court of Mitrovica in 2011 and the conviction was upheld by the Kosovo Court of Appeals. Ultimately, the outcome of this case again shows the capacity of the Kosovo authorities to bring proceedings against members of the KLA and to uphold the rule of law. It does not demonstrate a weakness of the authorities of such a nature as to vitiate the right of Mr. Krasniqi to interim release.

21. In any event, these new examples offered by the SPO cannot counter the stringent conditions to which Mr. Krasniqi has offered to submit. Any operational

²¹ SPO Response, paras 40-41.

difficulties in monitoring him would be eliminated by a reporting requirement and by requiring him [REDACTED]. Mr. Krasniqi confirms that he will abide by any and all other conditions that the learned Pre-Trial Judge would be minded to impose to alleviate any concern that he remains a flight risk. [REDACTED]. This would be the humane approach. It is also the approach that is consistent with the presumption of innocence, and appropriate in the circumstances of this case and based upon the facts.

V. THE SPO HAS NOT ESTABLISHED A RISK OF MR. KRASNIQI ABSCONDING TO A COUNTRY WITH NO EXTRADITION ARRANGEMENTS

22. The SPO submits that there is a risk of Mr. Krasniqi absconding to one of the countries which either does not recognise Kosovo or has no extradition agreement with Kosovo.²² There is no evidence to suggest that Mr. Krasniqi has any significant connection or any history of travel to any such country. There is no evidence that he has any inclination to travel to any such country. Indeed, the SPO only previously submitted that Mr. Krasniqi travels regularly to Albania.²³ Albania does have an extradition agreement with Kosovo.²⁴ Accordingly, there is no evidence to substantiate a risk of flight to a country which does not have an extradition arrangement with Kosovo.

VI. CONCLUSION

23. The SPO's stubborn insistence that no conditions can overcome its generic objections to interim release represents the triumph of rigidity over evidence, fairness

²² SPO Response, para. 16.

²³ 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, para. 33.

²⁴ SPO Response, fn. 30.

and objectivity. It cannot be right that Mr. Krasniqi's ongoing detention continues to be based on generalisations, hyperbole and unsubstantiated allegations. The evidential basis for the SPO's Response does not stand up to scrutiny. There is no evidence that Mr. Krasniqi is a flight risk, will interfere with witnesses or will commit further crimes. He should be released subject to such conditions as the Pre-Trial Judge deems necessary.

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