

**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

**Date:** 30 June 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**Krasniqi Defence Reply to Prosecution Response to Defence Submissions on  
Detention Review, KSC-BC-2020-06/F00358, dated 18 June 2021**

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## I. INTRODUCTION

1. The SPO offers no substantive riposte<sup>1</sup> to the Defence submissions,<sup>2</sup> resting instead on irrelevant and unsupported assertions. The Defence reply herewith.

## II. SUBMISSIONS

### A. NO RECENT DEVELOPMENTS INCREASE ANY ALLEGED RISKS POSED BY MR. KRASNIQI

2. Rather than engage with Defence submissions, the SPO continues making generic allegations without evidence linking them to Mr. Krasniqi. In particular:-

- a. Statements attributed to the KLA WVA are irrelevant;<sup>3</sup> there is no evidence connecting Mr. Krasniqi to that organisation;<sup>4</sup>
- b. The submission that a “potential network remains as active as ever”,<sup>5</sup> is based particularly on “veterans’ organizations”<sup>6</sup> and therefore irrelevant to Mr. Krasniqi in the absence of evidence linking him to them;
- c. The ‘Freedom has a name, the KLA’ campaign is irrelevant without evidence that it was initiated, controlled or influenced by Mr. Krasniqi (or

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<sup>1</sup> KSC-BC-2020-06, F00345, Specialist Prosecutor, *Prosecution Response to Krasniqi Defence Submissions on Detention Review* (“Response”), 10 June 2021, confidential, with Annex 1, confidential.

<sup>2</sup> KSC-BC-2020-06, F00329, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review* (“Submissions”), 31 May 2021, confidential.

<sup>3</sup> *Contra* Response, para. 8.

<sup>4</sup> KSC-BC-2020-06, IA002/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release* (“Appeal Decision”), 30 April 2021, confidential, para. 55.

<sup>5</sup> Response, para. 7.

<sup>6</sup> *Ibid.*, fn. 13.

anyone connected to him). The assertion that this campaign “has been highly active in recent months” is wholly unsupported by any citation;<sup>7</sup>

d. The assertion that “[t]he Accused’s network will stop at nothing to secure his acquittal”<sup>8</sup> is also wholly unsupported. Unless the SPO has any supporting evidence, such baseless allegations should stop.

3. [REDACTED].<sup>9</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>10</sup>

4. [REDACTED].<sup>11</sup> [REDACTED]. [REDACTED].<sup>12</sup> [REDACTED].<sup>13</sup> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>14</sup> [REDACTED].<sup>15</sup> [REDACTED].

5. [REDACTED]. [REDACTED]. [REDACTED],<sup>16</sup> [REDACTED].

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

7. The underlying fallacy in these SPO allegations is that Mr. Krasniqi has never previously been accused of any wrongdoing, despite twice appearing as a witness before the ICTY and years of EULEX and other investigations. It is wholly unjustified to assume that he is a person likely to be involved in witness intimidation.

8. [REDACTED].

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<sup>7</sup> Response, para. 7.

<sup>8</sup> *Ibid.*, para. 20.

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED].

<sup>15</sup> [REDACTED].

<sup>16</sup> [REDACTED].

9. The SPO underestimates the impact of protective measures.<sup>17</sup> [REDACTED]. [REDACTED]. That is a powerful protective shield. It inevitably limits any risk of witness intimidation; if it did not, the granting of protective measures would be pointless. The Defence note that Article 187(2) of the Criminal Procedure Code (“CPC”) of Kosovo (the model for the interim release provisions of the KSC)<sup>18</sup> provides that if detention on remand is ordered to prevent a risk of interference with evidence, “it shall be terminated as soon as the evidence on account of which detention on remand was ordered has been taken or secured”. Vulnerable witnesses have now been secured by the imposition of protective measures. Detention on remand should therefore be terminated.<sup>19</sup>

10. The SPO submit delayed disclosure is temporary and progressive disclosure will offset this protection.<sup>20</sup> [REDACTED]. Any concern about the safety of those witnesses, could be met by releasing Mr. Krasniqi until the date when their identities are disclosed. Given the likely time period involved, that would be a proportionate response.

## B. ONGOING DETENTION IS DISPROPORTIONATE

11. The SPO fails to address Defence submissions about the likely start date of trial. It therefore appears to be accepted that, unless released, Mr. Krasniqi will be detained for many months before trial can start.

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<sup>17</sup> Response, paras 12-13.

<sup>18</sup> Appeal Decision, paras 14-15.

<sup>19</sup> See further Article 187(3) which confirms that ongoing detention on remand should be a last resort after other measures have been tried and failed.

<sup>20</sup> Response, para. 13.

12. Ongoing detention is disproportionate because of the inability of Mr. Krasniqi to receive any family visits until at least 15 July 2021.<sup>21</sup> Even if the current rules are relaxed, family visits will still be limited by COVID related restrictions and ancillary costs.

13. The SPO mischaracterises the Defence position;<sup>22</sup> the Defence submission is not “premised on an assumption that these issues [family visits] would have been different in Kosovo”. It is founded on interference with Mr Krasniqi’s right to private and family life.<sup>23</sup> The Defence relied on evidence (not assumption) from both the Netherlands (which the SPO ignores) and Kosovo (which the SPO fails to address – citing a report that some prisoners’ rights were “restricted and restored”<sup>24</sup> hardly establishes that family visits were impossible in Kosovo throughout the period) to show that the restrictions endured by Mr. Krasniqi for the past eight months are disproportionate and unnecessary.<sup>25</sup>

14. Finally, the suggestion that the Defence are responsible for delaying the case is risible.<sup>26</sup> Seeking an extension of time to file detention review submissions cannot affect the trial date. Good cause was shown for the extension of time in relation to preliminary motions.<sup>27</sup> The SPO criticism of the Defence seeking this extension is inconsistent with its own submission the “scale of these charges affects all aspects of the trial process”.<sup>28</sup> Further, the Defence provided an update on the proposed agreed facts at the Fifth Status Conference.<sup>29</sup> It is wholly wrong to submit that the Defence

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<sup>21</sup> KSC-BC-2020-06, F00353, Registrar, *Update to Submission of the Registrar Pursuant to Rule 23(2) on COVID-19 Risk Mitigation Measures*, 16 June 2021, confidential, paras 15-17.

<sup>22</sup> Response, fn. 53.

<sup>23</sup> Submissions, para. 41.

<sup>24</sup> Response, fn. 53.

<sup>25</sup> Submissions, para. 43.

<sup>26</sup> Response, para. 23.

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

<sup>28</sup> Response, para. 22.

<sup>29</sup> KSC-BC-2020-06, F00313, Krasniqi Defence, *Krasniqi Defence Submissions for Fifth Status Conference*, 18 May 2021, confidential, para. 11.

“has made no effort”, when the SPO did not even provide the proposed agreed facts in a language that Mr. Krasniqi could read. Additionally, the SPO has just requested an extension of its Rule 102(3) notice deadline.<sup>30</sup> The Defence have not delayed the start of the trial.

### C. CONDITIONS WOULD SUFFICIENTLY MITIGATE THE ALLEGED RISKS

15. The issue is not whether the alleged risk is eliminated but whether any alleged risks have been mitigated to an acceptable level. The Defence have provided credible evidence of the availability of monitoring powers, the practical capability of the Kosovo Police (“KP”) and the previous use of such powers including in war crimes cases in Kosovo. Additionally, Articles 87 and 88 of the CPC of Kosovo contain detailed provisions on monitoring powers. These technical surveillance powers are used in practice by the KP.<sup>31</sup> Its ability to monitor individuals is beyond doubt.

16. There is no substantiated evidence that the KP cannot monitor Mr. Krasniqi. [REDACTED].<sup>32</sup> [REDACTED]. The SPO’s earlier submissions about lack of capacity are no longer a viable reason to deny interim release.

### III. CONCLUSION

17. As set out above, Mr. Krasniqi should be released [REDACTED], subject to any conditions the Pre-Trial Judge deems appropriate.

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<sup>30</sup> KSC-BC-2020-06, F00356, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit to Provide its Rule 102(3) Notice*, 18 June 2021, public, para. 6.

<sup>31</sup> See e.g. Oath for Justice, *Police Investigator Shares How He Investigated the Case Against the Accused Who Planned Terrorist Attacks in Kosovo*, 14 February 2019, available at <https://betimiperdrejtesi.com/hetuesi-policor-tregon-si-e-kishte-hetuar-rastin-kunder-te-akuzuarve-per-planifikim-te-sulmeve-terroriste-ne-kosove/> (accessed 16 June 2021).

<sup>32</sup> [REDACTED].

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