



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:** 25 June 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Review of Detention of Jakup Krasniqi**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 41(6), (10) 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, further to the confirmation of an indictment ("Confirmation Decision")<sup>2</sup>, Jakup Krasniqi ("Mr Krasniqi") was arrested pursuant to a decision<sup>3</sup> and an arrest warrant issued by the Pre-Trial Judge.<sup>4</sup>

2. On 22 January 2021, the Pre-Trial Judge rejected Mr Krasniqi's application for interim release ("Interim Release Application" and "First Detention Decision").<sup>5</sup>

3. On 24 February 2021, further to a joint request by the Accused in the present case, who also waived the right to have their detention reviewed before the expiry of the two-month time limit set out in Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge varied the time limit for Mr Krasniqi to make submissions on his continued detention until ten days after notification of the decision of the Panel of the Court of Appeals on his appeal against the First Detention Decision.<sup>6</sup>

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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, 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*, 26 October 2020, public.

<sup>3</sup> KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public.

<sup>4</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>5</sup> KSC-BC-2020-06, F00122/RED, Defence for Mr Krasniqi, *Public Redacted Version of Application for Interim Release*, 18 December 2020, public; KSC-BC-2020-06, F00180/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Jakup Krasniqi's Application for Interim Release*, 22 January 2021, public.

<sup>6</sup> KSC-BC-2020-06, F00206, Pre-Trial Judge, *Decision on Joint Defence Request for Extension of Time Limit*, 24 February 2021, public, para. 6.

4. On 30 April 2021, the Panel of the Court of Appeals denied Mr Krasniqi's appeal against the First Detention Decision ("Court of Appeals Decision").<sup>7</sup>
5. On 12 May 2021, the Defence for Mr Krasniqi ("Defence") notified the Pre-Trial Judge that, without prejudice to any future application for interim release, it would not make submissions on detention review at that stage.<sup>8</sup>
6. On 19 May 2021, after Mr Krasniqi reconsidered his position regarding submission on his continued detention, the Pre-Trial Judge further varied the time limit for the Defence to make submissions to 31 May 2021.<sup>9</sup>
7. On 31 May 2021, the Defence filed submissions on detention review, requesting the Pre-Trial Judge to grant him interim release with or without conditions ("Request").<sup>10</sup> On 10 June 2021, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response").<sup>11</sup> On 18 June 2021, the Defence replied to the Response ("Reply").<sup>12</sup>

## II. SUBMISSIONS

8. The Defence submits that several circumstances have changed since the First Detention decision, which plead in favour of Mr Krasniqi's interim release.<sup>13</sup>

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<sup>7</sup> KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals Chamber, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, public.

<sup>8</sup> KSC-BC-2020-06, F00291, Defence, *Krasniqi Defence Notification Pursuant to Decision KSC-BC-2020-06/F00206*, 12 May 2021, public, para. 3.

<sup>9</sup> KSC-BC-2020-06, Transcript, 19 May 2021, public, p. 451, line 19 – p. 452, line 2.

<sup>10</sup> KSC-BC-2020-06, F00329, Defence, *Krasniqi Submissions on Detention Review*, 31 May 2021, confidential.

<sup>11</sup> KSC-BC-2020-06, F00345, Specialist Prosecutor, *Prosecution Response to Krasniqi Defence Submissions on Detention Review*, 10 June 2021 (notified on 11 June 2021), confidential, with confidential Annex 1 ("F00345/A01"). A public redacted version was filed on 14 June 2021, see F00345/RED.

<sup>12</sup> KSC-BC-2020-06, F00358, Defence, *Krasniqi Defence Reply to Prosecution Response to Defence Submissions on Detention Review*, 18 June 2021, confidential.

<sup>13</sup> Request, paras 1, 52.

9. The SPO responds that Mr Krasniqi's detention remains necessary as the risks under Article 41(6)(b) of the Law have increased since the First Detention Decision.<sup>14</sup>

10. In its Reply, the Defence challenges the SPO allegations and claims that they are generic and unsubstantiated.<sup>15</sup> It further reiterates its request to release Mr Krasniqi with or without conditions.<sup>16</sup>

### III. APPLICABLE LAW

11. Article 41(6) of the Law provides that the Specialist Chambers ("SC") shall only order the 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 the person (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime; or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.

12. Article 41(10) of the Law provides that, until a judgment is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. This also follows from Rule 57(2) of the Rules.

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

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

<sup>15</sup> Reply, paras 1-2.

<sup>16</sup> Reply, paras 11-16.

prevent reoffending or 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.

14. Pursuant to Rule 56(2) of the Rules, the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

#### IV. DISCUSSION

##### A. PRELIMINARY MATTER

15. The Defence disputes the admissibility of [REDACTED].<sup>17</sup> The Defence claims that, as the SPO failed to provide it immediately with a detailed inventory of the search and seizure carried out at Mr Krasniqi's house, it is impossible to [REDACTED].<sup>18</sup>

16. The Pre-Trial Judge notes that the Defence acknowledges that on 28 April 2021 the SPO provided it with a detailed inventory of the search and seizure [REDACTED].<sup>19</sup> In this regard, and for the purposes of the present Request, the Pre-Trial Judge cannot discern how, [REDACTED],<sup>20</sup> the Defence suffered any prejudice by receiving the inventory on 28 April 2021. In any event, the Pre-Trial Judge observes that the Defence has not previously contested either the accuracy or the authenticity of the inventory. The Pre-Trial Judge, therefore, considers that the Defence's submission must be dismissed.

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<sup>17</sup> Reply, paras 3-4.

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

<sup>19</sup> [REDACTED].

<sup>20</sup> F00366/A01, p. 132.

## B. APPLICABLE STANDARD

17. The Defence submits that the Pre-Trial Judge is required to carry out a comprehensive review of the necessity of detention every two months, independently from any “change in circumstances”, as the latter requirement only applies to any additional detention review requested by an Accused, the SPO or initiated *proprio motu*.<sup>21</sup>

18. The SPO responds that a review of the necessity of the detention inevitably requires the Pre-Trial Judge to assess what has changed since the previous ruling on detention.<sup>22</sup> It further argues that the Pre-Trial Judge is not required to make findings on factors already decided in the initial ruling on detention.<sup>23</sup>

19. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, to examine whether the reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether (i) there is a grounded suspicion that the person has committed the crime(s), and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law has been fulfilled.<sup>24</sup> The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the Pre-Trial Judge is satisfied that, at the time of the review decision, grounds for continued detention still exist.<sup>25</sup> The SPO bears the burden

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<sup>21</sup> Request, para. 13.

<sup>22</sup> Response, para. 3.

<sup>23</sup> Response, para. 3.

<sup>24</sup> See, for example, KSC-BC-2020-07, F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021, public, para. 17.

<sup>25</sup> KSC-BC-2020-07, IA002/F00005, Court of Appeals Chamber, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, public, para. 55.

of establishing that the detention of the Accused is necessary.<sup>26</sup> The Parties' submissions will be considered against this threshold.

### C. GROUNDED SUSPICION

20. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a *conditio sine qua non* for the validity of the detained person's continued detention.<sup>27</sup>

21. Neither Mr Krasniqi nor the SPO make submissions as to the existence of a grounded suspicion under Article 41(6)(a) of the Law.

22. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Krasniqi is criminally liable for a number of crimes against humanity and war crimes under Articles 13, 14(1)(c) and 16(1)(a) of the Law.<sup>28</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.<sup>29</sup> There have been no developments in the case negating these findings.

23. The Pre-Trial Judge, accordingly, finds that there continues to be a grounded suspicion that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

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<sup>26</sup> First Detention Decision, para. 17, with further references; *similarly*, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, Judgment ("*Merabishvili v. Georgia* [GC]"), 28 November 2017, para. 234.

<sup>27</sup> *Merabishvili v. Georgia* [GC], para. 222, with further references.

<sup>28</sup> Confirmation Decision, para. 521(a)(i)-(ii).

<sup>29</sup> *See*, for example, KSC-BC-2020-04, F00007/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala*, 12 June 2020, public, para. 35.

#### D. NECESSITY OF DETENTION

24. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail.<sup>30</sup> The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>31</sup> that any of the risks under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.<sup>32</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>33</sup>

25. 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>34</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>35</sup>

26. Lastly, when deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.<sup>36</sup>

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<sup>30</sup> KSC-BC-2020-06, IA001/F00005, Court of Appeals Chamber, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release* ("Veseli Interim Release Appeal Decision"), 30 April 2021, public, paras 18-19; First Detention Decision, para. 18.

<sup>31</sup> See *chapeau* of Article 41(6)(b) of the Law.

<sup>32</sup> First Detention Decision, para. 18; see also KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

<sup>33</sup> Court of Appeals Decision, para. 26.

<sup>34</sup> First Detention Decision, para. 19, with further references.

<sup>35</sup> Similarly, ECtHR, *Aleksanyan v. Russia*, no. 46468/06, [Judgment](#), 22 December 2008, para. 179; see also First Detention Decision, para. 19, with further references.

<sup>36</sup> As regards the obligation to consider "alternative measures", see 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*, 26 April 2017, public, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova [GC]* ("*Buzadji v. the Republic of Moldova [GC]*"), no. 23755/07, [Judgment](#), 5 July 2016, para. 87, *in fine*; ECtHR, *Idalov v. Russia [GC]*, no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

## 1. Risk of Flight

27. The Defence argues, on the basis of its previous submissions, that the SPO has not established that there is a sufficiently real possibility that Mr Krasniqi will flee.<sup>37</sup> It does not submit further observations on this matter, on the grounds that the Pre-Trial Judge already found that any risk of flight could be mitigated by appropriate conditions.<sup>38</sup>

28. The SPO responds that the large amount of information disclosed to Mr Krasniqi since the First Detention Decision increases the risk of flight, insofar as Mr Krasniqi's account of the extent of the case against him has grown.<sup>39</sup>

29. The Pre-Trial Judge considers that, after having been made aware of the charges against him and the possibility of a serious sentence in the event of a conviction, Mr Krasniqi has gained increased insight into the evidence underpinning the charges against him on the basis of the ongoing disclosure process. In addition, Mr Krasniqi continues to play a significant role in Kosovo on the basis of the previous positions he occupied, namely as the former Chairman of the Kosovo Assembly, a former Acting President of Kosovo and the former Deputy Commander of the Kosovo Liberation Army ("KLA").<sup>40</sup> The influence he continues to derive from this role may assist him in evading SC proceedings by, for instance, calling upon the support of persons sympathetic to him and/or the KLA, securing access to relevant information, and obtaining funds and means to travel.

30. Therefore, notwithstanding the counter-balancing factors identified in the First Detention Decision,<sup>41</sup> the Pre-Trial Judge finds that a moderate risk of flight in relation to Mr Krasniqi continues to exist.

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<sup>37</sup> Interim Release Application, paras 33-42.

<sup>38</sup> Request, para. 19.

<sup>39</sup> Response, para. 6.

<sup>40</sup> Court of Appeals Decision, para. 52.

<sup>41</sup> First Detention Decision, para. 30.

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

31. The Defence submits that there is no longer a sufficiently real risk supported by specific evidence that Mr Krasniqi might obstruct the progress of SC proceedings by interfering with witnesses.<sup>42</sup> In particular, and in addition to previous submissions,<sup>43</sup> it submits that the following intervening factors must be taken into consideration: (i) the extensive protective measures imposed in the case, [REDACTED], which reduce any alleged risk of witness interference in that they make it impossible, for Mr Krasniqi or for any other person connected to him, to identify protected witnesses;<sup>44</sup> (ii) the February 2021 parliamentary elections which have seen Mr Krasniqi's party losing all its seats in the Kosovo Parliament;<sup>45</sup> (iii) Mr Krasniqi's behaviour in the months following the First Detention Decision;<sup>46</sup> (iv) the findings of the Court of Appeals Decision,<sup>47</sup> which allegedly held that the Pre-Trial Judge findings in the First Detention Decision had not been supported by sufficient evidence.

32. The SPO responds that the protective measures and the election developments do not alter the risk of obstruction insofar as the former demonstrate the serious risks faced by witnesses and the latter do not undermine in any way Mr Krasniqi's position of influence, which is primarily based on his past positions in the KLA and in the Government.<sup>48</sup>

33. The SPO further submits that the following new elements increase the risk of obstruction: (i) the ongoing disclosure of Rule 102(1)(b) material;<sup>49</sup>

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<sup>42</sup> Request, para. 32.

<sup>43</sup> Interim Release Application, paras 43-49.

<sup>44</sup> Request, paras 21-28.

<sup>45</sup> Request, para. 29(a).

<sup>46</sup> Request, para. 29(b).

<sup>47</sup> Request, paras 30-31.

<sup>48</sup> Response, paras 11-14.

<sup>49</sup> Response, para. 6.

(ii) Mr Krasniqi's position of influence and potential network, as strengthened by the launch of a KLA support campaign and by the declarations of the acting chairman of the KLA War Veterans Association;<sup>50</sup> (iii) [REDACTED].<sup>51</sup>

34. The Defence replies that [REDACTED].<sup>52</sup> [REDACTED]. [REDACTED].<sup>53</sup> It also reiterates the importance of protective measures in the context of the protection from the risk of obstruction.<sup>54</sup>

35. At the outset, the Pre-Trial Judge recalls that he previously found that there is a risk that Mr Krasniqi would obstruct SC proceedings based on, among other things, his position of influence, his public statements criticising the SC, the content of a 24 April 2020 Facebook post targeting "collaborators" and [REDACTED].<sup>55</sup> Moreover, the Court of Appeals held that, [REDACTED].<sup>56</sup>

36. As regards the recent election developments in Kosovo, the Pre-Trial Judge finds that they do not affect his previous finding that Mr Krasniqi holds influence in Kosovo as a former political leader and former KLA deputy commander, as these positions clearly predate the recent February 2021 parliamentary elections.<sup>57</sup> Furthermore, the recent election results do not prevent Mr Krasniqi's ability, due to his past positions and ensuing influence, to call upon the support of persons sympathetic to him and/or the KLA for the purposes of obstructing the progress of SC proceedings.

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<sup>50</sup> Response, paras 7-8.

<sup>51</sup> Response, paras 9-10.

<sup>52</sup> Reply, paras 6-7.

<sup>53</sup> Reply, para. 8.

<sup>54</sup> Reply, paras 9-10.

<sup>55</sup> First Detention Decision, paras 36, 39.

<sup>56</sup> Court of Appeals Decision, para. 62.

<sup>57</sup> Court of Appeals Decision, para. 52.

37. Moreover, the Pre-Trial Judge notes [REDACTED]. [REDACTED].<sup>58</sup> [REDACTED],<sup>59</sup> [REDACTED]<sup>60</sup> [REDACTED]<sup>61</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>62</sup> [REDACTED].

38. Against this backdrop, the Pre-Trial Judge recalls that he has previously found that there is a well-established and ongoing climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.<sup>63</sup> Even though this factor is, in and of itself, not determinative in relation to the risk of obstructing the progress of the proceedings, it provides the context against which [REDACTED]. It is also relevant in light of the fact that, as a former high-ranking KLA member and political figure, Mr Krasniqi holds a position of influence that allows him to elicit the support of sympathisers in this climate. In addition, this risk need not materialise in an Accused personally tampering with evidence or exerting influence or pressure on witnesses. It suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.<sup>64</sup>

39. Lastly, with regard to the Defence's argument concerning protective measures, the Pre-Trial Judge notes the extent of the protective measures granted so far<sup>65</sup> and [REDACTED].<sup>66</sup> The case record shows that the risk of intimidation or

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<sup>58</sup> Response, para. 9, with further references.

<sup>59</sup> F00345/A01, pp. 28-30.

<sup>60</sup> F00345/A01, pp. 20-25.

<sup>61</sup> F00345/A01, pp. 35-39.

<sup>62</sup> Court of Appeals Decision, para. 62.

<sup>63</sup> See, for example, First Detention Decision, para. 38.

<sup>64</sup> See, for example, First Detention Decision, para. 22.

<sup>65</sup> KSC-BC-2020-06, F00133/COR/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures*, 14 December 2020, confidential; F00190/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on Specialist Prosecutor's Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters*, 5 February 2021, confidential; F00211/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Third Decision on Specialist Prosecutor's Request for Protective Measures*, 3 March 2021, confidential; F00239/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Fourth Decision on Specialist Prosecutor's Request for Protective Measures*, 26 March 2021, confidential; F00338/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Fifth Decision on Specialist Prosecutor's Request for Protective Measures*, 4 June 2021, confidential.

<sup>66</sup> KSC-BC-2020-06, F00287/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of Sixth Request for Protective Measures*, 12 May 2021, confidential; [REDACTED].

interference for witnesses and/or their family members is inherently high, and the Pre-Trial Judge is not convinced that the risk of obstruction can be efficiently mitigated relying only on protective measures.

40. Accordingly, the Pre-Trial Judge finds that the risk that Mr Krasniqi will obstruct SC proceedings continues to exist.

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

41. As regards the risk of committing further crimes, the Defence recalls its submissions made in relation to the risk of obstruction and the Interim Release Application.<sup>67</sup> The SPO also relies on the factors already mentioned with regard to the risk of obstruction to argue that there is the risk that Mr Krasniqi will commit further crimes.<sup>68</sup>

42. The Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.<sup>69</sup> It is further recalled that it suffices that Mr Krasniqi instigates or assists others to commit such crimes, or contributes in any other way to their commission; he does not need to physically execute such acts.<sup>70</sup>

43. Turning to the facts under consideration, the Pre-Trial Judge recalls that, besides the climate of witness intimidation and Mr Krasniqi's position of influence in Kosovo that allows him to call upon the support of sympathisers in the context of the general climate of witness intimidation and interference, there are specific indications that [REDACTED]. In addition, the Pre-Trial Judge notes that

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<sup>67</sup> Request para. 33; Interim Release Application, paras 50-51.

<sup>68</sup> Response paras 6, 14.

<sup>69</sup> First Detention Decision, para. 42.

<sup>70</sup> First Detention Decision, para. 42.

Mr Krasniqi's knowledge of the SPO's case against him has increased in view of the ongoing disclosure of material underpinning the serious charges against him.

44. On this basis, the Pre-Trial Judge considers that the risk that Mr Krasniqi will, under any form of responsibility, commit crimes similar to the underlying acts charged against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC, continues to exist.

#### **4. Conclusion**

45. The Pre-Trial Judge concludes that there remains a moderate risk that Mr Krasniqi will flee, and that there remains a risk that Mr Krasniqi will obstruct the progress of proceedings, or commit further offences. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions.

#### **C. CONDITIONAL RELEASE**

46. The Defence submits that the risk of obstruction and the risk of committing further crimes can be mitigated by the conditions already proposed in relation to the First Detention Decision ("Proposed Conditions")<sup>71</sup> seeing as the Kosovo Police, as duly empowered by Kosovo legal framework on surveillance of e-communications, is capable of monitoring Mr Krasniqi's potential interactions [REDACTED].<sup>72</sup> In addition, the Defence submits that several domestic courts, including the EULEX courts, have repeatedly and successfully granted house arrest in war crimes trials, which demonstrates the effectiveness of the monitoring framework in place in Kosovo.<sup>73</sup>

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<sup>71</sup> First Detention Decision, para. 45.

<sup>72</sup> Request para. 46, 51.

<sup>73</sup> Request, para. 50

47. The SPO reiterates that EULEX would not be able to enforce the Proposed Conditions due to its limited mandate.<sup>74</sup> It further argues that the cases invoked by the Defence to support the effectiveness of house arrest mainly involved ordinary KLA soldiers or members of Serbian forces. On the contrary, when house arrest and alternative conditions were granted to higher level KLA members, several incidents of witness intimidation took place, thus demonstrating the difficulties faced by law enforcement agencies in monitoring release conditions when confronted with high profile accused.<sup>75</sup> It, therefore, concludes that neither the Proposed Conditions nor any other measure are capable of mitigating the risks posed by Mr Krasniqi.<sup>76</sup>

48. The Defence replies by reiterating that the Kosovo Police is able to effectively monitor an accused's communications when in house arrest.<sup>77</sup> [REDACTED].<sup>78</sup>

49. The Pre-Trial Judge recalls that, with respect to the risk of flight, it was found that the Proposed Conditions can sufficiently mitigate this risk.<sup>79</sup> The Pre-Trial Judge sees no reason to alter that finding.

50. As regards the risk of obstructing the progress of SC proceedings or committing further crimes, the Pre-Trial Judge recalls his previous findings that it is only through the communication monitoring framework at the SC detention facilities that Mr Krasniqi's communications can be effectively restricted and

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<sup>74</sup> Response, para. 16; KSC-BC-2020-06, 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, para. 38.

<sup>75</sup> Response, paras 17-18.

<sup>76</sup> Response, paras 19-20.

<sup>77</sup> Reply para. 15.

<sup>78</sup> Reply, para. 16; *see also* KSC-BC-2020-06, F00358, Defence, *Annex 01 to Krasniqi Defence Reply to Prosecution Response to Defence Submissions on Detention Review ("F00358/A01")*, 18 June 2021, confidential.

<sup>79</sup> First Detention Decision, para. 48.

monitored, thereby mitigating the risks of him obstructing SC proceedings or engaging in or contributing to crimes.<sup>80</sup>

51. The Pre-Trial Judge considers that the additional guarantees proposed by the Defence insufficiently address the risks posed by Mr Krasniqi. In particular, [REDACTED],<sup>81</sup> [REDACTED].

52. The Pre-Trial Judge lastly considers that even additional measures, such as a restriction of internet and (mobile) telephone use, the installation of a keylogger or similar monitoring devices would not prevent Mr Krasniqi from employing other electronic devices belonging to other persons, including for example his family or his acquaintances, or from passing on instructions to other persons with a view to intimidating and/or interfering with witnesses. The Pre-Trial Judge finds that Mr Krasniqi's influential position and [REDACTED] are of particular relevance in this regard.

53. Accordingly, the Pre-Trial Judge finds that the Proposed Conditions and any further limitations would insufficiently mitigate the risks of Mr Krasniqi obstructing SC proceedings or committing further crimes.

#### D. PROPORTIONALITY OF DETENTION

54. The Defence submits that Rule 56(2) of the Rules imposes on the Pre-Trial Judge an obligation to ensure that Mr Krasniqi is not detained for an unreasonable period prior to the opening of the case. In addition, it provides that a person might be released in the case of undue delay caused by the SPO.<sup>82</sup>

55. In this regard, the Defence submits that the period of pre-trial detention suffered by Mr Krasniqi is unreasonable and disproportionate<sup>83</sup> by reason of:

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<sup>80</sup> First Detention Decision, para. 49.

<sup>81</sup> F00358/A01, pp. 2-3.

<sup>82</sup> Request, paras 18, 45.

<sup>83</sup> Request, para. 34.

(i) the expected start of the trial, which in an “unrealistic” best-case scenario could not, in any case, take place before mid-January 2022;<sup>84</sup> (ii) the lack of family visits since 4 November 2020 which, also having regard to Mr Krasniqi’s age and to the different conditions set in place for Dutch and Kosovo detainees, disproportionately interferes with Mr Krasniqi’s right to private and family life.<sup>85</sup>

56. The SPO responds that Mr Krasniqi’s detention remains proportionate, and his rights fully respected,<sup>86</sup> seeing as: (i) the trial preparation is proceeding in an expeditious manner and there is no indication that the SPO has been dilatory;<sup>87</sup> (ii) the scale of the charges against Mr Krasniqi, which include a vast array of war crimes and crimes against humanity, and the consequences that this has on the trial preparation, must be balanced against the length of pre-trial detention;<sup>88</sup> and (iii) the responsibility of Defence relating to the length of pre-trial proceedings.<sup>89</sup>

57. The Defence replies by reiterating its concerns about the proportionality of detention.<sup>90</sup> It further emphasises the limitations regarding in-person visits, which are prohibited until 15 July 2021.<sup>91</sup> Finally, it refutes that it bears any responsibility in relation to the length of the pre-trial proceedings.<sup>92</sup>

58. The Pre-Trial Judge recalls, at the outset, the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention.<sup>93</sup> The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being

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<sup>84</sup> Request, paras 35-39.

<sup>85</sup> Request, paras 40-44.

<sup>86</sup> Response, paras 21, 24.

<sup>87</sup> Response, para. 21.

<sup>88</sup> Response, para. 22.

<sup>89</sup> Response, para. 23.

<sup>90</sup> Reply, para. 11.

<sup>91</sup> Reply, paras 12-13.

<sup>92</sup> Reply, para. 14.

<sup>93</sup> KSC-BC-2020-07, IA001/F00005, Court of Appeals Chamber, *Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73

considered, the continued detention “stops being reasonable” and the individual needs to be released.<sup>94</sup> However, the Pre-Trial Judge notes that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features.<sup>95</sup>

59. In assessing the proportionality of Mr Krasniqi’s detention so far, the Pre-Trial Judge pays particular attention to: (i) the fact that he is charged with 10 counts of war crimes and crimes against humanity in relation to events encompassing multiple locations in Kosovo and Albania over an extended period of time; (ii) the potential lengthy sentence he might face, if convicted; (iii) the complexity of the case; (iv) the previous findings concerning the existence of the risks under Article 41(6)(b)(ii) and (iii) of the Law and the fact that the Proposed Conditions cannot mitigate them; (v) the fact that all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial at a point in the foreseeable future; and (vi) the fact that relevant time limits have been either met or extended for good cause, also at the request of the Defence on certain occasions. Against this background, the Pre-Trial Judge finds that Mr Krasniqi’s pre-trial detention is proportionate and that any discussion regarding its anticipated length remains purely speculative at the moment. In this context, the Pre-Trial Judge recalls the additional guarantee provided for in the SC legal framework of the periodic review of the necessity of continued pre-trial detention every two months.<sup>96</sup>

60. The Pre-Trial Judge notes Mr Krasniqi’s concerns about the limitations regarding in-person visits. However, he finds that any interference with

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<sup>94</sup> *Similarly*, Court of Appeals Decision, para. 69.

<sup>95</sup> *Buzadji v. the Republic of Moldova* [GC], para. 90.

<sup>96</sup> *Similarly*, as to the importance of repeated review, see ECtHR, *Ereren v. Germany*, no. 67522/09, [Judgment](#), 6 November 2014, para. 64.

Mr Krasniqi's right to family life pursued the legitimate aim of protecting his and others' health, and, having particular regard to the unprecedented global public health emergency, was proportionate to the legitimate aim pursued.<sup>97</sup> In this regard, the Pre-Trial Judge observes that other means to communicate with his family have been made available and that, among other measures, in-person visits by immediate relatives at the detention facilities will resume from 15 July 2021.<sup>98</sup>

## V. DISPOSITION

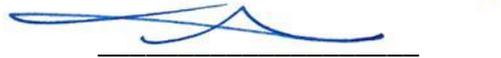
61. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **ORDERS** Mr Krasniqi's continued detention;
- b) **ORDERS** Mr Krasniqi, if he so wishes, to file submissions on the next review of detention by no later than **Wednesday, 4 August 2021**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- c) **ORDERS** the SPO, should Mr Krasniqi decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Krasniqi's detention by no later than **Monday, 9 August 2021**, and Mr Krasniqi, if he so wishes, to file his submissions by no later than **Thursday, 19 August 2021**; and
- d) **ORDERS** Mr Krasniqi to file public redacted versions of the Request and Reply by no later than **Wednesday, 30 June 2021**, or to indicate whether these filings may be reclassified as public.

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<sup>97</sup> See Article 8 of the European Convention on Human Rights.

<sup>98</sup> KSC-BC-2020-06, F00353/RED, Registrar, *Public Redacted Version of "Update to Submission of the Registrar Pursuant to Rule 23(2) on COVID-19 Risk Mitigation Measures"*, 16 June 2021, public, para. 15.



**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Friday, 25 June 2021

At The Hague, the Netherlands.