

**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:** 6 December 2021

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**Public Redacted Version of**

**Krasniqi Defence Observations on Detention Review Timeline and Submissions**

**on Second Detention Review, KSC-BC-2020-06/F00524, dated 13 October 2021**

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## I. INTRODUCTION

1. Pursuant to the oral order of the Pre-Trial Judge made on 21 July 2021, the Defence for Jakup Krasniqi (“Defence”) were permitted to make their submissions on the second detention review of Mr. Krasniqi within 10 days of notification of the Appeals Chamber’s Decision on the first detention review.<sup>1</sup>

2. On 1 October 2021, the Appeals Chamber granted in part Mr. Krasniqi’s appeal against the Decision on Review of Detention. The Appeals Chamber held that the Pre-Trial Judge erred in finding that no conditions could effectively mitigate the identified risks without seeking additional submissions from the Kosovo Police Director, and remanded the matter to the Pre-Trial Judge for further consideration.<sup>2</sup>

3. On 8 October 2021, the Pre-Trial Judge ordered the Kosovo Police to provide information about its ability to monitor release conditions<sup>3</sup> and, further, sought observations from the Defence in relation to the timeline for detention review.<sup>4</sup>

4. The Defence hereby respond to the Pre-Trial Judge’s Order Seeking Observations and incorporate their submissions for the second detention review. The Defence submit that Mr. Krasniqi should be released because: (1) it is not necessary to detain him because conditions can mitigate any identified risks (further submissions will be made following the Response of the Kosovo Police to the above Order); and

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<sup>1</sup> KSC-BC-2020-06, In Court – Oral Order, Order on the Timeline for the Next Review of Detention Regarding Mr. Krasniqi, 21 July 2021, public.

<sup>2</sup> KSC-BC-2020-06, IA006/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi’s Appeal Against Decision on Review of Detention* (“Decision on Krasniqi’s Appeal”), 1 October 2021, confidential, paras 58, 60.

<sup>3</sup> KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information* (“Order Kosovo Police”), 8 October 2021, public, with Annex, confidential.

<sup>4</sup> KSC-BC-2020-06, F00514, Pre-Trial Judge, *Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention* (“Order Seeking Observations”), 8 October 2021, public, paras 6-7.

(2) having already been detained for over 11 months, it has become disproportionate to continue Mr. Krasniqi's detention.

## II. PROCEDURAL HISTORY

5. On 4 November 2020, Mr. Krasniqi was arrested and transferred to the Kosovo Specialist Chambers ("KSC") detention center.

6. On 22 January 2021, the Pre-Trial Judge issued the Decision on Jakup Krasniqi's Application for Interim Release and rejected the application.<sup>5</sup>

7. On 3 February 2021, the Defence filed their Appeal against the Decision on Jakup Krasniqi's Application for Interim Release.<sup>6</sup>

8. On 30 April 2021, the Appeals Chamber issued its Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release and denied the Appeal.<sup>7</sup>

9. On 31 May 2021, the Defence submitted their written observations on the continued detention of Mr. Krasniqi.<sup>8</sup>

10. On 25 June 2021, the Pre-Trial Judge issued the Decision on Review of Detention of Jakup Krasniqi and ordered Mr. Krasniqi's continued detention.<sup>9</sup>

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<sup>5</sup> KSC-BC-2020-06, F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi's Application for Interim Release*, 22 January 2021, confidential.

<sup>6</sup> KSC-BC-2020-06, IA002/F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Jakup Krasniqi's Application for Interim Release*, 3 February 2021, confidential.

<sup>7</sup> KSC-BC-2020-06, IA002/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release ("Appeal Decision Interim Release")*, 30 April 2021, confidential, para. 84.

<sup>8</sup> KSC-BC-2020-06, F00329, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review ("Submissions Detention Review")*, 31 May 2021, confidential.

<sup>9</sup> KSC-BC-2020-06, F00371, Pre-Trial Judge, *Decision on Review of Detention of Jakup Krasniqi ("First Detention Review Decision")*, 25 June 2021, confidential.

11. On 7 July 2021, the Defence filed their Appeal against the Decision on Review of Detention of Jakup Krasniqi.<sup>10</sup>

12. On 1 October 2021, the Appeals Chamber granted in part Mr. Krasniqi's appeal against the Decision on Review of Detention and remanded the issue of conditional release to the Pre-Trial Judge for further consideration.<sup>11</sup>

13. On 8 October 2021, the Pre-Trial Judge ordered the Kosovo Police to provide information about its ability to monitor release conditions<sup>12</sup> and, further, sought observations from the Defence in relation to the timeline for detention review.<sup>13</sup>

### III. APPLICABLE LAW

14. Rule 56(2) of the Rules<sup>14</sup> requires the Pre-Trial Judge to "ensure that a person is not detained for an unreasonable period prior to the opening of the case". The rule further states that "[i]n 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".

15. Rule 57(2) provides:

After the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law and until a judgment is final, the Panel seized with a case shall review a decision on detention on remand upon the expiry of two (2) months from the last ruling on detention, in accordance with Article 41(6), (10), (11) and (12) of the Law or at any time upon request by the Accused or the

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<sup>10</sup> KSC-BC-2020-06, IA006/F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Review of Detention of Jakup Krasniqi* ("Krasniqi Appeal"), 7 July 2021, confidential.

<sup>11</sup> Decision on Krasniqi's Appeal, paras 58, 60.

<sup>12</sup> Order Kosovo Police.

<sup>13</sup> Order Seeking Observations, paras 6-7.

<sup>14</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules").

Specialist Prosecutor, or *proprio motu*, where a change in circumstances since the last review has occurred.

16. The European Court of Human Rights (“ECtHR”) has consistently held that to justify a substantial period of detention on remand, the reasons justifying detention must not only be relevant and specific but the authorities must show “‘special diligence’ in the conduct of the proceedings”.<sup>15</sup>

17. Article 41(6)(b) of the Law<sup>16</sup> provides that the Specialist Chambers (“SC”) or the Specialist Prosecutor shall only order the arrest and detention of a person when there are articulable grounds to believe that

- i. there is a risk of flight;
- ii. he or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; 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 he or she will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.

#### IV. RESPONSE TO ORDER SEEKING OBSERVATIONS

18. The Defence appreciate being given the opportunity to make submissions on the timeline for the next review of detention. The Defence respectfully inform the Pre-Trial Judge that they prefer Option B – namely that the second detention review

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<sup>15</sup> ECtHR, *Kalashnikov v. Russia*, no. 47095/99, *Judgment (Merits and Just Satisfaction)*, 15 October 2002, para. 114; *Buzadji v. the Republic of Moldova*, no. 23755/07, *Judgment (Merits and Just Satisfaction)*, 5 July 2016, para. 87; *Bykov v. Russia*, no. 4378/02, *Judgment (Merits and Just Satisfaction)*, 10 March 2009, para. 64; *Letellier v. France*, no. 12369/86, *Judgment (Merits and Just Satisfaction)*, 26 June 1991, para. 35; *Labita v. Italy*, no. 26772/95, *Judgment (Merits and Just Satisfaction)*, 6 April 2000, para. 153; *Idalov v. Russia*, no. 5826/03, *Judgment (Merits and Just Satisfaction)*, 22 May 2012, para. 140; *Kudła v. Poland*, no. 30210/96, *Judgment (Merits and Just Satisfaction)*, 26 October 2000, para. 111.

<sup>16</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”).

should be dealt with at the same time as the Pre-Trial Judge's reconsideration of the first detention review decision.

19. In light of the Decision on Krasniqi's Appeal, issues relating to the capacity of the Kosovo Police to monitor any appropriate conditions will assume particular prominence in the consolidated reconsideration of the first detention review decision and second detention review. Accordingly, the Defence notify the Pre-Trial Judge and the Specialist Prosecutor's Office ("SPO") that they do intend to file observations on the issue of conditions after receipt of the response from the Kosovo Police. The Defence take note that its deadline for filing those observations is 3 days after receipt of the SPO observations (which are themselves due 5 days after notification of the Kosovo Police Response).<sup>17</sup>

## V. SUBMISSIONS FOR SECOND DETENTION REVIEW

20. The Defence are mindful that on a detention review pursuant to Rule 57(2), although the Pre-Trial Judge must be satisfied that the grounds for continued detention still exist, the Pre-Trial Judge is not required to make findings on matters already decided upon.<sup>18</sup>

21. The Defence maintain previous submissions, namely that Mr. Krasniqi does not pose any flight risk; does not pose any risk of witness interference or obstructing the progress of SC proceedings; and does not pose any risk of committing any criminal offence.<sup>19</sup> Nevertheless, for the purpose of these detention review submissions, the

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<sup>17</sup> Order Seeking Observations, para. 6(b).

<sup>18</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.

<sup>19</sup> Submissions Detention Review, paras 19-33; Krasniqi Appeal, paras 6, 16-39.

Defence make no new submissions about the risk factors identified in Article 41(6)(b) of the Law.<sup>20</sup>

22. The Defence submit that the continued detention of Mr. Krasniqi is not necessary because any correctly identified risks can be mitigated by appropriate conditions and ongoing detention is no longer proportionate in the light *inter alia* of prosecutorial delay as discussed in detail below.

## VI. CONDITIONS CAN MITIGATE ANY CORRECTLY IDENTIFIED RISKS

23. It remains the position of the Defence that continued detention is not justified because any correctly identified risks can be mitigated through the imposition of appropriate conditions.<sup>21</sup> The Defence note that the Appeals Chamber has previously found that the decisive consideration on the availability of conditions, since there was no evidence of any specific support network, was the ability of Kosovo to monitor Mr. Krasniqi's potential interactions with persons [REDACTED].<sup>22</sup> Appropriate conditions, tailored specifically to this risk, will be proposed by the Defence and will sufficiently mitigate the identified risks.

24. Mr. Krasniqi remains willing to propose extensive conditions which would eliminate or very substantially reduce any identified risks. Such conditions could include:

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<sup>20</sup> The Defence reserve the right to make further submissions on these matters in future detention reviews.

<sup>21</sup> Submissions Detention Review, paras 46-51; KSC-BC-2020-06, F00358, Krasniqi Defence, *Krasniqi Defence Reply to Prosecution Response to Defence Submissions on Detention Review*, 18 June 2021, confidential, paras 15-16; [REDACTED]; Krasniqi Appeal, paras 40-46; KSC-BC-2020-06, IA006/F00004, Krasniqi Defence, *Krasniqi Defence Reply to SPO Response to Krasniqi Defence Appeal of June 2021 Detention Decision*, 26 July 2021, confidential, paras 11-13.

<sup>22</sup> Appeal Decision Interim Release, para. 77.

- a. house arrest at a specified address in Kosovo;
- b. preventing Mr. Krasniqi from leaving the address except in case of emergencies;
- c. monitoring the address constantly either in person or through CCTV;
- d. searching the address for any communication devices before and during his house arrest;
- e. monitoring or entirely removing telephones, internet-connected devices and other means of communication (making appropriate provision for privileged communication with Counsel);
- f. restricting the people who are allowed to visit Mr. Krasniqi to those on a list pre-approved by the Pre-Trial Judge;
- g. requiring friends and family members who visit Mr. Krasniqi to surrender mobile telephones and other communication devices before entering the address;
- h. reporting any breaches of the above conditions to the Court immediately.

25. To the extent that they are not already addressed by the above conditions, Mr. Krasniqi remains willing to surrender his passport to the authorities and to undertake not to make any public statements or post on social media in relation to the case or with respect to any details in regards to the court proceedings.

26. The Defence note that [REDACTED].<sup>23</sup> [REDACTED].

27. The Pre-Trial Judge has now ordered the Kosovo Police to respond to detailed enquiries about potential conditions.<sup>24</sup> It is plain from the Decision on Krasniqi's Appeal that this is not an academic or pointless exercise; the response is capable of leading to a decision to release Mr. Krasniqi subject to conditions. The Defence

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<sup>23</sup> [REDACTED].

<sup>24</sup> Order Kosovo Police, para. 10.



highlight in particular the conclusion of the Appeals Chamber that “the Kosovo Police’s willingness and ability to enforce proposed conditions could assist in mitigating the risks identified by the Pre-Trial Judge” (underlining added).<sup>25</sup> The assessment of the Kosovo Police’s capacity and resources to enforce conditions must now take place after the Kosovo Police have responded to those matters and the Defence will, as set out above, submit observations in accordance with the timeline established by the Pre-Trial Judge. Furthermore, the Defence will tender its submissions on the precise conditions which it considers should be adopted upon sight of the Kosovo Police Response.

## VII. ONGOING DETENTION IS NOT PROPORTIONATE

28. The Defence recall that the length of time spent in detention pending trial is a factor that needs to be considered along with the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.<sup>26</sup> The longer the period of detention, the stronger the reasoning needs to be to justify ongoing detention. Indeed, Rule 56(2) expressly places a duty on the Pre-Trial Judge to “ensure that a person is not detained for an unreasonable period prior to the opening of the case” and provides that “undue delay caused by the Specialist Prosecutor” may justify release.

29. Mr. Krasniqi was arrested on 4 November 2020. At the time of filing these submissions, he has therefore been in pre-trial detention for over 11 months already.

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<sup>25</sup> Decision on Krasniqi’s Appeal, para. 54.

<sup>26</sup> *Ibid.*, para. 41.

30. Mr. Krasniqi is 70 years old [REDACTED].<sup>27</sup> [REDACTED].<sup>28</sup>

31. It is now apparent that important procedural deadlines initially proposed by the Prosecution and imposed by the Pre-Trial Judge have been missed or extended. Delay on the part of the SPO has extended the pre-trial process in this case and hence extended the period of Mr. Krasniqi's detention, which is necessarily a factor that ought to be taken into consideration in assessing the reasonableness of the continued detention. Moreover, it is now clear that all pre-trial procedural steps will not be completed to transmit the case for trial in the foreseeable future. In those circumstances, Mr. Krasniqi's detention should not be extended.

32. First, delay on the part of the SPO is most obvious in the case of the Pre-Trial Brief. The SPO initially submitted that trial would actually be ready to start "this summer or no later than September 2021".<sup>29</sup> At the Second Status Conference on 17 December 2020, the SPO submitted that "based on our current projection of the commencement of a trial date in September, which we've explained to the Court, we would be prepared to file the pre-trial brief and the related materials in **early July**".<sup>30</sup> By contrast, at the Seventh Status Conference on 14 September 2021, the SPO's position was that as "we will not be in a position to provide the Rule 95(4) materials in October, we are, unfortunately, not in a position to commit with certainty to a concrete date".<sup>31</sup> Thus two months after the date when the SPO had submitted that it would be prepared to file the Pre-Trial Brief, the SPO was not only not ready to file the Pre-Trial Brief but did not even want to commit to a future date for its filing. On 12 October 2021, the SPO suggested that the Pre-Trial Brief could be filed on **17 December 2021**

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

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

<sup>29</sup> KSC-BC-2020-06, F00097, Specialist Prosecutor, *Prosecution Submissions Further to the Status Conference of 18 November 2020*, 23 November 2020, public, para. 14.

<sup>30</sup> KSC-BC-2020-06, Transcript of Hearing, 17 December 2020, public, p. 199, lines 17-20.

<sup>31</sup> KSC-BC-2020-06, Transcript of Hearing, 14 September 2021 ("Transcript of 14 September 2021"), public, p. 602, lines 6-8.

but requested that the deadline for service of the Rule 109(c) chart be extended until 28 January 2022.<sup>32</sup> The inescapable conclusion is that there has been a delay of at least five months in the preparation of the Pre-Trial Brief and this is prolonging Mr. Krasniqi's detention.

33. Second, the SPO's disclosure timetable has also slipped by a period of months. On 23 November 2020, the Pre-Trial Judge set the deadline for the completion of Rule 102(1)(b) disclosure as **31 May 2021**.<sup>33</sup> On 12 March 2021, the Pre-Trial Judge extended the deadline to disclose all Rule 102(1)(b) material to 23 July 2021, when rendering the Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters.<sup>34</sup> At the Status Conference on 21 July 2021, following the SPO's request for an extension, the Pre-Trial Judge issued an oral order and varied the deadline for Rule 102(1)(b) material to 27 September 2021.<sup>35</sup> Finally, on 14 September 2021, the Pre-Trial Judge extended the Rule 102(1)(b) deadline to **1 November 2021** and ordered the Prosecution to submit any requests to extend this deadline by 27 October 2021.<sup>36</sup>

34. At the time of this filing, it is now more than four months after the initial deadline expired and the Prosecution have still not completed Rule 102(1)(b) disclosure. The Defence note that at the Seventh Status Conference the SPO submitted in relation to translations that "the work is expected to continue for a number of months in light of the volume of material".<sup>37</sup> On the assumption that this submission was accurate, the SPO is likely to need to seek further extensions. The delay in completion of

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<sup>32</sup> KSC-BC-2020-06, F00520, Specialist Prosecutor, *Prosecution Submissions Regarding the Date for Filing of a Pre-Trial Brief* ("Pre-Trial Brief Submissions"), 12 October 2021, public, paras 4-5.

<sup>33</sup> KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters* ("Framework Decision"), 23 November 2020, public, para. 99(e).

<sup>34</sup> KSC-BC-2020-06, F00218, Pre-Trial Judge, *Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters*, 12 March 2021, public, para. 22.

<sup>35</sup> KSC-BC-2020-06, In Court – Oral Order, Variation of the Deadline for Rule 102(1)(b) Material, 21 July 2021, public.

<sup>36</sup> KSC-BC-2020-06, In Court – Oral Order, Order on SPO's Deadline Related to Rule 102(1)(b) Material, 14 September 2021, public.

<sup>37</sup> Transcript of 14 September 2021, p. 553, lines 17-18.

Rule 102(1)(b) disclosure is a matter which has necessarily delayed the start of trial and prolongs the detention of Mr. Krasniqi. It must be taken into account in relation to the proportionality of detention.

35. Third, in relation to the Rule 102(3) Notice, the initial deadline for the SPO to provide the Defence with the Rule 102(3) Notice was **30 April 2021**.<sup>38</sup> After two previous extensions of time,<sup>39</sup> the Prosecution filed the Rule 102(3) Notice on **31 July 2021**.<sup>40</sup> It consists of more than 68,000 items. However, the SPO's description of many items on the Notice was so vague that the Defence were compelled to request an amended Rule 102(3) Notice<sup>41</sup> which the SPO resisted.<sup>42</sup> On 8 September 2021, the Pre-Trial Judge ordered the Defence to indicate to the Prosecution the items for which further information was needed by 24 September 2021 and ordered the Prosecution to prepare an amended notice by **22 October 2021**.<sup>43</sup> The Defence complied with this deadline and now await the amended Notice.

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

37. The Defence note that once the Defence communicate requests to access Rule 102(3) material to the SPO, the SPO then needs to consider and apply for any redactions to that material before it can actually be disclosed.

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<sup>38</sup> Framework Decision, para. 99(f).

<sup>39</sup> KSC-BC-2020-06, In Court – Oral Order, Order on SPO Request for Extension of the Deadline for Detailed Outline Under Rule 102(3), 24 March 2021, public; F00370, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time Limit to Provide its Rule 102(3) Notice*, 24 June 2021, public, para. 16(b).

<sup>40</sup> KSC-BC-2020-06, F00421, Specialist Prosecutor, *Prosecution Rule 102(3) Notice*, 31 July 2021, public, with Annex 1, confidential, and Annex 2, confidential and *ex parte*.

<sup>41</sup> KSC-BC-2020-06, F00425, Krasniqi Defence, *Krasniqi Defence Joinder to Veseli Defence Request for an Amended Rule 102(3) Notice*, 6 August 2021, confidential.

<sup>42</sup> KSC-BC-2020-06, F00433, Specialist Prosecutor, *Prosecution Response to Defence Request for Amended Rule 102(3) Notice*, 16 August 2021, public.

<sup>43</sup> KSC-BC-2020-06, F00460, Pre-Trial Judge, *Decision on the Defence Request for an Amended Rule 102(3) Notice*, 8 September 2021, public, para. 27(c) and (e).

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

38. The result of these delays is that it will be almost six months after the initial deadline before the SPO provides the Defence with the complete and properly particularised Rule 102(3) Notice material. Completion of the actual disclosure of those documents to the Defence remains distant, with 26 November 2021 the current deadline for the SPO to disclose Rule 102(3) material requested by the Defence that does not require redactions and submit requests for protective measures (which may then be challenged by the Defence). The Defence note the SPO forecast that Rule 102(3) review and processing will continue “at least” through October and November 2021.<sup>45</sup> The delays to the Rule 102(3) process were caused by the SPO (even if inadvertently) and have prolonged the pre-trial period and the detention of Mr. Krasniqi.

39. Fourth, disclosure of Rule 103 material is not yet complete. On 13 September 2021, the SPO submitted that its review “remains ongoing”.<sup>46</sup> At the Seventh Status Conference, the SPO confirmed that the review was “ongoing”<sup>47</sup> and, specifically, that the review of the documents contained in the Rule 102(3) Notice for exculpatory material was also ongoing.<sup>48</sup> The Defence recall that the Rule 102(3) Notice contained more than 68,000 documents. No time limit has been fixed for the completion of Rule 103 disclosure.

40. Fifth, the Defence note that since the last detention review, the Prosecution have been forced to request extensions of time for various filings or disclosures on seven separate occasions.<sup>49</sup>

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<sup>45</sup> Pre-Trial Brief Submissions, para. 2.

<sup>46</sup> KSC-BC-2020-06, F00464, Specialist Prosecutor, *Prosecution Submissions for Seventh Status Conference*, 13 September 2021, public, para. 6.

<sup>47</sup> Transcript of 14 September 2021, p. 582, line 22.

<sup>48</sup> Transcript of 14 September 2021, p. 589, lines 16-20.

<sup>49</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; IA009/F00003, Specialist Prosecutor, *Prosecution Request for Extension of Time Limits*, 26 July 2021, public; F00451, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit to Respond to Leave to Appeal Requests on Decision KSC-BC-2020-06/F00413*, 2

41. Sixth, the Defence note that, at the past Status Conferences, the SPO has not been able to commit to even a timeline or an estimated date for completing its outstanding investigations.<sup>50</sup> Self-evidently, the process of disclosure will not be completed until the SPO has concluded its investigations.

42. These undue delays have a direct and substantial impact on the proportionality of detention. In the first detention review, the Pre-Trial Judge concluded that all pre-trial procedural steps will be completed to transmit the case for trial in the foreseeable future and that time limits had either been met or extended for good cause.<sup>51</sup> The submissions above demonstrate that the SPO's time limits in relation to disclosure have, almost without exception, not been met and have required substantial extensions at the request of the SPO. Disclosure of Rule 102(1)(b) material and the Rule 102(3) Notice and provision of the Pre-Trial Brief have all been delayed by a period of months.

43. The Defence are well aware of the size of the case and the difficulties posed *inter alia* by the ongoing pandemic. Nonetheless, the SPO selected the timing of the indictment and chose the timing of Mr. Krasniqi's arrest. The size of the case and modified working conditions during the pandemic were both known to the SPO when it chose to seek the arrest and detention of Mr. Krasniqi in November 2020. As the Pre-Trial Judge highlighted at the Seventh Status Conference, the SPO itself proposed

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September 2021, public; F00485, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit*, 23 September 2021, public; F00488, Specialist Prosecutor, *Request for Extension of Time Limit to Respond to Leave to Appeal Requests on Decision KSC-BC-2020-06/F00450*, 24 September 2021, public; F00494, Specialist Prosecutor, *Prosecution Request for an Extension of Time Limit to Respond to F00489*, 28 September 2021, public; F00497, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit*, 29 September 2021, public.

<sup>50</sup> See e.g., KSC-BC-2020-06, Transcript of Hearing, 24 March 2021, public, p. 369, lines 4-7; Transcript of Hearing, 19 May 2021, public, p. 420, lines 15-19; Transcript of Hearing, 21 July 2021, public, p. 508, lines 5-10; Transcript of 14 September 2021, p. 600, line 20 to p. 601, line 4.

<sup>51</sup> First Detention Review Decision, para. 59.

many of the deadlines that it has failed to meet<sup>52</sup> and, indeed, initially suggested that trial would by now be underway. Eleven months have passed. It is no longer proportionate to keep Mr. Krasniqi in detention whilst the SPO works through these eminently foreseeable issues. The Defence invite the Pre-Trial Judge to conclude that there has been undue delay in progressing this matter.

44. Nor can it be said that transmission of the case for trial is likely to happen in the foreseeable future. The disclosure process is ongoing. Paragraphs of the Indictment remain redacted. The date for the SPO to file its Pre-Trial Brief is yet to be fixed (and the SPO's latest submission is that provision of the Rule 95(4) materials will not be complete until 28 January 2022).<sup>53</sup> The Defence will require a substantial period of time to investigate after the filing of the Pre-Trial Brief.

45. The combination of the delay in pre-trial proceedings and the length of time that Mr. Krasniqi has already spent in detention renders his continued detention disproportionate. He should be released, subject to such conditions as the Court considers appropriate having reviewed the forthcoming observations of the Kosovo Police.

## VIII. CONCLUSION

46. The Defence invite the Pre-Trial Judge in conducting the second detention review to conclude that after more than 11 months of detention, with the SPO's disclosure timetable having slipped and continuing to be delayed, and with no trial

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<sup>52</sup> Transcript of 14 September 2021, p. 611, lines 8-12, "Madam Prosecutor, I have to recall that you talk about an unrealistic deadline, but the deadlines have been proposed by your office. They've been proposed by your office in November last year, and then they have been proposed in several Status Conferences".

<sup>53</sup> Pre-Trial Brief Submissions, para. 5.



date in sight, the time has now come to release Mr. Krasniqi subject to such conditions as the Court considers necessary.

47. The Defence will address further submissions on the matter of conditions following review of the response from the Kosovo Police as permitted by the Pre-Trial Judge.<sup>54</sup>

**Word count: 4,390**



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Monday, 6 December 2021  
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<sup>54</sup> Order Seeking Observations, para. 6(b).