

**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 Observations on Kosovo Police Submissions, KSC-BC-2020-  
06/F00568, dated 12 November 2021**

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## I. INTRODUCTION

1. The detailed, thorough and compelling submissions of the Kosovo Police<sup>1</sup> make it abundantly clear and confirm that any and all conditions imposed by the Pre-Trial Judge including house arrest can be effectively monitored in Kosovo. These conditions match or exceed the conditions currently applicable in the Detention Unit. The Defence for Jakup Krasniqi (“Defence”) maintains that the concerns identified by the Specialist Prosecutor’s Office (“SPO”) and Pre-Trial Judge are eliminated or sufficiently diminished by the submissions of the Kosovo Police and Mr. Krasniqi should therefore be released.

## II. PROCEDURAL HISTORY

2. On 25 June 2021, the Pre-Trial Judge concluded that the continued detention of Mr. Krasniqi was necessary.<sup>2</sup> The Pre-Trial Judge concluded that the risk of flight could be mitigated by conditions.<sup>3</sup> However, he concluded that conditions would not effectively enforce the prevention of prohibited communications, specifically in that Mr. Krasniqi could use electronic devices belonging to a third person or pass information or instructions to a third person.<sup>4</sup>

3. 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>5</sup> Having set aside the Pre-Trial

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<sup>1</sup> KSC-BC-2020-06, F00548/eng, CMU, *Answer to the Request Number KSC-BC-2020-06*, dated 13 October 2021 (“Kosovo Police Submissions”), 3 November 2021, confidential.

<sup>2</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, para. 61(a).

<sup>3</sup> *Ibid.*, para. 49.

<sup>4</sup> *Ibid.*, paras 51-52.

<sup>5</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.

Judge's finding that Mr. Krasniqi was in a position to exert influence over KLA sympathisers due to the lack of evidence,<sup>6</sup> the Appeals Chamber found that a risk of interference continued to exist [REDACTED].<sup>7</sup> The Appeals Chamber also found that it was not unreasonable for the Pre-Trial Judge to consider risks arising from indirect information passed through third parties.<sup>8</sup> The issue now before the Pre-Trial Judge is therefore whether the SPO has established that the proposed conditions, assessed in the light of the Kosovo Police Submissions, would not mitigate the risk that Mr. Krasniqi could [REDACTED], use the electronic devices of a third person or pass information to a third person to obstruct the proceedings.

4. On 8 October 2021, the Pre-Trial Judge ordered the Kosovo Police to provide information about its ability to monitor release conditions<sup>9</sup> and, further, permitted the SPO and the Defence to submit observations on the Kosovo Police Submissions.<sup>10</sup>

5. On 21 October 2021, the Defence was notified of the information submitted by the Registry on the detention regime applicable at the Kosovo Specialist Chambers ("KSC").<sup>11</sup>

6. On 27 October 2021, the Response from the Kosovo Police was filed in Albanian.<sup>12</sup> The Kosovo Police Submissions are comprehensive, detailed and address all issues raised by the Pre-Trial Judge.

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<sup>6</sup> Decision on Krasniqi's Appeal, para. 28.

<sup>7</sup> *Ibid.*, para. 30.

<sup>8</sup> *Ibid.*, paras 52-53.

<sup>9</sup> KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information*, 8 October 2021, public, with Annex, confidential.

<sup>10</sup> KSC-BC-2020-06, F00514, Pre-Trial Judge, *Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention*, 8 October 2021, public, para. 6(b).

<sup>11</sup> KSC-BC-2020-06, F00536, Registry, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)* ("Registry Submissions"), 20 October 2021, confidential.

<sup>12</sup> KSC-BC-2020-06, F00548, CMU, *Përgjigje në kërkesë me numër KSC-BC2020-06 datë 13 tetor 2021*, 27 October 2021, confidential. An English translation was notified on 3 November 2021.

7. On 8 November 2021, the SPO submitted its observations on the Kosovo Police Submissions.<sup>13</sup>

### III. SUBMISSIONS

8. The Defence recalls at the outset that the presumption before the KSC is of liberty. Detention must only be ordered or continued when it is necessary and the burden of proving that detention is necessary rests on the SPO.<sup>14</sup> Article 41(10) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 57(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules") explicitly provide that the Pre-Trial Judge seized with a case shall review a decision on detention on remand upon the expiry of two months from the last ruling on detention and shall ensure that a person is not detained for an unreasonable period prior to the opening of the case. The SPO bears the burden of establishing that the detention of the Accused is necessary and it is therefore not for the Defence to show that conditions can mitigate the alleged risks; continued detention is only necessary if the SPO genuinely establishes that no conditions can mitigate the alleged risks.<sup>15</sup> The SPO fails to meet this burden.

9. In assessing guarantees provided by a State, an international tribunal is entitled to take into consideration a range of factors in determining the reliability of a

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<sup>13</sup> KSC-BC-2020-06, F00562, Specialist Prosecutor, *Prosecution Response to Kosovo Police Submissions on Detention* ("Prosecution Response"), 8 November 2021, confidential, with Annex 1, public.

<sup>14</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. 23; F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi's Application for Interim Release* ("Decision Interim Release"), 22 January 2021, confidential, para. 17.

<sup>15</sup> Gazeta Express Newspaper, Trendafilova Confirms that Rules of Procedure Do Not Allow for the Detention to be Extended for More than One Year, 6 November 2021, available at <http://www.gazetaexpress.com/trendafilova-konfirmon-se-rregullat-e-procedures-nuk-lejohne-qe-paraburgimi-te-zgjatet-me-shume-se-nje-vit/> (accessed 11 November 2021), "[t]he President of Kosovo Specialist Chambers Ekaterina Trendafilova, two years ago confirming that the Rules of procedure do not allow for the detention to be extended for more than one year".

guarantee including the general level of co-operation from the State, any international pressures and national politics.<sup>16</sup> In this case, the national authorities are legally obliged to co-operate with the Court<sup>17</sup> and the Defence is aware of no legitimate concern about the level of co-operation. Moreover, as set out in previous filings, there is a new government in Kosovo to which Mr. Krasniqi has no connection.<sup>18</sup> Accordingly, on the facts of this case there is no reason whatsoever to doubt the guarantees offered by the Kosovo Police.

10. The Defence further recalls that, unlike international tribunals which have considered the effectiveness of guarantees offered by states, the KSC is not an international tribunal but sits within the Kosovo justice system.<sup>19</sup> The Kosovo Police and national authorities are legally obliged to co-operate with the Court. In this context, the attack made by the SPO on the ability, willingness and even good faith of the Kosovo Police is deeply surprising.<sup>20</sup> No national prosecutor would address its own national police force in those terms. It ill-behoves the SPO to have such contempt for the national justice system to which it belongs.

11. In any event, it is clear from the Kosovo Police Submissions that conditions can mitigate all risks, including those previously identified by the Pre-Trial Judge and the Appeals Chamber. Before turning to the detail, the Defence notes that the Kosovo Police has answered each question posed by the Pre-Trial Judge comprehensively. Moreover, above and beyond the specific response to the questions posed,

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<sup>16</sup> ICTY, *Prosecutor v. Mrkšić*, IT-95-13/1-AR65, Appeals Chamber, *Decision on Appeal Against Refusal to Grant Provisional Release*, 8 October 2002, paras 11-12.

<sup>17</sup> See Article 53 of the Law and Rule 200 of the Rules.

<sup>18</sup> See e.g., KSC-BC-2020-06, F00554, Krasniqi Defence, *Krasniqi Defence Reply to Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review*, 1 November 2021, confidential, para. 5.

<sup>19</sup> Article 1(2) of the Law.

<sup>20</sup> See, for example, KSC-BC-2020-06, F00540, Specialist Prosecutor, *Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review*, 22 October 2021, confidential, paras 32-33.

[REDACTED].<sup>21</sup> [REDACTED]. As a result, the SPO's determination to comb through the Kosovo Police Submissions to identify any apparent gaps in coverage is a fruitless exercise; [REDACTED] – [REDACTED].

12. The Defence emphasises that Mr. Krasniqi's personal circumstances must be assessed individually. The unverified allegations of corruption [REDACTED] within the criminal justice system of Kosovo [REDACTED] which are central to the SPO's Response<sup>22</sup> do not implicate or concern in any way Mr. Krasniqi. Instead, what is pertinent is that Mr. Krasniqi does **not** have any connections to any prominent figures in the leadership of the Kosovo Police or any members of the Kosovo Police who have alleged connections to the KLA.<sup>23</sup> [REDACTED]. The SPO's attempt to connect those [REDACTED] to Mr. Krasniqi personally is without basis as no evidence supporting such a link exists or has been offered by the SPO. The [REDACTED] cited by the SPO in its Response therefore do not constitute a relevant factor when weighing the merits of Mr. Krasniqi's conditional release.

13. Furthermore, the Pre-Trial Judge should not rely on the SPO's bad faith attempt to draw an analogy between these [REDACTED] and Mr. Krasniqi's alleged influence, position and responsibilities during and after the war in Kosovo, which include his position of acting President of Kosovo and according to the SPO Deputy General Commander of the KLA,<sup>24</sup> which, in any event, is flawed absent any evidence that he had and still has any such influence.<sup>25</sup>

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<sup>21</sup> [REDACTED].

<sup>22</sup> Prosecution Response, paras 5-7.

<sup>23</sup> *Contra* Prosecution Response, paras 23-24. [REDACTED].

<sup>24</sup> Prosecution Response, paras 3, 25.

<sup>25</sup> See for instance ICTY, *Prosecutor v. Stanišić*, IT-04-79-AR65.1, Appeals Chamber, *Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release*, 17 October 2005, para. 27, requiring that the Prosecution produce "specific information as to the Accused's alleged contacts".

14. In addition, the Appeals Chamber has relevantly recalled, with respect to the Pre-Trial Judge's finding on Mr. Krasniqi's influential position in Kosovo, that the fact that an Accused may still hold considerable power to influence victims or witnesses is no indication in itself that the Accused will exercise such influence unlawfully.<sup>26</sup> The SPO, however, conveniently avoids in its Response stating specifically the period for which Mr. Krasniqi occupied these positions. For the period Mr. Krasniqi was acting President of Kosovo, the SPO has offered no material showing any influence he exercised.<sup>27</sup> Nor did the SPO offer any concrete evidence so far on if, when and for how long Mr. Krasniqi was KLA Deputy Commander.

15. The picture of the Kosovo criminal justice system that the SPO paints is tendentious, one-sided and inaccurate.<sup>28</sup> The Defence can point to numerous examples showing the integrity, credibility and impartiality of the Kosovo criminal justice system in general and of the Kosovo Police in particular;<sup>29</sup> and so could the SPO

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<sup>26</sup> Appeal Decision Interim Release, para. 57.

<sup>27</sup> Mr. Krasniqi held the position of acting President of Kosovo twice: from 28 September 2010 to 22 February 2011 and from 2 April 2011 to 7 April 2011. It should be emphasised that Mr. Krasniqi did not become acting President because he held any influential position or had the power to influence people, but rather because, under Article 90(2) of the Constitution of the Republic of Kosovo, if the President is unable to fulfil his responsibilities, the President of the Assembly of Kosovo steps in as acting President of Kosovo. Even when Mr. Krasniqi acted as President of the Assembly/Speaker of the Parliament, under Article 67(7) of the Constitution of the Republic of Kosovo, he did not have any executive competences and, by extension, any influence on Kosovo's criminal justice system in general and the security institutions in particular.

<sup>28</sup> Prosecution Response, paras 5-8, 21-26.

<sup>29</sup> United Nations, Security Council, 'Report of the Secretary-General', S/2021/861, 8 October 2021, paras 36-38; U.S. Embassy in Kosovo, Ambassador Kosnett's Remarks at Kosovo Police's 20th Anniversary Celebration, 6 September 2019, available at <https://xk.usembassy.gov/ambassador-kosnetts-remarks-at-kosovo-polices-20th-anniversary-celebration/> (accessed 11 November 2021); EULEX Kosovo, Message by the Acting Head of EULEX on Kosovo Police's 20th Anniversary, 6 September 2019, available at <https://www.eulex-kosovo.eu/?page=2,11,1040> (accessed 11 November 2021); Balkan Transitional Justice, Kosovo Police Detain Wartime Massacre Suspect, 31 March 2021, available at <https://balkaninsight.com/2021/03/31/kosovo-police-detain-wartime-massacre-suspect/> (accessed 11 November 2021); Balkan Transitional Justice, Kosovo Ex-Guerrillas Freed From House Arrest, 5 July 2013, available at <https://balkaninsight.com/2013/07/05/ex-kla-fighters-released-from-house-detention/> (accessed 11 November 2021); Partners in Justice International, War Crimes in Kosovo, available at <https://partnersinjustice.org/stand-with-victims-of-atrocity-crimes/horizontal-mentoring/crsv-kosovo/> (accessed 11 November 2021); Balkan Insight, EULEX Judge Places Kosovo Official Under House Arrest, 6 October 2011, available at <https://balkaninsight.com/2011/10/06/eulex-judge-places-kosovo->

consider these examples, which are available in the public domain, if its genuine intention would be to assist the Court. The SPO selectively chose the examples it cited in its submissions, but yet did not consider necessary to make its own assessment and inquiries on the capacities of the Kosovo Police. The SPO has routinely (i) ignored liberty as the presumption before the KSC and that detention is the exception; (ii) opposed interim release on repetitive unsubstantiated grounds; (iii) used [REDACTED] and material that have no connection to Mr. Krasniqi's personal circumstances; and (iv) had no intention of considering the appropriateness of available alternatives to pre-trial detention.

16. An honest, diligent and impartial Prosecution would have taken steps to clarify with the Kosovo Police and the Pre-Trial Judge their doubts if any genuinely existed, whilst the Defence was inquiring about the Kosovo Police's capacities. Instead, the SPO went on a rampage [REDACTED] of the Kosovo Police to demean them only to keep the Accused in pre-trial detention. Another proof of this is found in the SPO's hyperbolic and spurious assertion that "[r]eleasing the Accused to Kosovo is an existential threat to the fair and expeditious conduct of this case and this Court".<sup>30</sup>

#### A. RISK OF FLIGHT

17. The Pre-Trial Judge previously concluded that the imposition of conditions could mitigate the risk of flight.<sup>31</sup> The Kosovo Police Submissions confirm the

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[gov-t-official-under-house-arrest/](#) (accessed 11 November 2021), "[i]nterior minister inspector Kadrush Koliqi was ordered to remain under house arrest by a judge at Pristina District Court after a pre-trial hearing late last night". *See also*, Administrative Cooperation Arrangement Between the European Anti-Fraud Office and the Kosovo Police, 2 February 2017, available at <https://mpb.rks-gov.net/Uploads/Documents/Pdf/EN/22/Marrevshja%20ENG.pdf> (accessed 11 November 2021); Working Arrangement Between the Kosovo Academy for Public Safety (KAPS) and the European Union Agency for Law Enforcement Training (CEPOL), 24 March 2017, available at <https://mpb.rks-gov.net/Uploads/Documents/Pdf/EN/21/Working%20Arrangement%20KAPS%20-%20CEPOL-1.pdf> (accessed 11 November 2021).

<sup>30</sup> Prosecution Response, para. 25.

<sup>31</sup> First Detention Review Decision, para. 49; Decision Interim Release, para. 48.



correctness of that assessment. [REDACTED],<sup>32</sup> [REDACTED],<sup>33</sup> [REDACTED]<sup>34</sup> [REDACTED].<sup>35</sup> In addition, as set out in more detail below, the Kosovo Police can effectively monitor house arrest conditions, which would also eliminate any risk of flight. As previously submitted, the Pre-Trial Judge could also impose the condition that Mr. Krasniqi surrender his passport.<sup>36</sup> In light of the Kosovo Police Submissions, it would be perverse now to conclude that the risk of flight cannot be effectively mitigated by conditions.

## B. RISK OF INTERFERENCE

18. The Kosovo Police Submissions confirm that the identified risks of [REDACTED], using electronic devices of third parties and passing information to third parties can all be effectively mitigated under house arrest in Kosovo.

19. The Registry has confirmed that the relevant mitigations at the Detention Unit consist of: passive monitoring of non-privileged telephone conversations<sup>37</sup> (pursuant to which only 10% of telephone conversations are listened to and active monitoring is a possible additional step but subject to certain restrictions);<sup>38</sup> visits occur within the sight and general hearing of detention officers (confirming that they are not generally specifically monitored);<sup>39</sup> the Detention Unit protocols search visitors for prohibited electronic devices;<sup>40</sup> and additional measures including restricting telephone calls to approved numbers are available.<sup>41</sup>

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

<sup>33</sup> [REDACTED].

<sup>34</sup> [REDACTED].

<sup>35</sup> [REDACTED].

<sup>36</sup> KSC-BC-2020-06, F00524, Krasniqi Defence, *Krasniqi Defence Observations on Detention Review Timeline and Submissions on Second Detention Review*, 13 October 2021, confidential, para. 25.

<sup>37</sup> Registry Submissions, paras 18, 26.

<sup>38</sup> *Ibid.*, paras 19, 26-28.

<sup>39</sup> *Ibid.*, para. 31.

<sup>40</sup> *Ibid.*, paras 46-47.

<sup>41</sup> *Ibid.*, para. 38(a).

20. The Kosovo Police Submissions confirm that, under house arrest, the Kosovo Police is able to: [REDACTED];<sup>42</sup> [REDACTED];<sup>43</sup> [REDACTED];<sup>44</sup> [REDACTED];<sup>45</sup> [REDACTED];<sup>46</sup> [REDACTED];<sup>47</sup> [REDACTED];<sup>48</sup> [REDACTED];<sup>49</sup> [REDACTED].<sup>50</sup>

21. The conditions capable of being implemented by the Kosovo Police are thus equal to – and in some respects superior to – the conditions currently being implemented by the Registry.<sup>51</sup>

22. The conditions capable of being implemented by the Kosovo Police mitigate all the risks identified by the Pre-Trial Judge and Appeals Chamber. In particular:-

- a. [REDACTED], [REDACTED]. [REDACTED];
- b. [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED], [REDACTED]; [REDACTED]; [REDACTED]. The Defence submits that this actually goes beyond the regime in force at the Detention Unit in key aspects. [REDACTED]; [REDACTED]. [REDACTED], [REDACTED]; [REDACTED], [REDACTED], [REDACTED], [REDACTED]. [REDACTED], [REDACTED], [REDACTED].<sup>52</sup> [REDACTED], [REDACTED]; [REDACTED];

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<sup>42</sup> [REDACTED].

<sup>43</sup> [REDACTED].

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

<sup>45</sup> [REDACTED].

<sup>46</sup> [REDACTED].

<sup>47</sup> [REDACTED].

<sup>48</sup> [REDACTED].

<sup>49</sup> [REDACTED].

<sup>50</sup> [REDACTED].

<sup>51</sup> *Contra* Prosecution Response, para. 17.

<sup>52</sup> [REDACTED].

c. [REDACTED]. [REDACTED]. [REDACTED], [REDACTED].

23. The SPO submissions that the Kosovo Police failed to provide sufficient details in relation to the risk of interference and obstructing the proceedings<sup>53</sup> are misconceived, overly formalistic and significantly exceed the questions posed by the Pre-Trial Judge.

24. For example, [REDACTED], [REDACTED].<sup>54</sup> [REDACTED], [REDACTED]. [REDACTED].<sup>55</sup> [REDACTED]<sup>56</sup> [REDACTED]. [REDACTED], [REDACTED], [REDACTED], [REDACTED].<sup>57</sup> [REDACTED], [REDACTED], [REDACTED].

25. To take another example, [REDACTED], [REDACTED], [REDACTED][REDACTED]; [REDACTED]; [REDACTED], [REDACTED]; [REDACTED], [REDACTED], [REDACTED], [REDACTED].<sup>58</sup> [REDACTED]<sup>59</sup> [REDACTED]. [REDACTED], [REDACTED].<sup>60</sup> The Pre-Trial Judge should disregard these and similar deliberate misinterpretations contained in the SPO's Response.

26. The SPO's assertions about the insufficiency and lack of specificity of the Kosovo Police Submissions – which, according to the SPO, should have covered issues such as the legal basis for the measures; [REDACTED]; compatibility of the measures with the European Convention on Human Rights (“ECHR”); [REDACTED]; [REDACTED]; [REDACTED]<sup>61</sup> – are flawed and based on the erroneous assumption that the

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<sup>53</sup> Prosecution Response, paras 9-20.

<sup>54</sup> [REDACTED].

<sup>55</sup> [REDACTED].

<sup>56</sup> [REDACTED].

<sup>57</sup> [REDACTED].

<sup>58</sup> [REDACTED].

<sup>59</sup> [REDACTED].

<sup>60</sup> [REDACTED].

<sup>61</sup> [REDACTED].

questions posed by the Pre-Trial Judge were sufficiently exhaustive in nature to prompt the Kosovo Police to cover in its Submissions these and other issues.

27. As regards the legal basis for monitoring communications, the Defence recalls its earlier submissions that, for example, Article 13 of the Law on E-communications provides for the creation of an interception sector within the Kosovo Police. This law applies to: any message in the form of text, voice, sound or image sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient; calls (including voice, voicemail and video conference); supplementary services (including call forwarding and call transfer); and messaging or multi-media services (including short message services, enhanced media services and multimedia services). Articles 18(1) and (2) of the Law on E-communications designate monitoring centres within authorised institutions to receive intercepted communications and data. Monitoring Centres are installed at the Kosovo Police for the interception of electronic communication for purposes of criminal procedures (including EULEX).<sup>62</sup> Moreover, the Defence would also point out that it is odd that the SPO relies on the lack of specificity and insufficiency of the Kosovo Police Submissions in relation to the compatibility of the measures with the ECHR as a basis to deny conditional release.

28. The fact that the SPO is able to identify and advance follow-up questions on technical aspects arising from the Kosovo Police Submissions merely indicates issues which the Pre-Trial Judge could clarify and specify in imposing conditions for house arrest, or alternatively may seek further clarifications from the Kosovo Police if this is deemed necessary, rather than a basis to conclude that the risks cannot be effectively

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<sup>62</sup> KSC-BC-2020-06, F00329, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review*, 31 May 2021, confidential, para. 48, with reference to Law No. 05/L-030 on Interception of Electronic Communications, available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10968> (accessed 11 November 2021).

mitigated under house arrest in Kosovo. This is a step the SPO could have but chose not to take in order to assist the Court to reach an informed and proper decision, whilst leaving its speculative submissions standing without clarification is only to the prejudice and detriment of Mr. Krasniqi. The above technicalities in no way undermine the Kosovo Police's expressly confirmed ability and willingness to enforce in good faith any condition that may be imposed by the Pre-Trial Judge.

29. The Defence observes that the SPO repeats the argument it has previously advanced as a basis to deny conditional release, namely that "[w]itnesses do not need to be physically harmed to be intimidated", that "even the prospect of releasing the Accused in Kosovo creates fear and uncertainty amongst witnesses in this case" and the generalised "well-established climate of interference with the judicial process in Kosovo".<sup>63</sup> This issue has already been authoritatively decided in the International Criminal Tribunal for the former Yugoslavia ("ICTY") *Haradinaj et al.* case, where the Trial Chamber observed that the Prosecution has not identified or alleged that the Accused can be linked to any of the incidents of witness interference that were mentioned.<sup>64</sup> One of the Prosecution's main arguments was similarly based on the assumption that the provisional release of the Accused would negatively impact the public perception of the safety of potential witnesses and the Trial Chamber acknowledged that the public perception of witness safety may play a crucial role under the circumstances prevailing in Kosovo for the willingness of witnesses to give evidence.<sup>65</sup> However, since it was not shown that the Accused could pose a concrete danger to anyone, including victims and witnesses, the Trial Chamber was not satisfied that a negative impact on the public perception of the safety of potential witnesses sufficed as a ground for denying provisional release.<sup>66</sup> The Trial Chamber

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<sup>63</sup> Prosecution Response, para. 2.

<sup>64</sup> ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, Trial Chamber II, *Decision on Ramush Haradinaj's Motion for Provisional Release ("Haradinaj Decision")*, 6 June 2005, para. 46.

<sup>65</sup> *Ibid.*, para. 47.

<sup>66</sup> *Haradinaj Decision*, para. 47.

added that, as stated in *Prlić et al.*, “even if the Accused continues to enjoy influence, it does not necessarily follow that he will exercise it unlawfully”.<sup>67</sup>

30. [REDACTED], [REDACTED]. [REDACTED], [REDACTED]. [REDACTED].

31. The Defence recalls that Mr. Krasniqi has already undertaken to comply with any interim release conditions imposed by the Pre-Trial Judge. The Defence has taken specific instructions and repeats that Mr. Krasniqi undertakes to comply with every condition imposed by the Pre-Trial Judge and the regime put in place by the Kosovo Police. His undertaking to comply, combined with [REDACTED], [REDACTED], combine to make it likely that any conditions for release would be followed.

32. The Defence emphasises that the elimination of every possible risk is a logical impossibility both in the Detention Unit and on house arrest.<sup>68</sup> Within the Detention Unit, there is nothing stopping Mr. Krasniqi from telephoning any individual and, if he did pass information to another individual, there is no subsequent monitoring of that individual. The test for maintaining detention does not require that every hypothetical risk be eliminated. It requires that continued detention is only maintained where necessary. The Kosovo Police Submissions clearly show that detention is not necessary. Such risks as arise are equally capable of mitigation on house arrest in Kosovo as they are in detention. The Defence reiterates that the Pre-Trial Judge is at liberty to seek further clarifications from the Kosovo Police if necessary and impose any other conditions that may be necessary.

### C. RISK OF COMMITTING FURTHER CRIMES

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<sup>67</sup> *Ibid.*; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-PT, Trial Chamber, *Order on Provisional Release of Jadranko Prlić*, 30 July 2004, para. 28.

<sup>68</sup> *Contra* Prosecution Response, para. 26.

33. The identified risks of commission of further crimes are wholly dependent on the risk of interference with witnesses. The above measures outlined by the Kosovo Police show that any such risk can be effectively and completely mitigated.

#### IV. CONCLUSION

34. It is no longer sustainable to find that any risks in this case can only be mitigated in the Detention Unit. The detailed response from the Kosovo Police comprehensively demonstrates that an alternative exists; house arrest in Kosovo would mitigate all identified risks. Mr. Krasniqi has already been in detention for one year. He must not be detained any longer.

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