

**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

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**Krasniqi Defence Reply to Prosecution Consolidated Response to October 2021**

**Defence Submissions on Detention Review, KSC-BC-2020-06/F00554, dated**

**1 November 2021**

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## I. INTRODUCTION

1. During the Eighth Status Conference, the dilatory case preparation of the Specialist Prosecutor's Office ("SPO") was brutally exposed. Unsurprisingly, the SPO's Consolidated Response to October 2021 Defence Submissions on Detention Review<sup>1</sup> is also unable to conceal the undue delays which have affected this case. The SPO's ever more hysterical hyperbole about Mr. Krasniqi's imagined influence in Kosovo cannot overcome the fact that detention has become disproportionate due to the SPO's own delays. Mr. Krasniqi should be released.

## II. PROCEDURAL HISTORY

2. On 8 October 2021, the Pre-Trial Judge ordered the Kosovo Police to provide information about its ability to monitor release conditions<sup>2</sup> and, further, sought observations from the Defence in relation to the timeline for detention review.<sup>3</sup>

3. On 13 October 2021, the Defence for Jakup Krasniqi ("Defence") filed its Observations on Detention Review Timeline and Submissions on Second Detention Review.<sup>4</sup> On 22 October 2021, the SPO filed the Consolidated Response.<sup>5</sup>

4. On 27 October 2021, the Defence was notified of the Response from the Kosovo Police which was in Albanian.<sup>6</sup> An English translation has yet to be provided. The

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<sup>1</sup> KSC-BC-2020-06, F00540, Specialist Prosecutor, *Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review* ("Consolidated Response"), 22 October 2021, confidential.

<sup>2</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>3</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.

<sup>4</sup> KSC-BC-2020-06, F00524, Krasniqi Defence, *Krasniqi Defence Observations on Detention Review Timeline and Submissions on Second Detention Review* ("Submissions"), 13 October 2021, confidential.

<sup>5</sup> Consolidated Response.

<sup>6</sup> KSC-BC-2020-06, F00548, CMU, *Përgjigje në kërkesë me numër KSC-BC2020-06 datë 13 tetor 2021*, 27 October 2021, confidential.

Defence will make additional submissions on the Kosovo Police Response in accordance with the timeline previously set by the Pre-Trial Judge and requests that these additional submissions are read together with this Reply.<sup>7</sup> The Defence hereby replies to the remainder of the Consolidated Response.

### III. SUBMISSIONS

#### A. UNSUPPORTED ASSERTIONS ABOUT MR. KRASNIQI'S INFLUENCE ARE UNPERSUASIVE AND IMPROPER

5. The Pre-Trial Judge must reject the unsupported, highly speculative and hyperbolic assertions that: Mr. Krasniqi has “massive influence” and the “ability to manipulate government bodies”.<sup>8</sup> That is simply wrong; all government bodies are led by persons appointed by the new Government of Kosovo, who have no links to Mr. Krasniqi or his party. The SPO adduces no evidence whatsoever to support those false and highly prejudicial submissions. Generic reliance on its prior submissions to support “[s]pecific instances” of Mr. Krasniqi’s alleged interference and attempts to obstruct justice<sup>9</sup> is wholly inadequate; those prior submissions do not evidence the alleged misconduct (as other panels have found as set out below).

6. The SPO has a long and regrettable history of relying on unsubstantiated and untrue assertions in responding to Mr. Krasniqi’s applications for interim release. In December 2020, the SPO asserted (without attempting to substantiate the allegation) that Mr. Krasniqi had “particular influence” over a support network including the

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<sup>7</sup> Order Seeking Observations, para. 6(b).

<sup>8</sup> Consolidated Response, para. 12.

<sup>9</sup> *Ibid.*

KLA WVA.<sup>10</sup> The Pre-Trial Judge<sup>11</sup> and Appeals Chamber<sup>12</sup> remarked on the lack of evidence for this assertion. Despite having thus failed to establish influence over any support network, in June 2021, the SPO maintained that a “potential network remains as active as ever”<sup>13</sup> and that “[t]he Accused’s network will stop at nothing to secure his acquittal”.<sup>14</sup> The Appeals Chamber again found the evidence insufficient to reasonably conclude that Mr. Krasniqi exerts influence over sympathisers of the KLA.<sup>15</sup>

7. Despite the rejection of these previous unsupported assertions and despite offering no additional evidence capable of supporting them, the Consolidated Response not only mechanically repeats them but increases its rhetoric beyond any relation to reality. Instead of offering evidence to support its claims, the SPO changes the adjective and alleges for the first time “massive” influence which extends not only to former KLA members but to “Kosovo in general”.<sup>16</sup> Making such unsupported allegations after Mr. Krasniqi has been detained for nearly a year does not rise above the level of mere speculation and only underscores the ridiculous nature of the SPO’s position. There remains no evidence that Mr. Krasniqi has any influence over all or any part of Kosovo or that he can manipulate government bodies. It is therefore clear that the SPO is simply increasing its rhetoric in the hope that its speculative allegations compensate for the complete lack of evidence justifying Mr. Krasniqi’s continued detention.

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<sup>10</sup> KSC-BC-2020-06, F00153, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on Behalf of Mr Jakup Krasniqi*, 17 December 2020, confidential, para. 32.

<sup>11</sup> KSC-BC-2020-06, F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi’s Application for Interim Release*, 22 January 2021, confidential, para. 36.

<sup>12</sup> KSC-BC-2020-06, IA002/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release*, 30 April 2021, confidential, paras 55-56.

<sup>13</sup> KSC-BC-2020-06, F00345, Specialist Prosecutor, *Prosecution Response to Krasniqi Defence Submissions on Detention Review*, 10 June 2021, confidential, para. 7.

<sup>14</sup> *Ibid.*, para. 20.

<sup>15</sup> KSC-BC-2020-06, IA006/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 28.

<sup>16</sup> Consolidated Response, para. 12.

## B. NO RELEVANT EVIDENCE OF WITNESS INTERFERENCE

8. The SPO relies on four examples, which have absolutely nothing to do with Mr. Krasniqi or the current detention review, in an attempt to demonstrate the alleged risks of interference. These examples date from [REDACTED], [REDACTED], [REDACTED] and [REDACTED] respectively.<sup>17</sup> [REDACTED]. The SPO adduces no evidence that this climate is “ongoing”.<sup>18</sup> Nor is there any evidence connecting any of these cases to Mr. Krasniqi. Absent evidence that Mr. Krasniqi is likely to interfere with witnesses in Kosovo in 2021, these historic cases should not prevent his release (subject to appropriate conditions).

## C. UNDUE DELAYS BY THE SPO RENDER ONGOING DETENTION DISPROPORTIONATE

9. The Consolidated Response deliberately and wholly fails to grapple with the key issue - whether there has been undue delay by the SPO. The Defence identified six clear examples of undue delay by the SPO which have directly delayed these proceedings and prolonged Mr. Krasniqi’s detention.<sup>19</sup> The SPO’s delays were also extensively discussed at the Eighth Status Conference.<sup>20</sup> In response, the SPO only addresses one of those six matters – submitting incorrectly that justifiable extensions for a small number of remaining Rule 102(1)(b)<sup>21</sup> materials has not delayed the start of trial.<sup>22</sup> That entirely overlooks, first, the other five clear examples submitted by the Defence and, second, that, whilst the most recent delay may relate to a relatively small

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<sup>17</sup> Consolidated Response, para. 13.

<sup>18</sup> *Contra* Consolidated Response, para. 21.

<sup>19</sup> Submissions, paras 32-41.

<sup>20</sup> See e.g. KSC-BC-2020-06, Draft Transcript of Hearing, 29 October 2021, confidential, p. 639, lines 14-20; p. 651, lines 6-11; p. 664, line 21 to p. 665, line 16; p. 665, line 21 to p. 666, line 1.

<sup>21</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

<sup>22</sup> Consolidated Response, para. 40.

number of materials, over the course of the case the disclosure of a vast number of Rule 102(1)(b) materials have been delayed by months.<sup>23</sup>

10. Moreover, events since the Consolidated Response have clearly demonstrated undue delay by the SPO. The SPO has had to seek a further extension for disclosure of Rule 102(1)(b) material, including regarding the translation into Albanian of 1,000 of the current 1,400 Rule 102(1)(b) statements in this case.<sup>24</sup> That represents more than 70% of the Rule 102(1)(b) statements in this case. The SPO sought an extension of three months until 31 January 2022 to complete this disclosure.<sup>25</sup> This delay is “undue”; no competent prosecution would have failed to translate more than 70% of the statements despite keeping Mr. Krasniqi in detention for one year.

11. Throughout the Eighth Status Conference, it was obvious that undue delay by the SPO has drastically affected the timelines for this case and will continue to do so. Rule 102(1)(b) disclosure is ongoing; the Rule 102(3) process is ongoing; Rule 103 disclosure is ongoing; Rule 107 disclosure is ongoing; the SPO investigation itself is ongoing. These delays – which are entirely the fault of the SPO – should now be recognised. Mr. Krasniqi should not be left to suffer the cost of the SPO’s lack of due diligence.

12. It is disingenuous of the SPO to suggest that these egregious delays have not delayed proceedings because preliminary motion litigation is ongoing.<sup>26</sup> The SPO’s undue delays in disclosure will continue to blight the timeline long after the preliminary motions are resolved. For the Defence, the review of disclosure – including the ability for Mr. Krasniqi to review the statements against him – is the

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<sup>23</sup> Submissions, paras 33-34.

<sup>24</sup> KSC-BC-2020-06, F00549, Specialist Prosecutor, *Prosecution Submissions for Eighth Status Conference and Request for Extension of Deadline*, 27 October 2021, public, para. 17.

<sup>25</sup> *Ibid.*, para. 19.

<sup>26</sup> Consolidated Response, para. 40.

starting point for the conduct of investigations. The SPO's undue delays have set Defence investigations back by months with the result that the Defence will still be months behind where it ought to be once the preliminary motions are resolved.

13. The Defence submits that the Pre-Trial Judge should find expressly that there has been undue delay by the SPO, which is a separate and complete justification for interim release (with appropriate conditions) pursuant to Rule 56(2).

14. Moreover, Article 5(3) of the European Convention on Human Rights ("ECHR") provides that "[e]veryone arrested or detained [...] shall be [...] entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial". Article 6(1) of the ECHR further elaborates that "everyone is entitled to a fair and public hearing within a reasonable time".

15. In defining the standard for reasonable time with regard to pre-trial detention under Article 5(3) of the ECHR, the European Court of Human Rights ("ECtHR") defined the obligations on the judicial authorities with reference to "the diligence shown by them in dealing with the case and the manner in which they organised the investigation".<sup>27</sup> The ECtHR has emphasised the "special diligence" which is required when the accused person is remanded in custody before trial. It held:

Article 5(3) (art. 5-3), for its part, refers only to persons charged and detained. It implies that there must be special diligence in the conduct of the prosecution of the cases concerning such persons.<sup>28</sup>

16. The Defence requests, based on the above delays which the SPO justifies by lack of resources and competing workstreams, the Pre-Trial Judge to find that the SPO has

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<sup>27</sup> ECtHR, *Wemhoff v. Germany*, no. 2122/64, *Judgment (Merits)*, 27 June 1968, pp. 11-12, para. 2.

<sup>28</sup> ECtHR, *Stögmüller v. Austria*, no. 1602/62, *Judgment (Merits)*, 10 November 1969, p. 35, para. 5. This requirement has been repeated in later ECtHR case law on numerous occasions, *see e.g. Matznetter v. Austria*, no. 2178/64, *Judgment (Merits)*, 10 November 1969, pp. 30-31, para. 12; *Calleja v. Malta*, no. 75274/01, *Judgment (Merits and Just Satisfaction)*, 7 July 2005, para. 100.

not only unduly delayed but also completely failed to exercise special diligence to ensure that Mr. Krasniqi's provisional detention must not be prolonged beyond a reasonable time within the meaning of Article 5(3) of the ECHR.

17. In any event, all the above factors clearly demonstrate that detention is no longer proportionate. The pre-trial phase remains ongoing and will remain ongoing for months. Rule 102(1)(b) disclosure and provision of Rule 95 materials are not anticipated to end until 31 January 2022. The Rule 102(3) process must continue beyond that point. There can be no illusion that this case is approaching readiness for trial. Detention cannot be justified any longer.

#### IV. CONCLUSION

18. As set out above, there has been undue delay by the SPO and prolonged detention is disproportionate to any alleged risks adequately identified by evidence. Mr. Krasniqi should be released subject to conditions, which should be considered in the light of the Kosovo Police response.

**Word count: 1,978**



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Monday, 6 December 2021

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