



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 13 May 2022

Language: English

Classification: Public

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

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(6), (10) and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 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")², Jakup Krasniqi ("Mr Krasniqi" or "Accused") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.³

2. On 22 January 2021, the Pre-Trial Judge rejected Mr Krasniqi's application for interim release ("First Detention Decision").⁴

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was filed on 19 November 2020, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED. The Specialist Prosecutor submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the SPO submitted a confidential, corrected, and lesser redacted version of the Confirmed Indictment, F00647/A01. A confirmed amended indictment was filed on 29 April 2022 ("Confirmed Indictment"), strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions.

³ 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; F00027/A07/COR/RED, *Public Redacted Version of Corrected Version of Arrest Warrant for Jakup Krasniqi*, 26 October 2020, public; F00044, Registrar, *Notification of Arrest of Jakup Krasniqi Pursuant to Rule 55(4)*, 4 November 2020, public.

⁴ KSC-BC-2020-06, F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi's Application for Interim Release*, 22 January 2021, confidential. A public redacted version was issued on 26 January 2021, F00180/RED.

3. On 30 April 2021, the Court of Appeals upheld the First Detention Decision (“First Court of Appeals Decision”).⁵
4. On 25 June 2021, the Pre-Trial Judge ordered Mr Krasniqi’s continued detention (“Second Detention Decision”).⁶
5. On 1 October 2021, the Court of Appeals issued the decision on Mr Krasniqi’s appeal against the Second Detention Decision (“Second Court of Appeals Decision”),⁷ in which it, *inter alia*, remanded the Second Detention Decision to the Pre-Trial Judge for further consideration in order to assess whether the Kosovo Police can effectively enforce the conditions proposed by the Accused or any further condition identified by the Pre-Trial Judge as necessary to mitigate the identified risks.⁸
6. On 13 October 2021, the Pre-Trial Judge ordered the Registrar to provide information on the detention regime applicable to Mr Krasniqi at the Detention Facilities of the Specialist Chambers (“Registrar Order”).⁹ On 20 October 2021, the Registrar provided the information requested pursuant to the Registrar Order.¹⁰
7. On 26 October 2021, the Kosovo Police, further to an order by the Pre-Trial Judge,¹¹ provided information regarding: (i) the authority and capability of the Kosovo Police to restrict the movements of individuals subject to conditional

⁵ KSC-BC-2020-06, IA002/F00005, Court of Appeals, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release*, 30 April 2021, confidential. A public redacted version was issued on the same day, IA002/F00005/RED.

⁶ KSC-BC-2020-06, F00371, Pre-Trial Judge, *Decision on Review of Detention of Jakup Krasniqi*, 25 June 2021, confidential. A public redacted version was issued on 30 June 2021, F00371/RED.

⁷ KSC-BC-2020-06, IA006/F00005, Court of Appeals, *Decision on Jakup Krasniqi’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential. A public redacted version was issued on the same day, IA006/F00005/RED.

⁸ Second Court of Appeal Decision, paras 56-58.

⁹ KSC-BC-2020-06, F00522, Pre-Trial Judge, *Order to the Registrar to Provide Information on the Detention Regime*, 13 October 2021, confidential, para. 7.

¹⁰ KSC-BC-2020-06, F00536, Registrar, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)*, 20 October 2021, confidential. A public redacted version was issued on 29 November 2021, F00536/RED.

¹¹ KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information (“Kosovo Police Order”)*, 8 October 2021, public, with one Annex, confidential.

release, monitor and restrict such individuals' communications, administer house arrest, and the enforceability of conditions attaching to interim release; and (ii) previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes ("KP Submissions").¹²

8. On 26 November 2021, the Pre-Trial Judge issued a decision whereby he confirmed the Second Detention Decision and ordered Mr Krasniqi's continued detention ("Third Detention Decision").¹³

9. On 9 December 2021, the Defence for Mr Krasniqi ("Defence") appealed against the Third Detention Decision.¹⁴

10. On 15 December 2021, further to a request by, *inter alios*, Mr Krasniqi, who also waived the right to have his 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 Third Detention Decision.¹⁵

11. On 25 March 2022, the Court of Appeals upheld the Third Detention Decision ("Third Court of Appeals Decision").¹⁶

12. On 6 April 2022, the Defence filed submissions on detention review, requesting the Pre-Trial Judge to release Mr Krasniqi subject to conditions as the

¹² KSC-BC-2020-06, F00548, Kosovo General Police Directorate, *Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021, 26 October 2021*, confidential. The translation into English of said submission was issued on 3 November 2021, F00548/eng.

¹³ KSC-BC-2020-06, F00582, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi*, 26 November 2021, confidential. A public redacted version was issued on 8 December 2021, F00582/RED.

¹⁴ KSC-BC-2020-06, IA016/F00001, Defence for Mr Krasniqi, *Krasniqi Defence Appeal against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi*, 9 December 2021, confidential, with Annex 1, public. A public redacted version was filed on 6 April 2022, IA016/F00001/RED.

¹⁵ KSC-BC-2020-06, Transcript of Hearing, 15 December 2021, public, p. 763, line 6 to p. 764, line 4.

¹⁶ KSC-BC-2020-06, IA016/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, confidential. A public redacted version was issued on the same day, IA016/F00005/RED.

Pre-Trial Judge may deem appropriate (“Request”).¹⁷ On 19 April 2022, the SPO responded to the Request (“Response”).¹⁸ On 25 April 2022, the Defence replied to the Response (“Reply”).¹⁹

II. SUBMISSIONS

13. The Defence requests that Mr Krasniqi be released subject to such conditions as the Pre-Trial Judge may deem appropriate.²⁰ Moreover, it argues that detention is no longer proportionate, [REDACTED], which limit the risks identified by the Pre-Trial Judge.²¹ The Defence further requests the Pre-Trial Judge to order the director of the Kosovo Police (“Kosovo Police Director”) to attend an oral hearing in order to answer questions from the Parties and the Pre-Trial Judge about the Kosovo Police’s willingness and ability to enforce condition of release.²²

14. The SPO responds that the Request should be rejected.²³ It maintains that the continued detention of Mr Krasniqi remains necessary since there has been no relevant change in circumstances detracting from the established reasons for detention and that the Court of Appeals has rather confirmed that the proposed conditions do not mitigate the identified risks.²⁴ As far as the proportionality of Mr Krasniqi’s detention is concerned, the SPO argues that given, *inter alia*, the scope and complexity of the instant case, the continuing expeditious progress in pre-trial milestones, the lengthy custodial sentence, if convicted, and the inability

¹⁷ KSC-BC-2020-06, F00761, Defence for Mr Krasniqi, *Krasniqi Defence Submissions on Third Detention Review*, 6 April 2022, confidential and *ex parte*. A confidential redacted version was issued on 8 April 2022, F00761/CONF/RED.

¹⁸ KSC-BC-2020-06, F00772, Specialist Prosecutor, *Prosecution Response to Krasniqi Defence Submissions on Third Detention Review*, 19 April 2022, confidential and *ex parte*.

¹⁹ KSC-BC-2020-06, F00782, Defence for Mr Krasniqi, *Krasniqi Defence Reply to Prosecution Response to Defence Submissions on Third Detention Review*, 25 April 2022, confidential and *ex parte*.

²⁰ Request, paras 3, 26-29.

²¹ Request, paras 3, 30-38.

²² Request, paras 2, 16-25.

²³ Response, para. 27 (*sic*).

²⁴ Response, para. 1.

of the proposed conditions to mitigate the risks, pre-trial detention continues to be reasonable and proportionate.²⁵ Lastly, the SPO submits that an oral hearing to elicit information directly from the Kosovo Police is not necessary, as confirmed by the Court of Appeals.²⁶

15. The Defence replies that the SPO offers no substantive response to the Request and relies on irrelevant and unsupported assertions about Mr Krasniqi's [REDACTED] and interfere with witnesses.²⁷

III. APPLICABLE LAW

16. 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.

17. Article 41(10) of the Law and Rule 57(2) of the Rules 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.

18. 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

²⁵ Response, paras 20-25.

²⁶ Response, paras 26-34.

²⁷ Reply, para. 1.

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.

19. 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. REQUEST FOR AN ORAL HEARING

20. The Defence submits that it is incumbent on the Pre-Trial Judge to use every available mechanism to investigate the possibility of conditional release.²⁸ In this regard, it requests the Pre-Trial Judge to order the Kosovo Police Director to attend an oral hearing to answer questions from the Parties and the Pre-Trial Judge about the willingness and ability of the Kosovo Police to enforce conditions of release.²⁹

21. The Defence does not provide a list of specific questions to be asked at an oral hearing to the Kosovo Police Director, but rather submits that oral evidence is necessary and would bring added value as it would allow the Kosovo Police Director the opportunity to: (i) address the ambiguities and/or omissions identified by the Pre-Trial Judge in the KP Submissions, which hindered the required case-by-case assessment;³⁰ and (ii) [REDACTED].³¹ The Defence further contends that additional evidence from the Kosovo Police would be relevant to the Pre-Trial Judge's case-by-case assessment of the extent to which the identified

²⁸ Request, para. 16.

²⁹ Request, paras 17, 25.

³⁰ Request, para. 18.

³¹ Request, para. 19.

risks are mitigated by the proposed conditions and the extent to which the Kosovo Police has the experience and capacity to implement them. It is additionally argued that an oral hearing would ensure that the Parties and the Pre-Trial Judge obtain complete answers and clarifications to relevant questions.³² In this regard, the Defence submits that an oral hearing is capable of changing the outcome of the periodic detention review and would provide a forum for the Pre-Trial Judge to address the feasibility of any additional conditions with the Kosovo Police.³³

22. Lastly, the Defence submits that, pursuant to the Law, the Pre-Trial Judge has the power to order *proprio motu* the Kosovo Police Director to attend an oral hearing and respond to questions.³⁴ In the alternative, the Defence is entitled to apply to the Pre-Trial Judge for such an order pursuant to Rules 201(2) and 202(1), seeing as in the instant case a request to the Kosovo Police by the Defence has not been adequately or comprehensively answered and the information, cooperation or assistance is highly material to its case.³⁵

23. The SPO responds that the Court of Appeals has already found that an oral hearing on detention to elicit information directly from the Kosovo Police was unnecessary in light of the information received from the Parties and the Kosovo Police and that, in general, there is no obligation to hold an oral hearing on a detention related matter.³⁶ In any case, the SPO argues that the Defence did not demonstrate the added value of an oral hearing, namely the reason why, if granted, it could lead the Pre-Trial Judge to reach another conclusion.³⁷

24. In this regard, the SPO submits that to the Kosovo Police have already been approached several times by the Defence and the Pre-Trial Judge. Granting the oral hearing would constitute a sixth attempt to ask the same questions to the Kosovo

³² Request, para. 20.

³³ Request, para. 21.

³⁴ Request, paras 22-24.

³⁵ Request, para. 24.

³⁶ Response, paras 28, 33.

³⁷ Response, para. 29.

Police.³⁸ In this regard, the SPO asserts that the Defence contention that an oral hearing would lead to an “acceptable answer” is speculative and unreasonable.³⁹ The SPO argues that neither the Pre-Trial Judge nor the Court of Appeals challenged the quality of the Kosovo Police Submissions, but rather found that the proposed conditions did not mitigate the identified risks.⁴⁰

25. Lastly, in relation to the Defence’s reliance on Rule 201(2) of the Rules, the SPO submits that the Defence failed to prove the first prong of the test, i.e. the fact that a request by the Defence has been refused or ignored. Accordingly, the relevant test has not been fulfilled.⁴¹

26. The Defence replies that it has met the standard set by the Court of Appeals, namely that an oral hearing could lead to a different outcome.⁴² In reiterating the added value of an oral hearing,⁴³ the Defence recalls that the Court of Appeals found that the Pre-Trial Judge was obliged to request further information if the observations received from the Kosovo Police were insufficient to enable him to make an informed decision.⁴⁴ Lastly, recognising that the Pre-Trial Judge’s power to order the Kosovo Police Director to attend an oral hearing and respond to questions is a discretionary one,⁴⁵ the Defence reiterates that, in its view, Rule 201(2) of the Rules is applicable considering that both the Pre-Trial Judge and the Court of Appeals have concluded that the requests to the Kosovo Police by the Defence were not adequately or comprehensively answered.⁴⁶

27. The Pre-Trial Judge recalls that, in the Third Detention Decision, when assessing whether any additional conditions could sufficiently mitigate the identified risks, he

³⁸ Response, para. 31.

³⁹ Response, para. 30.

⁴⁰ Response, para. 32.

⁴¹ Response, para. 34.

⁴² Reply, para. 13.

⁴³ Reply, para. 14.

⁴⁴ Reply, para. 15.

⁴⁵ Reply, para. 16.

⁴⁶ Reply, para. 17.

found that there was no basis to request any further information from the Kosovo Police. In particular, the Pre-Trial Judge noted that the Kosovo Police had been approached on three separate occasions and that he had formulated a detailed list of questions, which had also left room for the Kosovo Police to provide any additional information considered to be relevant for that determination. Therefore, the Pre-Trial Judge concluded that the Kosovo Police had had ample opportunity to provide the required information and any additional information would not assist him any further in relation to that matter.⁴⁷

28. The Pre-Trial Judge also recalls that he dismissed a similar request for an oral hearing filed by a co-accused in the context of his review of detention. On that occasion, the Pre-Trial Judge referred to the extensive and exhaustive written submissions provided by the Kosovo Police.⁴⁸ In upholding that finding, the Court of Appeals recalled that there is no general obligation to hold an oral hearing on a detention related issue, as the Pre-Trial Judge may decide in exercising his discretion that a hearing is unnecessary when the information before him is sufficient to enable him to reach an informed decision.⁴⁹

29. Turning to the specific circumstances of Mr Krasniqi's request, in the Third Detention Decision it was indeed found that: (i) [REDACTED];⁵⁰ and (ii) [REDACTED].⁵¹ [REDACTED].⁵² It is therefore clear that [REDACTED]. Accordingly, an oral hearing [REDACTED] is not necessary. With regard to

⁴⁷ Third Detention Decision, para. 83.

⁴⁸ KSC-BC-2020-06, F00624, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi*, 14 December 2021, confidential, paras 23-24. A public redacted version was issued on 25 January 2022, F00624/RED.

⁴⁹ KSC-BC-2020-06, IA017/F00011, Court of Appeals, *Decision on Hashim Thaçi's Appeal against Decision on Review of Detention* ("Thaçi's Appeals Decision"), 5 April 2022, confidential, paras 59, 61. A public redacted version was issued on the same day, IA017/F00011/RED.

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

[REDACTED],⁵³ the Pre-Trial Judge notes that [REDACTED].⁵⁴ The latter had therefore ample opportunity to provide the required information.

30. [REDACTED].⁵⁵ Moreover, the Pre-Trial Judge considered, in the Third Detention Decision, that the aforementioned consideration was, as such, not determinative of the matter under discussion.⁵⁶ A further hearing is therefore not necessary.

31. Insofar as oral evidence from the Kosovo Police Director [REDACTED], the Court of Appeals confirmed that the Chief Detention Officer is in a better position to promptly bring to the Registrar's attention any communications that raise concerns and additionally found that the Chief Detention Officer has broad authority to take further measures to restrict the communications of detainees.⁵⁷ Therefore, [REDACTED] would not displace the Court of Appeals' assessment regarding the enhanced protections in the SC Detention Facilities. Accordingly, the Pre-Trial Judge finds that an oral hearing to address such an issue is likewise unnecessary.

32. Similar considerations apply to the assessment of the extent to which the identified risks can be mitigated by any additional conditions and the extent to which the Kosovo Police has the experience and capacity to implement them. Insofar as the Kosovo Police has made extensive submissions concerning its capacity to monitor visits and communications in Mr Krasniqi's residence, an oral hearing is unnecessary at this stage.⁵⁸

33. Lastly, and insofar as the Defence invokes Rule 201(2) of the Rules, the Pre-Trial Judge finds that the first prong of the test set out in the abovementioned rule has not been met by the Defence. In fact, by extensively responding to the questions posed to the Pre-Trial Judge, the Kosovo Police did not refuse or ignore a request for information, cooperation, or assistance. The fact that such response was deemed

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ Third Detention Decision, para. 81.

⁵⁷ Third Court of Appeals Decision, para. 32.

⁵⁸ KP Submissions, pp. 6-8, 13-18.

inadequate to mitigate the identified risks by both the Pre-Trial Judge and the Court of Appeal does not mean that the relevant request for information, cooperation, or assistance has been refused or ignored.

34. Considering that the information in the Pre-Trial Judge's possession allows him to make an informed decision,⁵⁹ the Pre-Trial Judge dismisses the Defence's request for an oral hearing.

B. APPLICABLE STANDARD

35. In examining whether the reasons for detention on remand still exist, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge adopts the standard established in previous decisions.⁶⁰

C. GROUNDED SUSPICION

36. 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.⁶¹

37. The Defence has not made submissions regarding this criterion in the Request. In the Response, the SPO avers that the Pre-Trial Judge's finding that there continues to be a grounded suspicion that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the SC continues to stand, absent any change in circumstances.⁶²

⁵⁹ Third Court of Appeals Decision, para. 42.

⁶⁰ See, among many others, Third Detention Decision, para. 28, with further references. ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222, with further references.

⁶² Response, para. 4.

38. 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 (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.⁶³ Moreover, the Pre-Trial Judge recalls that a well-grounded suspicion has also been established with regard to the new charges brought by the SPO against Mr Krasniqi with the requested amendments to the indictment.⁶⁴ 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.⁶⁵

39. Accordingly, the Pre-Trial Judge finds that the requirement set forth in Article 41(6)(a) and (10) of the Law continues to be met.

D. NECESSITY OF DETENTION

40. 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.⁶⁶ The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"⁶⁷ 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

⁶³ Confirmation Decision, para. 521(a)(i)-(ii).

⁶⁴ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. A confidential redacted version (F00777/CONF/RED) and a public redacted version (F00777/RED) were filed, respectively, on 22 April 2022 and 6 May 2022. The requested amendments are detailed at para. 11.

⁶⁵ 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.

⁶⁶ KSC-BC-2020-06, IA001/F00005, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public, paras 18-19; First Detention Decision, para. 18.

⁶⁷ See *chapeau* of Article 41(6)(b) of the Law.

future occurrence.⁶⁸ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁶⁹ 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.⁷⁰

1. Risk of Flight

41. The Defence does not provide any specific submissions regarding the risk of flight. According to the SPO, a risk of flight remains as: (i) Mr Krasniqi has a continued influence in Kosovo; (ii) he is in a position to obtain funds and means to travel; and (iii) the ever-growing account of the evidence disclosed to Mr Krasniqi, as well as the possibility of a serious sentence in the event of a conviction, may provide him the necessary incentive to evade SC proceedings.⁷¹ The Defence replies that the SPO's assertions that Mr Krasniqi: (i) continues to play a significant role in Kosovo and (ii) is in the position to obtain the funds and means to travel, are speculative and prejudicial and must be rejected by the Pre-Trial Judge.⁷²

42. Having examined the factors and circumstances invoked in the decisions reviewing Mr Krasniqi's detention, the Pre-Trial Judge remains satisfied that they continue to exist. More specifically, The Pre-Trial Judge considers that Mr Krasniqi: (i) has been made aware of the charges against him and the

⁶⁸ 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.

⁶⁹ First Court of Appeals Decision, para. 26.

⁷⁰ 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*; *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

⁷¹ Response, para. 8.

⁷² Reply, para. 3.

possibility of a serious sentence in the event of a conviction⁷³ and (ii) continues to play a significant role in Kosovo on the basis of the previous positions he occupied.⁷⁴ Hence, there is the incentive and means to evade proceedings. In particular, the influence Mr Krasniqi continues to derive from these roles may assist him in evading SC proceedings by, for instance, securing access to relevant information, and obtaining funds and means to travel.

43. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,⁷⁵ the Pre-Trial Judge finds that a moderate risk of flight in relation to Mr Krasniqi continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

44. According to the SPO, a risk of obstruction remains as: (i) Mr Krasniqi [REDACTED]; (ii) he continues to play a significant role in Kosovo; and (iii) he has increased insight into the incriminatory evidence following the last detention review, as well as access to the identities of witnesses with in-court protective measures.⁷⁶ The SPO submits that these element shall be placed in a context of a persistent climate of intimidation of witnesses and interference with criminal proceedings against former Kosovo Liberation Army (“KLA”) members, which was recently confirmed by a witness in another case before the SC.⁷⁷ Lastly, the SPO avers that, absent any change in circumstances, the finding that Mr Krasniqi will obstruct the progress of the SC proceedings, if released, stands.⁷⁸

⁷³ First Detention Decision, para. 29; Second Detention Decision, para. 29; Third Detention Decision, para. 37.

⁷⁴ First Court of Appeals Decision, para. 52; Second Detention Decision, para. 36; Second Court of Appeals Decision, para. 27; Third Detention Decision, para. 37.

⁷⁵ First Detention Decision, para. 30.

⁷⁶ Response, paras 9-10.

⁷⁷ Response, paras 11-12.

⁷⁸ Response, para. 13.

45. In its Reply, the Defence argues that the SPO's assertions that Mr Krasniqi: (i) continues to play a significant role in Kosovo and (ii) [REDACTED] are speculative and prejudicial and must be rejected by the Pre-Trial Judge.⁷⁹

46. The Defence further avers that any risk posed by the increased insight into the evidence and witnesses is minimised by protective measures and by the absence of any allegations of witness interference or intimidation by Mr Krasniqi since the disclosure of material to the Defence.⁸⁰

47. Lastly, the Defence rebuts the SPO's reliance on a testimony by a witness in another case before the SC in order to establish a general climate of witness intimidation.⁸¹ In particular, the Defence submits that the generic allegations of such a witness are wholly unrelated to Mr Krasniqi and that the SPO has failed to prove that a climate of witness intimidation and interference persists in Kosovo.⁸²

48. The Pre-Trial Judge recalls that 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].⁸³

49. Furthermore, as a former political leader and former KLA deputy commander, Mr Krasniqi still holds a position of influence in Kosovo,⁸⁴ which, [REDACTED], allows for the reasonable conclusion that it is possible⁸⁵ for Mr Krasniqi to [REDACTED].⁸⁶

⁷⁹ Reply, para. 3.

⁸⁰ Reply, para. 4.

⁸¹ Reply, paras 5-6.

⁸² Reply, para. 6.

⁸³ First Detention Decision, paras 36, 39; Second Detention Decision, paras 35, 37; Second Court of Appeals Decision, para. 30; Third Detention Decision, paras 42-43.

⁸⁴ First Court of Appeals Decision, para. 52; Second Detention Decision, para. 36; Second Court of Appeals Decision, para. 27; Third Detention Decision, para. 44.

⁸⁵ First Court of Appeal Decision, para. 26.

⁸⁶ Second Detention Decision, para. 38.

50. The Pre-Trial Judge considers that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo, which, even though not determinative in and of itself, provides the context against which Mr Krasniqi's [REDACTED] and his position of influence must be considered.⁸⁷ In this regard, the Pre-Trial Judge considers that whether the Accused has not been previously accused of involvement in witness interference⁸⁸ does not alleviate the risk of obstruction.⁸⁹ In particular, the Pre-Trial Judge recalls that the risk of obstruction 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.⁹⁰

51. Lastly, and insofar as the Defence submits that protective measures in place minimise the identified risks,⁹¹ the Pre-Trial Judge still considers that protective measures in place are not entirely sufficient to mitigate the risk of obstruction, considering that, notwithstanding the adoption of several decisions on protective measures, [REDACTED], irrespective of these measures, [REDACTED].⁹² Moreover, the Pre-Trial Judge considers that the advancement of the pre-trial proceedings following the Third Detention Decision – in particular, the filing of

⁸⁷ First Detention Decision, para. 38; Second Detention Decision, para. 38; Third Detention Decision, para. 45; In relation to the assessment of previously proposed conditions of interim release, the Court of Appeals confirmed that the persisting climate of witness intimidation and interference in Kosovo are relevant "contextual considerations", see KSC-BC-2020-06, IA015/F00005, Court of Appeals, *Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, confidential, para. 43. A public redacted version was filed on the same day, IA015/F00005/RED.

⁸⁸ Reply, para. 4.

⁸⁹ Third Court of Appeals Decision, footnote 73.

⁹⁰ KSC-BC-2020-06, IA003/F00005, Court of Appeals, *Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential, para. 59. A public redacted version was filed the same day, IA003/F00005/RED.

⁹¹ Reply, para. 4.

⁹² [REDACTED].

the SPO's pre-trial brief and witness list,⁹³ as well as the disclosure of the identities of witnesses with in-court protective measures – increases the risk of obstruction considering that it will provide Mr Krasniqi with more details as to the case against him. On this basis, the Pre-Trial Judge further concludes that, in view of the fact that Mr Krasniqi [REDACTED] and continues to play a significant role in Kosovo, his increased insight into the evidence underpinning the serious charges against him following the Third Detention Decision increases the risk of obstruction.

52. 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

53. The Defence does not provide any specific submissions regarding the risk of committing further crimes. According to the SPO, this risk must be considered in light of: (i) a well-established and ongoing climate of witness intimidation and interference; (ii) Mr Krasniqi's increased awareness of incriminatory evidence; and (iii) the significant influential position the Accused still retains in Kosovo.⁹⁴ The SPO contends that, considering the prior examples of the [REDACTED], this risk remains high.⁹⁵

54. 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

⁹³ KSC-BC-2020-06, F00631, Specialist Prosecutor, *Submission of Pre-Trial Brief with Witness and Exhibit Lists* ("Rule 95(4) Material"), 17 December 2021, confidential, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version with confidential redacted Annexes 1-3 was issued on 21 December 2021, F00631/RED. A corrigendum with two strictly confidential *and ex parte* Annexes and one confidential Annex was submitted on 24 February 2022, F00709.

⁹⁴ Response, para. 14.

⁹⁵ Response, para. 14.

the latter in the circumstances of the present case.⁹⁶ 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.⁹⁷

55. Turning to the facts under consideration, the Pre-Trial Judge recalls that, besides the climate of witness intimidation, Mr Krasniqi has: (i) [REDACTED]; (ii) a position of influence in Kosovo which could allow him to secure access to confidential information; and (iii) an increased account of the SPO's case against him in view of the advancement of the pre-trial proceedings since the Third Detention Decision, especially the submission of the SPO's pre-trial brief and the disclosure of the identities of witnesses with in-court protective measures.⁹⁸

56. On this basis, the Pre-Trial Judge considers that there continues to be a 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.

57. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Krasniqi will commit further crimes continues to exist.

4. Conclusion

58. 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 against those perceived

⁹⁶ First Detention Decision, para. 42; Second Detention Decision, para. 42; Third Detention Decision, para. 50.

⁹⁷ First Detention Decision, para. 42; Second Detention Decision, para. 42; Third Detention Decision, para. 50.

⁹⁸ *See supra*, paras 48-51.

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. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions for his release.

E. CONDITIONAL RELEASE

59. The Defence reiterates that Mr Krasniqi is willing to abide by any condition imposed by the Pre-Trial Judge, including those specified in previous submissions. In addition, it invites the Pre-Trial Judge to specifically consider the following additional conditions: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; and (v) [REDACTED] (“Additional Conditions”).⁹⁹

60. The Defence further avers that the Additional Conditions are neither impracticable nor particularly complex or resource-intensive, [REDACTED].¹⁰⁰ The Defence submits that the Additional Conditions would limit the identified risk seeing as they would: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED].¹⁰¹ Lastly, the Defence submits that, while some hypothetical risk might remain, this would not be significantly greater than in the SC Detention Facilities, and would be in any case insufficient to justify ongoing detention.¹⁰²

61. The SPO responds that the Additional Conditions represent slight variations of already proposed and considered conditions and, suffering from obvious flaws,

⁹⁹ Request, para. 26.

¹⁰⁰ Request, para. 28.

¹⁰¹ Request, para. 29.

¹⁰² Request, para. 29.

do not sufficiently mitigate the identified risks.¹⁰³ In particular, [REDACTED].¹⁰⁴ [REDACTED].¹⁰⁵

62. With regard to [REDACTED].¹⁰⁶

63. Lastly, with regard to [REDACTED]. Stressing that it is difficult to externally replicate these parts of the detention framework, the SPO submits that the Additional Conditions amount to a pale replica of the SC Detention Facilities measures.¹⁰⁷

64. The Defence replies that the Additional Conditions match or enhance the confidence of security offered by the SC Detention Facilities, insofar as: (i) [REDACTED] and (ii) [REDACTED].¹⁰⁸ [REDACTED].¹⁰⁹

65. As found in previous detention decisions, the Pre-Trial Judge considers that the risk of flight can be sufficiently mitigated on the basis that Mr Krasniqi has committed himself to return to the SC whenever summonsed, not to change his place of residence and report regularly to the relevant authorities.¹¹⁰ This conclusion is underscored by the guarantees provided by the Kosovo Police that they are authorised and capable of ensuring that an individual subject to conditional release reports to the Kosovo Police, surrenders documents allowing him to travel, and returns to the SC whenever ordered to do so by the Pre-Trial Judge for the purposes of the proceedings in relation to him.¹¹¹

66. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Pre-Trial Judge will now assess whether the

¹⁰³ Response, para. 15.

¹⁰⁴ [REDACTED].

¹⁰⁵ [REDACTED].

¹⁰⁶ [REDACTED].

¹⁰⁷ Response, para. 19.

¹⁰⁸ Reply, para. 8.

¹⁰⁹ Reply, para. 8.

¹¹⁰ First Detention Decision, para. 48; Second Detention Decision, para. 49; Third Detention Decision, para. 67.

¹¹¹ Third Detention Decision, para. 67; KP Submissions, pp. 2-4, 6.

Additional Conditions sufficiently mitigate the identified risks. With regard to [REDACTED], the Pre-Trial Judge finds that [REDACTED] would not affect the Pre-Trial Judge's findings that: (i) the communications between Mr Krasniqi and his family members [REDACTED];¹¹² (ii) Mr Krasniqi could use coded or obscure language that, [REDACTED], would not be recognised by the Kosovo Police;¹¹³ and (iii) Mr Krasniqi could ask a family member to pass on a message orally or to use a device belonging to a third person to do so, or that he could transmit covert messages for the purposes of obstructing SC proceedings or committing further crimes.¹¹⁴

67. The Pre-Trial Judge turns to address the remaining Additional Conditions, [REDACTED].

68. The Pre-Trial Judge recalls at the outset that, contrary to what the Defence avers,¹¹⁵ while at the SC Detention Facilities only 10% of the non-privileged calls are listened to, all telephone conversations of the Accused on the non-privileged telephone line, the only one to which the Accused has access for non-privileged calls, are recorded.¹¹⁶ Moreover, in addition to visits at the SC Detention Facilities being supervised as a rule, more measures of recording and listening even of all visits are possible if considered necessary and proportionate.¹¹⁷ Insofar as the more general question of monitoring the interior of Mr Krasniqi's residence is concerned, the Pre-Trial Judge recalls that [REDACTED].¹¹⁸ Whereas [REDACTED],¹¹⁹ [REDACTED]. The Pre-Trial Judge recalls that the Kosovo Police, despite being fluent in Mr Krasniqi's native language and familiar with the general context in Kosovo, [REDACTED] and does not have the ability

¹¹² Third Detention Decision, para. 70.

¹¹³ Third Detention Decision, para. 70.

¹¹⁴ Third Detention Decision, para. 70.

¹¹⁵ Reply, para. 8.

¹¹⁶ Third Court of Appeals Decision, para. 30; Registry Submissions, paras 18-19, 26.

¹¹⁷ Third Court of Appeals Decision, para. 30; Registry Submissions, paras 31-34, 37-39.

¹¹⁸ Third Detention Decision, paras 70-74; Third Court of Appeals Decision, para. 27.

¹¹⁹ Third Court of Appeals Decision, para. 32.

[REDACTED] in a manner that an official of the SC, such as the Chief Detention Officer, would have.¹²⁰ [REDACTED].

69. The Pre-Trial Judge further considers that even live monitoring by a Registry official would not sufficiently mitigate the identified risks. In fact, [REDACTED]. While Mr Krasniqi has the possibility of having unmonitored communications at the SC Detention Facilities, these are strictly limited considering that detainees are only allowed unmonitored “private visits” for certain close family members and within limited time periods, [REDACTED].¹²¹ In this regard, the Pre-Trial Judge notes that the Court of Appeals found that the Pre-Trial Judge’s conclusion that the proposed conditions would allow for [REDACTED], and [REDACTED] was a reasonable one.¹²²

70. With regard to potential additional measures, and recalling that the obligation for the Pre-Trial Judge to inquire and evaluate, *proprio motu*, all reasonable conditions and not just those raised by the Defence, is not limitless,¹²³ the Pre-Trial Judge considers that, on the basis of the available information as to the capacity of the Kosovo Police to implement monitoring measures, no additional measures, which could be reasonably considered, could sufficiently mitigate the identified risks.¹²⁴

71. The Pre-Trial Judge recalls that the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.¹²⁵

¹²⁰ Third Detention Decision, para. 76. *See also* Third Court of Appeals Decision, para. 32.

¹²¹ Third Detention Decision, para. 71; *see also* Registry Practice Direction on Detainees Visits and Communications, KSC-BD09/Rev1/2020, 23 September 2020, Article 24, p. 10; KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, public, footnote 95.

¹²² Third Court of Appeals Decision, para. 28.

¹²³ Third Court of Appeals Decision, para. 42.

¹²⁴ Third Court of Appeals Decision, para. 42.

¹²⁵ Third Detention Decision, para. 77.

Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.¹²⁶ Recalling that it is within the Pre-Trial Judge's discretion to compare the conditions proposed by the Defence with the conditions in the SC Detention Facilities,¹²⁷ the Pre-Trial Judge remains persuaded that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Krasniqi's communications can be restricted in a manner to sufficiently mitigate the aforementioned risks. Accordingly, the Pre-Trial Judge finds that the Additional Conditions and any other conditions imposed by the Pre-Trial Judge are insufficient to mitigate the risk of Mr Krasniqi obstructing the progress of SC proceedings or committing further crimes.

F. PROPORTIONALITY OF DETENTION

72. The Defence submits at the outset 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.¹²⁸ The Defence further submits that the requirement to review detention every two months set out in Rule 57(2) of the Rules provides the mechanism for the Pre-Trial Judge to ensure that Mr Krasniqi is not detained for an unreasonable period prior to the start of the trial and therefore such a mechanism must be capable of leading to a different conclusion than that reached in previous reviews.¹²⁹

¹²⁶ Third Court of Appeals Decision, para. 30.

¹²⁷ Third Court of Appeal Decision, para. 26.

¹²⁸ Request, para. 30.

¹²⁹ Request, para. 31.

73. Turning to the specific circumstances of the case, the Defence invites the Pre-Trial Judge to assess the proportionality of Mr Krasniqi's pre-trial detention against: (i) its length hitherto; (ii) [REDACTED]; and (iii) the procedural progression of the case.¹³⁰

74. With regard to the length of pre-trial detention, which has reached the substantive amount of 17 months, the Defence submits that the possibility of a substantial custodial sentence in the event of a conviction can only carry a limited weight at this stage of the proceedings, given the presumption of innocence.¹³¹

75. The Defence further argues that Mr Krasniqi is 71 years old [REDACTED]. [REDACTED].¹³²

76. Lastly, the Defence submits that the case will not progress to trial in the immediate future and no tentative trial date can be set, given that the SPO's disclosure processes under Rules 102(3) and 103 of the Rules have not been completed and will likely cause delays in proceedings and given the necessity, for the Defence, to have time to review the disclosed material and prepare a pre-trial brief.¹³³ As a result, if conditional release is denied, the period of pre-trial detention is likely to be extensive and disproportionate.¹³⁴

77. The SPO responds that continued detention is reasonable and proportionate.¹³⁵ The SPO further responds that the Pre-Trial Judge has always assessed the reasonableness of the Accused's detention in light of the specific circumstances of the case at the time of the review in question, and such findings have always been upheld by the Court of Appeals.¹³⁶ [REDACTED].¹³⁷ In this

¹³⁰ Request, para. 32.

¹³¹ Request, para. 33.

¹³² [REDACTED].

¹³³ Request, paras 35-36.

¹³⁴ Request, para. 37.

¹³⁵ Response, para. 25.

¹³⁶ Response, paras 20-22.

¹³⁷ [REDACTED].

regard, the SPO avers that [REDACTED].¹³⁸ Lastly, the SPO avers that the case has further actively progressed towards trial, with the SPO filing its pre-trial brief, witness and exhibits list, and continuing to disclose Rule 102(3) and Rule 103 materials, and the Parties continuing litigating preliminary motions.¹³⁹

78. The Defence replies that the Court of Appeals confirmed that the periodic review of detention must be capable of leading to a different conclusion from the previous review and requires the Pre-Trial Judge to reassess the proportionality of detention in all the current circumstances of the case.¹⁴⁰ In this regard, the Defence [REDACTED] claims that the Response fails to address the SPO's undue delays which blight the progression of the case towards trial.¹⁴¹

79. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention – as reflected in Rule 56(2) of the Rules.¹⁴² 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 considered, the continued detention “stops being reasonable” and the individual needs to be released.¹⁴³ The Pre-Trial Judge notes that the question of 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.¹⁴⁴

¹³⁸ [REDACTED].

¹³⁹ Response, para. 24 (*sic*).

¹⁴⁰ Reply, paras 10-11.

¹⁴¹ Reply, paras 11-12.

¹⁴² KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

¹⁴³ *Similarly*, First Court of Appeals Decision, para. 69.

¹⁴⁴ ECtHR, [Buzadji v. the Republic of Moldova \[GC\]](#), para. 90.

80. Mr Krasniqi was arrested on 4 November 2020 and, as a result, he has been detained for slightly more than eighteen months at the time of the present review of his detention. Accordingly, the Pre-Trial Judge will assess whether this period of time is reasonable in the specific circumstances relating to Mr Krasniqi.

81. The Pre-Trial Judge recalls that: (i) Mr Krasniqi is charged with ten counts of serious international crimes, namely persecution on political and/or ethnic grounds, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder, and enforced disappearance of persons;¹⁴⁵ (ii) it is alleged that he played a significant role in these crimes;¹⁴⁶ (iii) he could be sentenced to a lengthy sentence, if convicted; (iv) proceedings against Mr Krasniqi are complex;¹⁴⁷ and (v) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions.¹⁴⁸

82. Moreover, 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 future¹⁴⁹ – in particular, following the Third Detention Decision: (i) the SPO's pre-trial brief as well as the chart according to Rule 109(c) of the Rules have been filed;¹⁵⁰ (ii) the SPO completed its disclosure

¹⁴⁵ Confirmed Indictment, para. 179.

¹⁴⁶ Confirmed Indictment, paras 11, 32, 39, 40, 44, 49, 53, 55-57, 178.

¹⁴⁷ Third Detention Decision, para. 95, citing ECtHR, *Shabani v. Switzerland*, *Shabani v. Switzerland*, no. 29044/06, [Judgment](#), 5 November 2009, paras 65, 69; ICTY, *Prosecutor v. Ademi*, IT-01-46-PT, [Order on Motion for Provisional Release](#), 20 February 2002, para. 26; ICTR, *Prosecutor v. Ndayambaje*, ICTR-98-42-T, [Decision on the Defence Motion for the Provisional Release of the Accused](#), 21 October 2002, para. 23; [Ngirumpatse Decision](#), para. 25. The Pre-Trial Judge also notes that the SPO intends to rely on [REDACTED], see Annex 2 to Rule 95(4) Material.

¹⁴⁸ See *supra*, para. 71.

¹⁴⁹ In this regard the Pre-Trial Judge recalls that, for the purposes of assessing the proportionality of Mr Krasniqi's detention, the actual length of time spent in pre-trial detention must be assessed as opposed to any estimates by the SPO that proved to be inaccurate, see Third Detention Decision, para. 97.

¹⁵⁰ Rule 95(4) Material; KSC-BC-2020-06, F00663, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart*, 28 January 2022, public, with Annex 1, strictly confidential and *ex parte* and Annex 2, confidential.

under Rule 102(1)(b) of the Rules,¹⁵¹ (iii) further progress in the disclosure process pursuant to Rules 102(3) of the Rules has been made as several request for protective measures regarding Rule 102(3) material have been adjudicated,¹⁵² (iv) the Pre-Trial Judge ordered the SPO to complete its review of the remaining material to be assigned for exculpatory review and disclose the material found to be exculpatory by 20 May 2022¹⁵³, (v) the Pre-Trial Judge has invited the parties to engage in *inter partes* discussions on ways to streamline the case before 13 May 2022 and ordered that proposals be filed by 20 May 2022;¹⁵⁴ and (vi) the Pre-Trial Judge invited the Defence to inform him whether its pre-trial brief, if any, could be filed by 16 September 2022, with a view to transmitting the case in the following weeks to the trial panel.¹⁵⁵ Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Krasniqi's detention shall be reviewed every two months or as soon as a change in circumstances arises.

¹⁵¹ KSC-BC-2020-06, F00670, Specialist Prosecutor, *Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests*, 31 January 2022, strictly confidential and *ex parte*, para. 1, with Annexes 1-9, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00670/CONF/RED; see also Transcript of Hearing, ("24 March 2022 Transcript"), 24 March 2022, public, p. 1067, line 24 to p. 1068, line 13.

¹⁵² KSC-BC-2020-06, F00651, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Request for Protective Measures for Rule 102(3) Materials Requested by the Selimi Defence*, 21 January 2022, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00651/CONF/RED; F00660, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Request for Protective Measures for Rule 102(3) Materials Requested by the Thaçi Defence and Deferred Item from F00574*, 28 January 2022, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00660/CONF/RED; F00746, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Request for Protective Measures for Deferred Rule 102(3) Items from F00660 and Request Regarding Deferred Rule 107(2) Items from F00719*, 22 March 2022, confidential; F00756, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Request for Protective Measures for Certain Rule 102(3) Information Requested by the Krasniqi Defence*, 29 March 2022, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00756/CONF/RED.

¹⁵³ 24 March 2022 Transcript, p. 1161, line 24 to p. 1162, line 2.

¹⁵⁴ 24 March 2022 Transcript, p. 1161, lines 13-20.

¹⁵⁵ KSC-BC-2020-06, F00798, Pre-Trial Judge, *Order Setting the Date for a Twelfth Status Conference and for Submissions*, 12 May 2022, public, para. 21(2)(g).

83. [REDACTED].¹⁵⁶ [REDACTED].¹⁵⁷ [REDACTED].¹⁵⁸ [REDACTED].¹⁵⁹
[REDACTED]. [REDACTED]. [REDACTED].¹⁶⁰ [REDACTED].

84. On this basis, the Pre-Trial Judge concludes that, for the purposes of the periodic review of the detention of Mr Krasniqi pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the time Mr Krasniqi has spent in pre-trial detention is not disproportionate.

V. CLASSIFICATION

85. The Pre-Trial Judge notes that the SPO does not object to the reclassification of the Response as public.¹⁶¹ However, the Pre-Trial Judge considers that the Response contains information that needs to be redacted from the other Defence teams,¹⁶² in accordance with the redactions applied to the confidential redacted version of the Request, or from the public,¹⁶³ in accordance with previously applied redactions. Therefore, the Pre-Trial Judge orders the SPO to file confidential redacted and public redacted versions of the Response.

86. The Pre-Trial Judge further orders the Defence to file public redacted versions of the Request and the Reply and to indicate whether the Reply can be reclassified as confidential.

VI. DISPOSITION

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

¹⁵⁶ [REDACTED].

¹⁵⁷ [REDACTED].

¹⁵⁸ [REDACTED].

¹⁵⁹ [REDACTED].

¹⁶⁰ [REDACTED].

¹⁶¹ Response, para. 26 (*sic*).

¹⁶² See, for example, Response, para. 24.

¹⁶³ See, for example, Response, paras 6, 9 (*in fine*), 14 (*in fine*), 19 (*in fine*).

- a) **REJECTS** the Defence's request for an oral hearing;
- b) **ORDERS** Mr Krasniqi's continued detention;
- c) **ORDERS** Mr Krasniqi, if he so wishes, to file submissions on the next review of detention by no later than **Wednesday, 22 June 2022**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- d) **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 **Wednesday, 29 June 2022**, and Mr Krasniqi, if he so wishes, to file his submissions by no later than **Wednesday, 6 July 2022**;
- e) **ORDERS** the SPO to submit confidential redacted and public redacted versions of the Response by no later than **Thursday, 19 May 2022**; and
- f) **ORDERS** the Defence to submit public redacted versions of the Request and the Reply and to indicate whether the Reply can be reclassified as confidential by no later than **Thursday, 19 May 2022**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 13 May 2022
At The Hague, the Netherlands.