



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 27 October 2022
Language: English
Classification: Public

Public redacted version of

Prosecution submissions on detention review of Mr Krasniqi

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I. Introduction

1. Mr Krasniqi has been repeatedly found to pose a risk of flight, obstruction to the progress of proceedings at the Kosovo Specialist Chambers and/or committing further crimes against those perceived as being opposed to the KLA, including (potential) witnesses.¹ The requirements under Article 41(6) of the Law² remain satisfied and no alternative, reasonable measures to detention exist that sufficiently mitigate the risks identified.

2. There has been no change in circumstances since the Appeals Panel decision of 2 August 2022,³ upholding the Pre-Trial Judge's order of 13 May 2022 for the continued detention of Mr Krasniqi,⁴ and the last decision of the Pre-Trial Judge of 19 September 2022.⁵ Mr Krasniqi's detention remains necessary and proportional.

II. Procedural background

3. The Accused went into custody on 4 November 2020 and was transferred to the seat of the Kosovo Specialist Chambers in The Hague. The Pre-Trial Judge issued

¹ See for example Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020/F00978, 19 September 2022 (public redacted version notified on 23 September 2022) ('Fifth PTJ Detention Decision').

² Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

³ Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention, KSC-BC-2020/IA020/F00005, 2 August 2022 (public redacted version notified on 2 August 2022) ('Fourth Appeals Panel Detention Decision').

⁴ Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F00801, 13 May 2022 (public redacted version notified on 24 May 2022) ('Fourth PTJ Detention Decision').

⁵ Fifth PTJ Detention Decision, KSC-BC-2020/F00978.

orders for his continued detention on 22 January 2021,⁶ 25 June 2021,⁷ 26 November 2021,⁸ 13 May 2022⁹ and 19 September 2022.¹⁰

4. The Appeals Panel confirmed orders for Mr Krasniqi's continued detention on 30 April 2021,¹¹ 25 March 2022,¹² and most recently on 2 August 2022.¹³

III. Submissions

5. For purposes of a detention review under Rule 57(2),¹⁴ the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.¹⁵ That determination concerns what has changed, if anything, since the previous ruling on detention. The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention.¹⁶ The Defence has not identified any relevant change in circumstances since the last ruling on detention,¹⁷ and indeed, no such changes have occurred.

⁶ Decision on Jakup Krasniqi's Application for Interim Release, KSC-BC-2020-06/F00180, 22 January 2021 (public redacted version notified on 26 January 2021).

⁷ Decision on Review of Detention of Jakup Krasniqi, KSC-BC-2020/F00371, 25 June 2021 (public redacted version notified on 30 June 2021).

⁸ Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F00582, 26 November 2021 (public redacted version notified on 8 December 2021) ('Third PTJ Detention Decision').

⁹ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00801/RED.

¹⁰ Fifth PTJ Detention Decision, KSC-BC-2020/F00978/RED.

¹¹ Decision on Jakup Krasniqi's Application for Interim Release, KSC-BC-2020-06/IA002/F00005, 30 April 2021 (public redacted version notified on 30 April 2021) ('First Appeals Panel Detention Decision').

¹² Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention, KSC-BC-2020-06/IA016/F00005, 25 March 2022 (public redacted version notified on 25 March 2022) ('Third Appeals Panel Detention Decision').

¹³ Fourth Appeals Panel Detention Decision, KSC-BC-2020/IA020/F00005/RED.

¹⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

¹⁵ *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

¹⁶ *Ibid.*

¹⁷ The Krasniqi Defence has not made submissions as part of the current round of detention.

A. EXISTENCE OF A GROUNDED SUSPICION

6. The Pre-Trial Judge has determined that there is a ‘well-grounded’ suspicion that Mr Krasniqi is criminally liable for the crimes contained in the confirmed indictment. 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’.¹⁸ There has been no development capable of changing this finding or warranting its re-examination by the Pre-Trial Judge. The Article 41(6)(a) criteria are met.

B. THERE ARE ARTICULABLE GROUNDS TO BELIEVE THAT THE ARTICLE 41(6) RISKS EXIST

7. In assessing the Article 41(6)(b) criteria, the panel must consider whether there exists a *risk*, in other words whether it is *possible* – rather than inevitable - for the person to abscond, destroy, hide, change or forge evidence of a crime, obstruct the progress of criminal proceedings, or repeat the criminal offence, complete an attempted crime, or commit a crime that the person threatened to commit.¹⁹

8. The Article 41(6)(b) criteria are in the alternative. While only one of the criteria needs to be met for a person to be detained,²⁰ all three Article 41(6)(b) criteria have been found to exist with respect to Mr Krasniqi. Indeed, absent any change in circumstance since the 19 September 2022 decision by the Pre-Trial Judge, Mr Krasniqi continues to pose a risk of flight as he still has an incentive and the means to evade proceedings.²¹ Furthermore, Mr Krasniqi maintains his position of influence, which together with, *inter alia*, prior statements by Mr Krasniqi, an already established willingness and ability to [REDACTED], and the Accused’s increasing insight into the evidence underpinning the charges against him, support a finding that a risk

¹⁸ Fifth PTJ Detention Decision, KSC-BC-2020-06/F00978/RED, para.24.

¹⁹ *Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, para.67. *See also* First Appeals Panel Detention Decision, KSC-BC-2020-06/IA002/F00005/RED, para.26.

²⁰ First Appeals Panel Detention Decision, KSC-BC-2020-06/IA002/F00005/RED, para.66.

²¹ Fifth PTJ Detention Decision, KSC-BC-2020-06/F00978/RED, paras 29-30.

continues to exist that Mr Krasniqi will obstruct the progress of the proceedings at the Specialist Chambers if released.²² These factors must also be considered in the persisting climate of intimidation of witnesses and interference in criminal proceedings involving KLA members. These factors also establish grounds to believe that there remains a risk that Mr Krasniqi will commit crimes similar to those for which he is charged.²³

9. Each of these articulable grounds continue to necessitate Mr Krasniqi's detention.

C. NO CONDITIONS SUFFICIENTLY MITIGATE THE ESTABLISHED RISKS

10. No alternative measures sufficiently mitigate all the Article 41(6)(b) risks posed by the Accused. Past proposals for conditional release, such as house detention, [REDACTED], [REDACTED], have been found to not sufficiently mitigate the risks of obstructing the progress of proceedings at the Specialist Chambers and committing further crimes.²⁴

11. The Krasniqi Defence has not made submissions as part of the current round of detention review. Although the Pre-Trial Judge must *proprio motu* consider 'all reasonable mitigation measures beyond those raised by the Defence', the list of reasonable measures is not unlimited²⁵ and measures need to be realistic.²⁶ All reasonable, realistic alternatives to detention in the controlled environment of the Detention Facilities in The Hague have been duly considered and rightfully rejected.

²² Fifth PTJ Detention Decision, KSC-BC-2020-06/F00978, paras 33-37.

²³ Fifth PTJ Detention Decision, KSC-BC-2020-06/F00978, paras 38-43.

²⁴ Fifth PTJ Detention Decision, KSC-BC-2020-06/F00978, paras 50-53; *See also* Third Appeals Panel Detention Decision, KSC-BC-2020-IA016/F00005, para.33 and 42; Fourth Appeals Panel Detention Decision, KSC-BC-2020/IA020/F00005, paras 29-35 and 39; Fourth PTJ Detention Decision, KSC-BC-2020-06/F00801/RED, para.70.

²⁵ Fourth Appeals Panel Detention Decision, KSC-BC-2020/IA020/F00005, para.37.

²⁶ Fourth Appeals Panel Detention Decision, KSC-BC-2020/IA020/F00005, paras 33-34.

D. MR KRASNIQI'S CONTINUED DETENTION IS REASONABLE

12. In addition to being necessary, the continued detention of the Accused is reasonable. Mr Krasniqi is charged with 10 counts of war crimes and crimes against humanity and, if convicted, could face a lengthy sentence.²⁷ The risks under Article 41(6) cannot be adequately managed outside of the Detention Facilities. Key milestones in the pre-trial stage have either been met or will be met imminently. Importantly, the SPO has submitted its pre-trial brief, an updated witness list to the Accused, and a supplement to its Rule 102(3) notice. The SPO also completed the disclosure of items requested from the original Rule 102(3) notice and supplemented its Rule 109(c) chart.

13. The continued detention of Mr Krasniqi is reasonable considering the progress of this case towards trial, its scope and complexity, the lengthy custodial sentence in the event of a conviction, and the risks posed.

IV. Classification

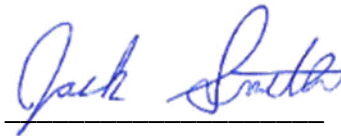
14. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version of this submission will be filed.

V. Relief Requested

15. For the foregoing reasons, the Pre-Trial Judge should order the continued detention of Mr Krasniqi.

²⁷ Fifth PTJ Detention Decision, KSC-BC-2020-06/F00978, para.58.

Word count: 1416



Jack Smith

Specialist Prosecutor

Thursday, 27 October 2022

At The Hague, the Netherlands.