



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

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

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TRIAL PANEL II of the Kosovo Specialist Chambers (“Panel”), 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. The procedural background concerning the periodic reviews of the detention of Jakup Krasniqi (“Mr Krasniqi”) has been set out extensively in previous decisions. Relevant events since the sixth review of Mr Krasniqi’s detention on 18 November 2022 (“Sixth Detention Decision”)¹ include the following.
2. On 16 December 2022, during a status conference, the Panel indicated the tentative start date for the trial of 1 March 2023.²
3. On 22 December 2022, the Defence for Mr Krasniqi (“Krasniqi Defence”) filed its submissions on the seventh review of Mr Krasniqi’s detention (“Krasniqi Submissions”).³
4. On 6 January 2023, the Specialist Prosecutor’s Office (“SPO”) responded (“SPO Response”).⁴
5. The Krasniqi Defence did not reply.

¹ F01110, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 18 November 2022, confidential. A public redacted version was issued on the same day, F01110/RED.

² Transcript of Hearing, 16 December 2022, p. 1773, lines 5-6.

³ F01181, Specialist Counsel, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, confidential.

⁴ F01188, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 6 January 2023, confidential. A public redacted version was filed on 16 January 2023, F01188/RED.

II. SUBMISSIONS

6. The Krasniqi Defence requests that Mr Krasniqi be released until the commencement of trial, subject to such conditions as the Panel deems appropriate.⁵ It argues that Mr Krasniqi's detention is not necessary, as the risks defined in Article 41(6)(b) of the Law: (i) have not been established by the SPO on the basis of any (sufficiently concrete) evidence; or (ii) can be adequately mitigated, at least for the short period before trial, by imposing conditions.⁶ Lastly, the Krasniqi Defence submits that if interim release continues to be denied, Mr Krasniqi faces the prospect of being continuously detained for several years prior to any judgment being rendered, and that this would be disproportionate to any risks identified in relation to him.⁷

7. The SPO requests continuation of Mr Krasniqi's detention, arguing that, absent any change in circumstances since the Sixth Detention Decision, his detention remains necessary and reasonable. According to the SPO, the transfer of the case to the Panel, and other significant developments that will give Mr Krasniqi further access to information regarding sensitive witnesses and the case against him, buttress the necessity and reasonableness of his detention.⁸

III. APPLICABLE LAW

8. The law applicable to deciding the present matter is set out in Article 41 of the Law, and Rules 56 and 57 of the Rules, and has been laid out extensively in earlier decisions.⁹ The Panel will apply these standards to the present decision.

⁵ Krasniqi Submissions, paras 1, 43.

⁶ Krasniqi Submissions, paras 3, 43-44.

⁷ Krasniqi Submissions, paras 3, 42.

⁸ SPO Response, paras 1, 10, 39.

⁹ See e.g. Sixth Detention Decision, paras 18-21.

IV. DISCUSSION

A. PRELIMINARY ISSUE

9. At the outset, the Panel observes that in the Sixth Detention Decision, the Pre-Trial Judge ordered the Krasniqi Defence, if it so wished, to file submissions on the present review of detention first, with submissions from the SPO thereafter.¹⁰ The Panel considers that such a procedural arrangement does not displace the onus that rests exclusively upon the SPO to establish, in every instance, that the conditions for detention continue to be met.¹¹ Nonetheless, the Panel decides that, going forward, it will receive first the submissions of the SPO and thereafter submissions from the Defence. The Panel will therefore order the SPO to file any application for continued detention at least 21 days before the date of review, with responses, if any, to be filed no later than 14 days before such review. No replies will be entertained.

B. ARTICLE 41 CRITERIA

10. The Court of Appeals has held that a panel has an obligation to review the reasons or circumstances underpinning detention and to determine whether these reasons continue to exist under Article 41(6) of the Law. The Panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the Panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.¹² Moreover, a review of detention under Rule 57(2) of the Rules is not strictly limited to whether

¹⁰ Sixth Detention Decision, para. 65(b).

¹¹ IA004-F00005, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Interim Release* ("First Appeals Decision on Thaçi's Detention"), 30 April 2021, confidential, para. 17 (a public redacted version was filed on the same day, IA004/F00005/RED); KSC-BC-2020-07, F00279, Trial Panel II, *Decision on Review of Detention of Hysni Gucati*, 23 August 2021, para. 12.

¹² KSC-BC-2020-07, IA002/F00005, Court of Appeals, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 55.

or not a change of circumstances occurred in the case. However, such a change can nonetheless be determinative and shall be taken into consideration if raised before the relevant panel or *proprio motu*.¹³

i. Grounded Suspicion

11. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.¹⁴

12. While the Krasniqi Defence does not make specific submissions on this point, the SPO argues that, absent any change of circumstances since the decision confirming the indictment ("Confirmation Decision"),¹⁵ there remains a grounded suspicion that Mr Krasniqi has committed a crime within the jurisdiction of the Specialist Chambers ("SC").¹⁶

13. The Panel notes that, in the Confirmation Decision, the Pre-Trial Judge determined that, pursuant to Article 39(2) of the Law, there was 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.¹⁷

¹³ IA010/F00008, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 19. A public redacted version was issued on the same day, IA010/F00008/RED.

¹⁴ See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹⁵ 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, F00026/CONF/RED, and a public redacted version, F00026/RED, were issued on 19 and 30 November 2020, respectively.

¹⁶ SPO Response, para. 11 (with further references).

¹⁷ Confirmation Decision, para. 521(a). See also e.g. Sixth Detention Decision, para. 25; F00978, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Fifth Detention Decision"), 19 September 2022, confidential, para. 24 (a public redacted version was issued on 23 September 2022,

Moreover, the Pre-Trial Judge found that a well-grounded suspicion has also been established with regard to new charges brought by the SPO against Mr Krasniqi.¹⁸ 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.¹⁹

14. Absent any new material circumstances affecting the above findings, the Panel finds that there continues to be a grounded suspicion that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

ii. Necessity of Detention

15. With respect to the grounds for continued detention, Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be necessary: (i) risk of flight; (ii) risk of obstruction of the proceedings; or (iii) risk of the further commission of crimes.²⁰ These grounds must be “articulable” in the sense that they must be specified in detail by reference to the relevant information or evidence.²¹ The SPO must accordingly articulate grounds to support the belief

F00978/RED); F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Fourth Detention Decision”), 13 May 2022, confidential and *ex parte*, para. 38 (a confidential redacted version, F00801/CONF/RED, and a public redacted version, F00801/RED, were issued on 13 and 24 May 2022, respectively).

¹⁸ 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), a public redacted version (F00777/RED) and a confidential lesser redacted version (F00777/CONF/RED2) were filed, respectively, on 22 April 2022, 6 May 2022 and 16 May 2022. The requested amendments are detailed at para. 11. *See also* Sixth Detention Decision, para. 25; Fifth Detention Decision, para. 24; Fourth Detention Decision, para. 38.

¹⁹ *See for instance* IA008/F00004, Court of Appeals, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 21. A public redacted version was issued on the same day, IA008/F00004/RED.

²⁰ *Cf.* ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, [Judgment](#), 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, [Judgment](#), 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, [Judgment](#), 4 July 2019, para. 155.

²¹ Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”.

that one of these risks exists.²² Furthermore, a Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention.²³ That being said, in determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person's detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁴

a) Risk of Flight

16. The Krasniqi Defence argues, in particular, that in light of Mr Krasniqi's cooperative behaviour and strong personal factors diminishing the risk of flight (such as his age, [REDACTED] and strong personal ties to Kosovo), the factors relied upon by the Pre-Trial Judge – namely Mr Krasniqi's influence and his awareness of the gravity of the charges against him and the possible lengthy prison sentence in case of a conviction – are insufficient to demonstrate a risk of flight.²⁵

17. The SPO submits that there remains a risk of flight, particularly as nothing suggests that Mr Krasniqi's significant role in Kosovo, as established by the Pre-Trial Judge and upheld by the Court of Appeals, has diminished in any way.²⁶ Thus, according to the SPO, Mr Krasniqi still has the incentive and means to evade proceedings.²⁷ The SPO further argues that the progression of the case since the Sixth Detention Decision (transfer of the case file to the Panel; SPO's filing of a

²² KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 15.

²³ First Appeals Decision on Thaçi's Detention, para. 22.

²⁴ First Appeals Decision on Thaçi's Detention, para. 22.

²⁵ Krasniqi Submissions, paras 16-23.

²⁶ SPO Response, para. 15, *referring to Sixth Detention Decision*, para. 30; First Appeals Decision on Krasniqi's Detention, para. 52; IA006/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention* ("Second Appeals Decision on Krasniqi's Detention"), 1 October 2021, confidential, para. 27 [a public redacted version was issued on the same day, IA006/F00005/RED].

²⁷ SPO Response, para. 16.

provisional list of its first 40 witnesses; gradual lifting of protective measures), indeed increases the risk of Mr Krasniqi's flight.²⁸

18. The Panel has examined the factors and circumstances invoked in the previous decisions of the Pre-Trial Judge ordering and reviewing Mr Krasniqi's detention and is not satisfied, to the relevant standard, that Mr Krasniqi is or remains a flight risk. Notwithstanding the Pre-Trial Judge's previous findings that the influence Mr Krasniqi continues to derive from positions previously held may assist him in evading SC proceedings,²⁹ the Panel observes that there is no indication that Mr Krasniqi considered or made preparations to evade arrest. Instead, there are indications that he was cooperative with the relevant authorities at all points during his detention and transfer.³⁰ The Panel is also mindful of the Pre-Trial Judge's finding that Mr Krasniqi's age, [REDACTED] and strong family ties in Kosovo, coupled with his repeated previous refusals to leave Kosovo³¹ and his public statements opposing fleeing from justice,³² are factors diminishing the risk of flight.³³ In these circumstances, the Panel considers that the argument that an Accused's (increased) knowledge of the charges may create an incentive for him or her to abscond³⁴ carries limited weight. In light of the above, the Panel considers that, while the risk of flight can never be completely eliminated, the

²⁸ SPO Response, para. 15.

²⁹ Sixth Detention Decision, para. 30; Fifth Detention Decision, para. 29; Fourth Detention Decision, para. 42.

³⁰ See e.g. F00064, Registrar, *Report on the Arrest and Transfer of Jakup Krasniqi to the Detention Facilities*, 8 November 2020, confidential and *ex parte*, para. 14, with Annex 1, strictly confidential and *ex parte* (a public redacted version was filed on 18 November 2020, F00064/RED); F00122, Specialist Counsel, *Application for Interim Release* ("Application for Interim Release"), 7 December 2020, confidential, para. 37, with Annexes 1-2, confidential, and Annex 3, public. A public redacted version was filed on 18 December 2020, F00122/RED.

³¹ See Application for Interim Release, para. 34.

³² See Application for Interim Release, para. 46; Annex 3 to Application for Interim Release.

³³ See also F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi's Application for Interim Release* ("First Detention Decision"), 22 January 2021, confidential, para. 30. A public redacted version was issued on 26 January 2021, F00180/RED.

³⁴ See SPO Response, paras 14-15.

required concrete grounds have not been shown at this time to exist that would support a finding that Mr Krasniqi poses a flight risk.

19. The Panel therefore finds that Mr Krasniqi's continued detention may not be justified at this time on the ground of the risk of flight under Article 41(6)(b)(i) of the Law.

b) Risk of Obstructing the Progress of SC Proceedings

20. The Krasniqi Defence submits that there is no sufficiently real possibility that Mr Krasniqi will obstruct proceedings, particularly as there is no evidence that he has ever interfered with any witness or obstructed judicial proceedings.³⁵ In these circumstances, the forthcoming lifting of redactions or the disclosure of the identity of witnesses is, according to the Krasniqi Defence, insufficient to justify Mr Krasniqi's ongoing detention.³⁶ It adds that the documents and statements relied upon by the Pre-Trial Judge, including [REDACTED], are insufficient to establish at this time a risk of obstruction on the part of Mr Krasniqi.³⁷ In this regard, the Krasniqi Defence argues that: (i) the SPO has not established that [REDACTED];³⁸ (ii) [REDACTED];³⁹ and (iii) the Facebook post relied upon by the SPO and the Pre-Trial Judge dates back to 2020 and is thus insufficient to imply at this time a real risk of obstruction.⁴⁰ Lastly, the Krasniqi Defence argues that the passage of more than two years in pre-trial detention diminishes the risk of any obstruction.⁴¹

³⁵ Krasniqi Submissions, paras 24-25, 32.

³⁶ Krasniqi Submissions, para. 32.

³⁷ Krasniqi Submissions, paras 26-28.

³⁸ Krasniqi Submissions, para. 26.

³⁹ Krasniqi Submissions, para. 27.

⁴⁰ Krasniqi Submissions, para. 28.

⁴¹ Krasniqi Submissions, paras 29-30.

21. With reference to previous findings by the Pre-Trial Judge and the Court of Appeals, the SPO submits that Mr Krasniqi continues to pose a risk of obstructing proceedings.⁴² According to the SPO: (i) there continues to be a climate of witness intimidation and interference, which, as held by the Court of Appeals, is a relevant contextual consideration; and (ii) in such a context, Mr Krasniqi's position of influence, his statement against so-called collaborators, and his [REDACTED] are of heightened concern.⁴³ Lastly, the SPO submits that as Mr Krasniqi has recently received, *inter alia*, the provisional list of the first 40 witnesses the SPO intends to call, and as protective measures will gradually be lifted, the risk of obstruction increases.⁴⁴

22. The Panel recalls that the Pre-Trial Judge found that there is a risk of Mr Krasniqi obstructing SC proceedings based on, *inter alia*: (i) his position of influence; (ii) his public statements criticising the SC; and (iii) the content of a 24 April 2020 Facebook post targeting "collaborators".⁴⁵ Furthermore, the Pre-Trial Judge considered that as a former political leader and former KLA deputy commander, Mr Krasniqi still holds a position of influence in Kosovo, which, combined with the [REDACTED], allows for the reasonable conclusion that it is possible for Mr Krasniqi to [REDACTED].⁴⁶ The Pre-Trial Judge also determined that the high risk of intimidation or interference of witnesses and/or their family members cannot be effectively mitigated by relying only on protective measures.⁴⁷

23. The Panel agrees with the Pre-Trial Judge's consideration of the above-mentioned factors. It further recalls that the Court of Appeals has confirmed that:

⁴² SPO Response, paras 18-20 (with further references).

⁴³ SPO Response, paras 21-23.

⁴⁴ SPO Response, paras 14, 24.

⁴⁵ See *e.g.* Sixth Detention Decision, para. 34; Fifth Detention Decision, para. 33; Fourth Decision, para. 48.

⁴⁶ See *e.g.* Sixth Detention Decision, para. 35; Fifth Detention Decision, para. 34; Fourth Detention Decision, para. 49.

⁴⁷ See *e.g.* Sixth Detention Decision, para. 37; Fifth Detention Decision, para. 36; Fourth Detention Decision, para. 51.

(i) there are indications that Mr Krasniqi is, at least, [REDACTED];⁴⁸ and (ii) that in assessing whether there is a risk that Mr Krasniqi will obstruct the proceedings if released, it was not unreasonable to take into account, among other factors, Mr Krasniqi's public statements criticising the SC or the Facebook post of 24 April 2020.⁴⁹ Furthermore, the Panel recalls the finding by the Court of Appeals 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.⁵⁰

24. In light of the above, the Panel concludes that the arguments invoked by the Krasniqi Defence have already been ruled upon by the Pre-Trial Judge and the Court of Appeals, and the Panel agrees with their consideration of these arguments.⁵¹ No new element has been placed before the Panel that would raise issues regarding those findings or render any of them unreasonable.

25. Furthermore, the proximity of trial reinforces the validity of these findings. Before the commencement of trial, the names and personal details of certain highly sensitive witnesses will be disclosed to the Krasniqi Defence, and will therefore become known to a broader range of people, including the Accused. This, in turn, increases the risk of sensitive information pertaining to witnesses becoming

⁴⁸ IA002/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release* ("First Appeals Decision on Krasniqi's Detention"), 30 April 2021, confidential, para. 62 (a public redacted version was issued on the same day, IA002/F0005/RED); Second Appeals Decision on Krasniqi's Detention, para. 30.

⁴⁹ First Appeals Decision on Krasniqi's Detention, para. 50.

⁵⁰ IA003/F00005, Court of Appeals, *Decision on Rexhep Selimi's Appeal Against Decision on Interim Release* ("First Appeals Decision on Selimi's Detention"), 30 April 2021, confidential, para. 59. A public redacted version was filed on the same day, IA003/F00005/RED.

⁵¹ See, in addition to the decisions mentioned in fns 45, 48 and 50 above: F00582, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi*, 26 November 2021, confidential, paras 42-43 (a public redacted version was issued on 8 December 2021, F00582/RED); F00371, Pre-Trial Judge, *Decision on Review of Detention of Jakup Krasniqi*, 25 June 2021, confidential, paras 35, 37 (a public redacted version was issued on 30 June 2021, F00371/RED); First Detention Decision, para. 36.

known to members of the public before the witnesses in question give evidence. In this context, the release of an Accused with sensitive information in his possession would not be conducive to the effective protection of witnesses who are yet to testify.

26. Accordingly, the Panel concludes that the risk that Mr Krasniqi will obstruct the progress of SC proceedings continues to exist.

c) Risk of Committing Further Crimes

27. The Krasniqi Defence avers, based on the same submissions as set out in paragraph 20 above and with reference to earlier submissions,⁵² that there is insufficient specific evidence to demonstrate a sufficiently real risk of Mr Krasniqi committing further crimes.⁵³ The Krasniqi Defence adds that a repetition of the criminal offences is impossible given the changed political circumstances in Kosovo.⁵⁴

28. The SPO submits that: (i) Mr Krasniqi has a position of influence in Kosovo, as well as [REDACTED]; (ii) Mr Krasniqi is progressively gaining access to more information concerning the case against him; (iii) the crimes with which Mr Krasniqi is charged are extremely serious and have allegedly been committed in cooperation with others, many of whom retain power and influence in Kosovo; and (iv) there is a general climate of witness intimidation.⁵⁵ Thus, according to the SPO, the risk remains that Mr Krasniqi will commit, or contribute to the commission of, crimes similar to the underlying acts charged in the Indictment,

⁵² Application for Interim Release, paras 50-51.

⁵³ Krasniqi Submissions, para. 33.

⁵⁴ Krasniqi Submissions, para. 34, *referring to* Application for Interim Release, paras 50-51.

⁵⁵ SPO Response, para. 28, *referring to* Sixth Detention Decision, para. 43.

against those perceived to be opposed to the KLA, including persons who have, could, or will provide evidence to the SC.⁵⁶

29. The Pre-Trial Judge found that a risk of Mr Krasniqi committing further crimes existed, particularly on the basis of Mr Krasniqi's: (i) position of influence in Kosovo which could allow him to [REDACTED]; and (ii) increased account of the SPO's case against him, in particular following the filing of a lesser redacted version of the witness list, the witness list including the mode of questioning and presentation times, the amended witness and exhibit lists, and the provisional list of the first 40 witnesses the SPO intends to call at trial.⁵⁷

30. The Panel agrees with the above-mentioned findings by the Pre-Trial Judge. In addition, no new circumstances have arisen since the last detention review that would justify different findings. The Panel notes, furthermore, that the factors taken into account in relation to the risk of obstruction are also relevant to the analysis of the risk that Mr Krasniqi may commit further crimes. In particular, the Panel highlights again the fact that: (i) the trial in this case is soon to begin; (ii) the identities of sensitive witnesses will soon be disclosed to the Krasniqi Defence; and (iii) any risk of interference with witnesses prior to their testimony must be imperatively avoided.

31. Lastly, the Krasniqi Defence argues that repetition of the criminal offences is impossible given the changed political circumstances in Kosovo. The Panel agrees on that point with the Pre-Trial Judge's finding that the crime(s) which continued detention seeks to prevent need not be identical to those for which the Accused is being prosecuted. Rather, on the basis of available information, the Panel must assess whether there is a likelihood that the Accused, if released, will engage in

⁵⁶ SPO Response, para. 29, *referring to* Sixth Detention Decision, para. 44.

⁵⁷ *See e.g.* Sixth Detention Decision, paras 43-45; Fifth Detention Decision, paras 40-41; Fourth Detention Decision, paras 54-55.

any criminal activity over which the SC has jurisdiction.⁵⁸ In addition, it suffices that there is a risk that Mr Krasniqi instigates or assists others to commit such crimes, or contributes in any other way to their commission; it does not need to be established that he would commit them personally if released.⁵⁹ Accordingly, the Krasniqi Defence's argument is dismissed.

32. In light of the above, the Panel considers that, taking all factors together, there continues to be a risk that Mr Krasniqi will commit further crimes as set out in Article 41(6)(b)(iii) of the Law.

iii. Conclusion

33. The Panel concludes that at this time there is insufficient information before it justifying a finding that Mr Krasniqi may abscond from justice. However, the Panel is satisfied, based on the relevant standard, that there is a risk that Mr Krasniqi will obstruct the progress of SC proceedings and a risk that he will commit further crimes 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. The Panel will assess below whether these risks can be adequately addressed by any conditions for his release.

⁵⁸ See also First Detention Decision, para. 21. Similarly, ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-558, Appeals Chamber, [*Judgment on the Appeal of Mr Aimé Kilolo Musamba Against the Decision of Pre-Trial Chamber II of 14 March 2014, Entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba"*](#), 11 July 2014, para. 117; *Prosecutor v. Gbagbo*, ICC-02/11-01/11-278-Red, Appeals Chamber, [*Judgment on the Appeal of Mr Laurent Koudou Gbagbo Against the Decision of Pre-Trial Chamber I of 13 July 2012 Entitled "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo"*](#), 26 October 2012, para. 70.

⁵⁹ See also e.g. Sixth Detention Decision, para. 42; Fifth Detention Decision, para. 40; Fourth Detention Decision, para. 54.

C. MEASURES ALTERNATIVE TO DETENTION

34. The Krasniqi Defence submits that Mr Krasniqi is willing to abide by any conditions laid down by the Panel, including those set out in prior submissions by the Krasniqi Defence. It avers that it has proposed extensive and strict monitoring conditions that would replicate or at least be comparable to that of the SC's detention facilities and reduce any risk to a level at which continued detention is not justified.⁶⁰ Lastly, the Krasniqi Defence argues that: (i) the limited duration of release sought by the Defence (until the commencement of trial) is likely to increase the efficacy of conditions; and (ii) a short and defined period of release is more easily monitored than an indefinite period of release.⁶¹

35. The SPO submits that no conditions that the Panel might consider *proprio motu* would sufficiently mitigate the risks under Article 41(6)(b) of the Law.⁶² Specifically, as regards the risk of flight, the SPO avers that in light of Mr Krasniqi's influence and the means and network available to him in Kosovo in case of (conditional) release, any conditions would insufficiently minimise that risk.⁶³ As regards the risks of obstruction and of committing further crimes, the SPO refers in particular to the finding of the Pre-Trial Judge that neither the conditions previously proposed by the Krasniqi Defence, nor any additional measures ordered *proprio motu* could sufficiently mitigate these risks.⁶⁴ Lastly, the SPO submits that: (i) nothing has occurred since the Sixth Detention Decision warranting a different assessment on conditional release, either generally or for a

⁶⁰ Krasniqi Submissions, para. 35, referring to F00568, Specialist Counsel, *Krasniqi Defence Observations on Kosovo Police Submissions*, 12 November 2021, confidential, paras 22-32; a public redacted version was filed on 6 December 2021, F00568/RED. See also Krasniqi Submissions, paras 8-10 and 38.

⁶¹ Krasniqi Submissions, para. 37.

⁶² SPO Response, para. 31.

⁶³ SPO Response, para. 31.

⁶⁴ SPO Response, para. 32.

discrete period of time; and (ii) the transfer of the case to the Panel and consequent acceleration towards trial make the underlying risks higher than ever.⁶⁵

36. When deciding on whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.⁶⁶ Article 41(12) of the Law sets out a number of options to be considered in order to ensure the accused's presence at trial, to prevent reoffending or to ensure successful conduct of proceedings. In this respect, the Panel recalls that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.⁶⁷ The Panel must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Krasniqi Defence or the SPO.⁶⁸

37. As regards the flight risk, the Panel recalls its finding above that Mr Krasniqi's continued detention may not be justified at this time on the ground of the risk of flight. The question of alternative measures that could address such a risk is therefore moot.

38. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel concurs with the Pre-Trial Judge's finding, which was upheld by the Court of Appeals, that none of the proposed conditions, nor any additional measures foreseen in Article 41(12) of the Law, could at this

⁶⁵ SPO Response, para. 34.

⁶⁶ 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 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova*, para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

⁶⁷ SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020* ("SCCC 22 May 2020 Judgment"), 22 May 2020, para. 70. See also ECtHR, *Idalov v. Russia* [GC], para. 140 *in fine*.

⁶⁸ First Appeals Decision on Selimi's Detention, para. 86; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 24.

stage in the proceedings sufficiently mitigate the existing risks with respect to Mr Krasniqi.⁶⁹ The Panel recalls that the Pre-Trial Judge determined that the measures in place at the SC's detention facilities, viewed as a whole: (i) 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; and (ii) offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁷⁰

39. The Panel agrees that it is only through the communication monitoring framework applicable at the SC's detention facilities that Mr Krasniqi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁷¹ In the absence of any intervening developments regarding this matter, this conclusion continues to hold true up to this point. The anticipated start date for the trial of 1 March 2023 or the limited duration of release requested by the Krasniqi Defence do not affect this finding.

40. In light of the foregoing, the Panel finds that the risks of obstructing the proceedings and committing further offences can only be effectively managed at this stage of the proceedings if Mr Krasniqi remains at the SC's detention facilities. In these circumstances, the Panel finds that Mr Krasniqi's continued detention is necessary in order to avert the risks in Article 41(6)(b)(ii) and (iii) of the Law.

⁶⁹ See e.g. Sixth Detention Decision, paras 51-52; Fifth Detention Decision, paras 50-53; Fourth Detention Decision, paras 66-71; IA020/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention*, 2 August 2022, confidential, para. 39 (a public redacted version was issued on the same day, IA020/F00005/RED).

⁷⁰ See e.g. Sixth Detention Decision, para. 53; Fifth Detention Decision, para. 52; Fourth Detention Decision, para. 71. See also 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, para. 30. A public redacted version was issued on the same day, IA016/F00005/RED.

⁷¹ See e.g. Sixth Detention Decision, para. 53; Fifth Detention Decision, para. 52; Fourth Detention Decision, para. 71.

D. REASONABLENESS OF DETENTION

41. The Krasniqi Defence argues that if interim release continues to be denied, Mr Krasniqi faces the prospect of being continuously detained for several years prior to any judgment being rendered, and that such a period of detention before and during trial would be disproportionate to any risks identified in relation to him.⁷²

42. The SPO argues that, taking all factors into consideration, Mr Krasniqi's detention continues to be reasonable, referring in this regard to, *inter alia*: (i) the serious charges against and the significant role allegedly played by Mr Krasniqi in the commission of the underlying crimes; (ii) the possible lengthy prison sentence in case of conviction; (iii) the complexity of the proceedings; and (iv) significant steps towards the commencement of the trial.⁷³

43. The Panel 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.⁷⁴ 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.⁷⁵ However, the question 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.⁷⁶

⁷² Krasniqi Submissions, paras 3, 42.

⁷³ SPO Response, paras 36-37.

⁷⁴ KSC-BC-2020-07, IA001/F00005, Court of Appeals, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, paras 72-73.

⁷⁵ First Appeals Decision on Krasniqi's Detention, para. 69.

⁷⁶ ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 90.

44. The Panel notes in this regard that Mr Krasniqi was arrested on 4 November 2020 and, as a result, has now been in detention for more than two years. During this time, significant steps were taken for the preparation of the case for trial. Following the 15 December 2022 transmission of the case file from the Pre-Trial Judge to the Panel, the latter promptly held a preparatory conference on 16 December 2022 and scheduled further preparatory conferences to be held on 18 January 2023 and in February 2023, with a view to starting the trial on 1 March 2023.⁷⁷ As the commencement of trial is now imminent, information of increasing sensitivity will be disclosed to the Krasniqi Defence, including the unredacted personal details and statements of protected witnesses.⁷⁸

45. In light of these developments, as well as the fact that there are continuing risks of obstructing the proceedings and of committing further crimes, neither of which can be sufficiently mitigated by the application of reasonable alternative measures,⁷⁹ the Panel finds that, besides being necessary, Mr Krasniqi's detention for a further two months is also reasonable in the specific circumstances of the case.

46. The Panel notes, however, that the Accused have already been in detention for a significant period of time, and the trial in this case is likely to be lengthy. This will require the Panel as well as all Parties to be particularly mindful of the need to ensure that the trial proceeds as expeditiously as possible. The Panel will continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable.

⁷⁷ Transcript of Hearing, 16 December 2022, p. 1699, line 24 to p. 1700, line 6, and p. 1773, lines 5-6.

⁷⁸ See, *inter alia*, the Pre-Trial Judge's first through twelfth decisions on protective measures in KSC-BC-2020-06 (F00133, F00190, F00211, F00239, F00338, F00373, F00407, F00438, F00466, F00467, F00559 and F00571).

⁷⁹ See paragraphs 38-40 above.

E. CLASSIFICATION

47. Noting that the SPO has filed a public version of the SPO Response, the Panel orders the Krasniqi Defence to submit a public redacted version of the Krasniqi Submissions, by no later than Wednesday, 25 January 2023.

VI. DISPOSITION

48. For the above-mentioned reasons, the Panel hereby:

- a) **ORDERS** Mr Krasniqi's continued detention;
- b) **ORDERS** the SPO to file, unless otherwise ordered, submissions on all future reviews of Mr Krasniqi's detention **no later than 21 days before** the next scheduled review of detention, with the Defence being ordered to file, unless otherwise ordered, their responses, if any, **no later than 14 days before** such review; no replies will be entertained;
- c) **ORDERS** accordingly the SPO to file its submissions on the next review by **Friday, 24 February 2023 (at 16:00 hrs)** and the Defence to file its response by **Friday, 3 March 2023 (at 16:00 hrs)**; and
- d) **ORDERS** the Krasniqi Defence to submit a public redacted version of the Krasniqi Submissions, by no later than **Wednesday, 25 January 2023**.



Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 17 January 2023

At The Hague, the Netherlands.