

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 Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr. Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

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Krasniqi Defence Response to Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi, KSC-BC-2020-06/F01340, dated 3 March 2023

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I. INTRODUCTION

1. The Defence for Mr. Jakup Krasniqi (“Defence”) hereby responds to the Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi.¹ Mr. Krasniqi has now been in detention for two years and four months. The target date for the conclusion of the Prosecution case is April 2025,² by which time, if not allowed any interim release, Mr. Krasniqi will have spent **four years and five months** in detention. Against that stark backdrop, the Defence respectfully requests the Trial Panel to release Mr. Krasniqi for a limited period of two weeks, subject to such conditions as the Trial Panel deems appropriate, in order that he may spend very limited time with his family in Kosovo prior to the start of a lengthy trial.

2. Pursuant to Rule 82(4) of the Rules,³ this filing is classified as confidential as it responds to a document with the same classification.

II. PROCEDURAL HISTORY

3. The procedural history has been set out extensively in prior submissions on detention review.⁴ The most pertinent facts are summarised below.

4. On 4 November 2020, Mr. Krasniqi was arrested and transferred to the Kosovo Specialist Chambers (“KSC”) Detention Unit.

¹ KSC-BC-2020-06, F01320, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi* (“Prosecution Submission”), 24 February 2023, confidential.

² KSC-BC-2020-06, In Court – Oral Order, Target Date for Closing of The SPO Case (“Order on SPO Closing Date”), 15 February 2023, public.

³ Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

⁴ See, for instance, KSC-BC-2020-06, F01181, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review* (“Detention Review Submissions”), 22 December 2022, confidential, paras 5-10.

5. At the Specialist Prosecutor's Preparation Conference on 15 February 2023, the Trial Panel set the start date of trial as 3 April 2023 and set a target date of 1 April 2025 for the closing of the Prosecution case.⁵ Further, the Trial Panel made preliminary enquiries of the Defence as to the likely duration of the Defence case, with the four Defence teams provisionally giving time estimates ranging between three to four months and three to four weeks.⁶ Taking into account the time for any no case to answer submission, it is not unreasonable to say that the evidence is unlikely to close before April 2026.

6. On 24 February 2023, the Specialist Prosecutor's Office ("SPO") filed the Prosecution Submission which seeks to maintain Mr. Krasniqi's detention.

III. APPLICABLE LAW

7. The Defence incorporates by reference its prior submissions on the applicable law.⁷

IV. NO SUFFICIENTLY REAL POSSIBILITY OF ARTICLE 41(6)(b) RISKS

8. The Trial Panel previously concluded that it was not satisfied that Mr. Krasniqi is or remains a flight risk.⁸ Nothing in the Prosecution Submission is capable of altering that conclusion. The Trial Panel has already considered the Prosecution's argument that increased knowledge of the charges may increase the incentive to flee, and, contrary to the Prosecution Submission,⁹ found, correctly, that it "carries limited

⁵ Order on SPO Closing Date.

⁶ KSC-BC-2020-06, Transcript of Hearing, 15 February 2023, public, p. 2010 lines 20, 25; p. 2011 lines 1, 8-9, 24-25.

⁷ Detention Review Submissions, paras 11-15.

⁸ KSC-BC-2020-06, F01212, Trial Panel II, *Decision on Periodic Detention Review of Jakup Krasniqi* ("Trial Panel Decision"), 17 January 2023, confidential, para. 18.

⁹ Prosecution Submission, para. 9.

weight”.¹⁰ Similarly, neither the conviction nor the sentence imposed in the *Mustafa* case is a new factor.¹¹ Both were known to Mr. Krasniqi from the public pronouncement of the trial judgment on 16 December 2022 – prior to the last detention review.

9. The Defence maintains that the evidence does not justify a finding that there is a sufficient risk that Mr. Krasniqi will obstruct proceedings or commit further crimes in the context of a two-week period of interim release. The proposed period of two weeks is extremely limited (and the Trial Panel has the discretion to allow a shorter period). The limited duration of release is relevant because it both reduces the opportunity to engage in any prohibited conduct and increases the likelihood of effective monitoring; monitoring could be carried out more intensively over a short period than would be sustainable over a longer period.

10. Moreover, the Trial Panel should consider that Mr. Krasniqi is highly aware that if his conduct during the proposed short period of interim release would give rise to any concerns, it would prejudice any future applications for interim release, such as those applications that coincide with the Summer or Winter recess. This makes it *less* likely that he would obstruct proceedings or commit further crimes.

11. The Defence deprecates the Prosecution’s continued deployment of findings or evidence which have nothing to do with Mr. Krasniqi, in an attempt to deny him release. The submission that there is a general climate of witness intimidation in Kosovo,¹² which exists entirely independently of Mr. Krasniqi and has, according to the Prosecution’s own submissions, continued during the two-year period in which Mr. Krasniqi has been in detention with his communications monitored, does not

¹⁰ Trial Panel Decision, para. 18.

¹¹ *Contra* Prosecution Submission, para. 9.

¹² Prosecution Submission, paras 15-18.

establish a risk that he would obstruct proceedings or commit further crimes. None of the cited findings from other KSC cases demonstrate any connection to Mr. Krasniqi. In the absence of any established connection between the alleged climate of intimidation and Mr. Krasniqi, it is a *non sequitur* to find that any climate of intimidation justifies the ongoing detention of Mr. Krasniqi.

12. The Defence has stated previously¹³ – and continues to reiterate – that pre-trial detention should always be the exception, rather than the rule.¹⁴ This standard is consistent with internationally recognised human rights standards, as espoused in jurisprudence of the International Criminal Court.¹⁵

13. The Defence notes that the Prosecution Submission relies on a *Skenderaj Press* publication said to show that a ‘millionaire’ from Skenderaj was offering a reward for information about ‘traitorous witnesses.’¹⁶ Such evidence should not be relied on. There is no connection whatsoever between that individual and Mr. Krasniqi, nor is there evidence to suggest a connection to *any* of the Accused in this case. Basic research suggests this is not the first time that this individual has used a combination of Facebook and small, unverified Kosovo media outlets to espouse his political views.¹⁷ Such publicity stunts should not only be treated with caution, but should be viewed

¹³ KSC-BC-2020-06, IA006/F00001, Krasniqi Defence, *Krasniqi Defence Appeal against Decision on Review of Detention of Jakup Krasniqi*, 7 July 2021, confidential, with Annex 1, public; F00568, Krasniqi Defence, *Krasniqi Defence Observations on Kosovo Police Submissions* (“Defence Observations”), 12 November 2021, confidential.

¹⁴ See KSC-BC-2020-06, IA004/F00005, Appeals Chamber, *Decision on Hashim Thaçi’s Appeal against Decision on Interim Release, Separate Concurring Opinion of Judge Kai Ambos*, 30 April 2021, confidential, para. 4.

¹⁵ ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Pre-Trial Chamber II, *Decision on Defence’s Application for Interim Release*, 18 November 2013, para. 33.

¹⁶ Prosecution Submission, para. 19.

¹⁷ See, for instance, Periskopi, Militanti i VV-së që goditi qenin me veturë del me video tjetër, i quan “zagarë” mbështetësit e PDK’së (“The VV Militant Who Hit the Dog with a Car Comes Out with Another Video, Calls PDK Supporters ‘Hounds’.”), 2021, available at <https://www.periskopi.com/militanti-i-vv-se-qe-goditi-qenin-me-veture-del-me-video-tjeter-i-quant-zagar-embeshtetesit-e-pdkse/>.

with scepticism, when used as an indicator of such a serious phenomenon as witness interference. Further, the *Skenderaj Press* is an independent outlet that is not affiliated with the Accused.¹⁸ To take an unverified video from an unknown source and imply specious connections to an atmosphere in Kosovo as a whole, does not merely create inaccuracies in this case record – it falsely implicates Mr. Krasniqi without *any* supporting basis. The Defence has previously pointed out the under-referenced assertions of this alleged climate in past Specialist Prosecutor’s filings, and the lack of convincing information to suggest its ongoing existence.¹⁹

14. Indeed, the absence of any attempt by the Prosecution to link this *Skenderaj Press* publication to Mr. Krasniqi, suggests that the Prosecution’s real purpose in relying on this material is directed to the imminent start of trial rather than the present periodic detention review. Generic submissions about an alleged climate of intimidation do not lessen the burden on the Prosecution to prove its case against Mr. Krasniqi beyond reasonable doubt. Nor do they give the Prosecution *carte blanche* to seek to declare witnesses ‘hostile’ with a view to cross-examining them on prior statements. Further submissions will be made at the appropriate juncture.

V. CONDITIONS CAN MITIGATE ANY RISKS IDENTIFIED BY THE TRIAL PANEL

15. The Defence repeats that Mr. Krasniqi is willing to abide by any conditions laid down by the Trial Panel, including those set out in prior submissions,²⁰ which the Kosovo Police are able to implement. The Defence is now proposing a period of release

¹⁸ The Defence disagrees with the implied authenticity of information replicated in *any* media outlet, however it takes particular issue with unverified information published in a local outlet with little-to-no effort at information triangulation.

¹⁹ Detention Review Submissions, para. 18.

²⁰ Detention Review Submissions, paras 8-10; Defence Observations; KSC-BC-2020-06, F01074, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review of Mr Krasniqi (F01053)*, 31 October 2022, public, para. 10.

of **only two weeks**. It is inherent in the nature of a short period of release that the number of visitors that Mr. Krasniqi could receive would be limited and hence any opportunities for communications would also be limited and more amenable to monitoring. Moreover, it is likely to be more feasible to focus resources on monitoring compliance with conditions over a shorter period of time than over a longer period.

16. The Defence re-iterates that, during the proposed two-week period of release, Mr. Krasniqi would (1) [REDACTED]; (2) [REDACTED]; (3) [REDACTED]; (4) [REDACTED]; (5) [REDACTED]; (6) [REDACTED]; (7) [REDACTED]; and (8) [REDACTED]. These or any other conditions deemed appropriate by the Trial Panel, over a short period, would sufficiently mitigate any risks.

17. The complete elimination of risk is not a pre-requisite to granting release. For all of the reasons set out above, any risk of Mr. Krasniqi fleeing, obstructing proceedings or committing further crimes is minimal and the imposition of conditions would adequately mitigate any such risk.

18. On 30 January 2023, the SPO disclosed the identities of a number of delayed disclosure witnesses to the Defence. The Defence has begun reviewing the evidence of those witnesses and highlights to the Trial Panel that the great majority of those witnesses say nothing at all – or at the very least, nothing incriminating - about Mr. Krasniqi.²¹

²¹ The Defence has counted 24 witnesses thus far who have been subject to delayed disclosure and who reference Jakup Krasniqi. Many of these references are merely acknowledgements of Mr. Krasniqi's role as KLA Spokesperson or following a question raised by the interviewer on knowledge of Mr. Krasniqi's name.

VI. ONGOING DETENTION IS DISPROPORTIONATE

19. The Trial Panel itself previously highlighted that Mr. Krasniqi has been in detention for “a significant period of time” and that “the trial in this case is likely to be lengthy”.²² The Trial Panel indicated that it would “continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable”.²³

20. The proportionality of detention has been brought into stark relief by the time lines laid down and discussed during the Specialist Prosecutor’s Preparation Conference. Mr. Krasniqi is now 72 years old. He has already been detained for two years and four months. The target date for closure of the Prosecution case is 1 April 2025. By that time, Mr. Krasniqi will have been detained for four years and five months. But that, of course, will not be the end of the case. Assuming that the Prosecution case closes on time, there will be pause for the determination of no case to answer submissions. There will then be four defence cases, each (as set out above) provisionally estimated at between three to four weeks and three to four months. On the current timetable, Mr. Krasniqi is thus likely to have spent five years and five months in prison before the closing speeches in this case – to say nothing of the time until the trial judgment is pronounced.

21. The target date for the closure of the Prosecution case and, hence, the clarity with which the future timetable can be predicted, are new factors which the Trial Panel should consider in determining whether ongoing detention has ceased to be proportionate.

²² Trial Panel Decision, para. 46.

²³ *Ibid.*

22. The Defence respectfully submits that in the light of the likelihood that Mr. Krasniqi, an individual entitled to the presumption of innocence, will spend at least five years in detention prior to the closing speeches in this case, it is disproportionate not to allow a short period of provisional release before the start of trial.

VII. CONCLUSION

23. For the reasons set out above, permitting a very short period of interim release would strike an appropriate balance between any risks identified by the Trial Panel and the proportionality of the length period of detention likely in this case before any judgment is pronounced.

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