



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, and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 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.¹ Relevant events since the seventh review of Mr Krasniqi’s detention on 17 January 2023 (“Seventh Detention Decision”)² include the following.
2. On 15 February 2023, the Panel granted an unopposed Defence request for a postponement of commencement of trial, initially scheduled for 1 March 2023, and ordered that the trial in this case shall start on 3 April 2023.³
3. On 24 February 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the eighth review of Mr Krasniqi’s detention (“SPO Submissions”).⁴
4. On 3 March 2023, the Defence for Mr Krasniqi (“Krasniqi Defence”) responded to the SPO Submissions (“Krasniqi Response”).⁵

¹ See e.g. F01110, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Sixth Detention Decision”), 18 November 2022, confidential, paras 1-15 (a public redacted version was issued on the same day, F01110/RED).

² F01212, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 January 2023, confidential (a public redacted version was issued on the same day, F01212/RED).

³ Transcript of Hearing, 15 February 2023, p. 2038, line 9 to p. 2039, line 1 (First Oral Order).

⁴ F01320, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 24 February 2023, confidential (a public redacted version was filed on the same day, F01320/RED).

⁵ F01340, Specialist Counsel, *Krasniqi Defence Response to Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 3 March 2023, confidential (a public redacted version was filed on the same day, F01340/RED).

II. SUBMISSIONS

5. The SPO requests the continuation of Mr Krasniqi's detention.⁶ It argues that: (i) absent any change in circumstances since the Seventh Detention Decision, Mr Krasniqi's detention remains necessary and reasonable; and (ii) the transfer of the case to the Panel, the setting of a trial commencement date, and other significant developments which show steady progress and will give Mr Krasniqi further access to information regarding sensitive witnesses and the case against him, buttress the necessity and reasonableness of his detention.⁷

6. The Krasniqi Defence requests that Mr Krasniqi be released for two weeks prior to the start of the trial, subject to such conditions as the Panel deems appropriate, so that he can spend time with his family in Kosovo.⁸ It argues that: (i) there is no sufficiently real possibility of any of the risks under Article 41(6)(b);⁹ and (ii) a conditional interim release of two weeks would strike an appropriate balance between any risks identified by the Panel and the proportionality of the foreseeably lengthy detention period prior to any judgment being rendered.¹⁰ According to the Krasniqi Defence, in light of the likelihood that Mr Krasniqi will spend at least five years in detention prior to the closing statements in this case, it would be disproportionate not to allow a short period of provisional release before the start of trial.¹¹

⁶ SPO Submissions, para. 35.

⁷ SPO Submissions, paras 1, 6.

⁸ Krasniqi Response, para. 1.

⁹ Krasniqi Response, in particular, paras 8-9.

¹⁰ Krasniqi Response, paras 1, 17, 23.

¹¹ Krasniqi Response, para. 22. *See also* Krasniqi Response, paras 1, 5, 20.

III. APPLICABLE LAW

7. The law applicable to deciding the present matter is set out in Article 41(6), (10), and (12) and Rules 56 and 57 and has been laid out extensively in earlier decisions.¹² The Panel will apply these standards to the present decision.

IV. DISCUSSION

8. The purpose of the bi-monthly review of detention pending trial pursuant to Article 41(10) is to determine whether the reasons for detention still exist.¹³ A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.¹⁴

A. ARTICLE 41 CRITERIA

i. Grounded Suspicion

9. As regards the threshold for continued detention, Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the Specialist Chambers ("SC"). This is a condition *sine qua non* for the validity of the detained person's continued detention.¹⁵

10. While the Krasniqi Defence does not make specific submissions on this point, the SPO argues that – absent any change in circumstances since the decision confirming the indictment ("First Confirmation Decision"),¹⁶ the decision

¹² See e.g. Sixth Detention Decision, paras 18-21.

¹³ IA022/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention*, 22 August 2022, confidential, para. 37 (a public redacted version was issued on the same day, IA022/F00005/RED).

¹⁴ IA010/F00008, Court of Appeals Panel, *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).

¹⁵ See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹⁶ 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

confirming amendments to the indictment (“Second Confirmation Decision”)¹⁷ and the Seventh Detention Decision – there remains a grounded suspicion that Mr Krasniqi has committed a crime within the SC’s jurisdiction.¹⁸

11. The Panel recalls that in the First Confirmation Decision, the Pre-Trial Judge determined that, pursuant to Article 39(2), 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).¹⁹ 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.²⁰ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).²¹

12. Absent any new material circumstances affecting the above findings, the Panel finds that there continues to be a grounded suspicion that Mr Krasniqi has

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

¹⁷ F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte* (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, 6 May and 16 May 2022. The requested amendments are detailed at para. 11.

¹⁸ SPO Submissions, para. 7 (with further references).

¹⁹ First Confirmation Decision, para. 521(a). *See also e.g.* Seventh Detention Decision, para. 13; 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, 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).

²⁰ Second Confirmation Decision, para. 183. *See also* Seventh Detention Decision, para. 13; Sixth Detention Decision, para. 25; Fifth Detention Decision, para. 24; Fourth Detention Decision, para. 38.

²¹ *See e.g.* IA008/F00004, Court of Appeals Panel, *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).

committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10).

ii. Necessity of Detention

13. With respect to the grounds for continued detention, Article 41(6)(b) 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.²² Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.²³ “Articulable” in this context means specified in detail by reference to the relevant information or evidence.²⁴ In determining whether any of the grounds under Article 41(6)(b) 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.²⁵

a) Risk of Flight

14. The SPO submits that Mr Krasniqi’s full knowledge of the scope of the case, including the charges against him and the evidence to be presented in relation to these charges, significantly elevates his risk of flight.²⁶ In the SPO’s view, the fact that Mr Krasniqi is aware of the serious nature of the charges against him and the

²² 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.

²³ 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. 19 (a public redacted version was issued on the same day, IA004/F00005/RED).

²⁴ 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”.

²⁵ First Appeals Decision on Thaçi’s Detention, para. 22.

²⁶ SPO Submissions, para. 9.

lengthy prison sentence that may result therefrom, take on increased significance in the context of the setting of the trial commencement date.²⁷

15. The Krasniqi Defence argues that the SPO's arguments do not constitute new factors and that nothing in the SPO Submissions is capable of altering the Panel's conclusion that it was not satisfied that Mr Krasniqi is or remains a flight risk.²⁸

16. As regards the SPO's argument relating to the advancement of the proceedings, the Panel notes that the SPO's general argument that the risk of flight increases in the context of the confirmation and setting of the trial commencement date is unpersuasive here. The Panel considers that the SPO has failed to establish its claim of a "sufficiently real possibility"²⁹ that Mr Krasniqi will abscond if released based on the stage of the proceedings.

17. With respect to the SPO's argument that the judgment in the *Mustafa* case would increase the possibility of a lengthier sentence for Mr Krasniqi, the Panel finds that this does not constitute evidence of a heightened flight risk. The risk of a long sentence is no greater today than it was earlier and the SPO has not demonstrated that this factor outweighs the other factors that the Panel considered in the previous decision. In any event, Mr Krasniqi is presumed to be innocent.

18. In addition, as already determined, there is evidence that Mr Krasniqi has cooperated with the relevant authorities at all points during his detention and transfer.³⁰

19. The Panel has examined the arguments of the SPO in light of the current stage of the proceedings, and while the risk of flight can never be completely ruled out, it reaffirms that it does not find any additional factor sufficiently compelling to

²⁷ SPO Submissions, para. 9, referring, *inter alia*, to KSC-BC-2020-05, F00494/RED/COR, Trial Panel I, Corrected Version of Public Redacted Version of Trial Judgment ("*Mustafa* Trial Judgment"), 24 January 2023, para. 831.

²⁸ Krasniqi Response, para. 8.

²⁹ See e.g. First Appeals Decision on Thaçi's Detention, para. 24.

³⁰ Seventh Detention Decision, para. 18 and fn. 30.

persuade the Panel to change its previous finding regarding the risk of flight.³¹ 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 pursuant to Article 41(6)(b)(i).

b) Risk of Obstructing the Progress of SC Proceedings

20. With reference to previous findings by various Panels, the SPO submits that Mr Krasniqi continues to present a risk of obstructing proceedings.³² It avers that this Panel's conclusion that the proximity of trial reinforces the validity of the findings by the Pre-Trial Judge and the Court of Appeals,³³ is even more forceful now with the trial date having been formally set and its imminence having resulted (or being about to result) in the disclosure of further highly sensitive information to the Krasniqi Defence and Mr Krasniqi.³⁴ According to the SPO, this continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question testify.³⁵ Furthermore, the SPO avers that there continues to be a climate of witness intimidation and interference, which, as held by the Court of Appeals, is a relevant contextual consideration.³⁶ The SPO submits that the full extent of the problem of witness intimidation and interference is presented in a recent news article regarding an individual from Skenderaj/Srbica who appears to be offering money in exchange for information on witnesses.³⁷ Lastly, the SPO contends that the gradual lifting of protective measures increases the risk of obstruction.³⁸

³¹ See Seventh Detention Decision, paras 18-19.

³² SPO Submissions, in particular, paras 10-13 (with further references).

³³ See Seventh Detention Decision, paras 24-25.

³⁴ SPO Submissions, paras 13-14.

³⁵ SPO Submissions, para. 14.

³⁶ SPO Submissions, paras 15-19 (with further references).

³⁷ SPO Submissions, para. 19.

³⁸ SPO Submissions, paras 20-21.

21. The Krasniqi Defence avers that: (i) the evidence does not justify a finding that there is a sufficient risk that Mr Krasniqi will obstruct proceedings in the context of a two-week period of interim release; and (ii) this limited duration of release would both reduce the opportunity for Mr Krasniqi to engage in any prohibited conduct and increase the likelihood of effective monitoring.³⁹ Furthermore, it submits 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, thus making it less likely that he would obstruct proceedings during this requested short period of interim release.⁴⁰ In addition, the Krasniqi Defence avers that the SPO continues to deploy findings or evidence which bear no relation to Mr Krasniqi, such as the submission that there is a general climate of witness intimidation in Kosovo or the reference to the publication in the *Skenderaj Press*.⁴¹

22. At the outset, the Panel notes that, to the extent that the Krasniqi Defence argues that certain conditions on Mr Krasniqi's release would negate any apparent risk under Article 41(6)(b)(ii), these arguments must be addressed only after the assessment of the necessity of detention. Thus, the Panel addresses the adequacy of the proposed conditions (*i.e.*, the brief period of release and monitoring) under Section IV.B. below.

23. The Panel calls attention to the standard utilised in assessing the risks under Article 41(6)(b), which does not require a "concrete example" of a situation in which Mr Krasniqi has personally intimidated or harassed a witness.⁴²

³⁹ Krasniqi Response, para. 9.

⁴⁰ Krasniqi Response, para. 10.

⁴¹ Krasniqi Response, paras 11-14.

⁴² See Seventh Detention Decision, para. 23, referring to IA003/F00005, Court of Appeals Panel, *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 issued on the same day, IA003/F00005/RED). See also F01302, Trial Panel II, *Decision on Periodic Review of Detention of Hashim Thaçi*, 17 February 2023, confidential, para. 24 (a public redacted version was issued on the same

24. The Panel has already determined and reiterates that there is a risk of Mr Krasniqi obstructing SC proceedings based on, *inter alia*: (i) his position of influence, which, combined with the [REDACTED], allows for the reasonable conclusion that it is possible for Mr Krasniqi to [REDACTED]; (ii) his public statements criticising the SC; and (iii) the content of a 24 April 2020 Facebook post targeting “collaborators”.⁴³ Furthermore, the Court of Appeals has confirmed that: (i) there are indications that Mr Krasniqi is, at least, [REDACTED];⁴⁴ and (ii) 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 2020.⁴⁵

25. As previously noted, in light of the near commencement of trial, the names and personal details of certain of the SPO’s highly sensitive witnesses have now been disclosed to the Krasniqi Defence,⁴⁶ and will therefore become known to a broader range of people, including to Mr Krasniqi. This, in turn, increases the risk of sensitive information pertaining to witnesses becoming 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.⁴⁷

day, F01302/RED); F01303, Trial Panel II, *Decision on Periodic Review of Detention of Kadri Veseli*, 17 February 2023, para. 23.

⁴³ See e.g. Seventh Detention Decision, paras 22-24; Sixth Detention Decision, para. 34; Fifth Detention Decision, para. 33.

⁴⁴ IA002/F00005, Court of Appeals Panel, *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/F00005/RED); IA006/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 30 (a public redacted version was issued on the same day, IA006/F00005/RED).

⁴⁵ First Appeals Decision on Krasniqi’s Detention, para. 50.

⁴⁶ See e.g. Disclosure Packages 656 through 660 of 30 January 2023.

⁴⁷ See Seventh Detention Decision, para. 25.

26. Additionally, the Panel is adjudicating this matter against a background of information that a general climate of witness interference persists in Kosovo regarding this case and others before the SC. As held in the *Mustafa* Trial Judgment:

[T]here is a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former [Kosovo Liberation Army] members. Witnesses are stigmatised as “traitors” or “collaborators”, are unable to speak freely about the events they underwent, are subjected to threats and intimidation and live in constant fear that something will happen to them or their family.⁴⁸

27. In light of the above, 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

28. With reference to the Panel’s findings in the Seventh Detention Decision,⁴⁹ the SPO submits that Mr Krasniqi continues to present a risk of committing further crimes.⁵⁰ According to the SPO, the Panel’s conclusion has taken on additional significance in light of the imminent commencement of trial, continuing disclosure of highly sensitive information, and the imperative of avoiding any risk of interference with witnesses prior to their testimony.⁵¹ Furthermore, the SPO argues that the following needs to be taken into account: (i) the general climate of witness intimidation; (ii) the extremely serious nature of the charges against Mr Krasniqi; (iii) the fact that the crimes with which Mr Krasniqi is charged are alleged to have been committed in cooperation with others; and (iv) the fact that

⁴⁸ *Mustafa* Trial Judgment, para. 57.

⁴⁹ Seventh Detention Decision, paras 29-30, 32.

⁵⁰ SPO Submissions, paras 22-23.

⁵¹ SPO Submissions, para. 23.

the First Confirmation Decision describes Mr Krasniqi's personal participation in the commission of crimes.⁵²

29. The Krasniqi Defence's submissions with respect to the risk of committing further crimes are identical to those summarised in paragraph 21 above relating to the risk of obstruction of proceedings.⁵³

30. The Panel recalls its finding in the Seventh Detention Decision that the risk of Mr Krasniqi committing further crimes continues to exist.⁵⁴ The Panel finds that the same factors that were taken into account in relation to the risk of obstruction are relevant to the analysis of the risk of Mr Krasniqi committing further crimes.⁵⁵ In light of those, the Panel considers that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.

31. The Panel highlights the fact that the trial in this case will begin in less than three weeks, that the identities of sensitive witnesses have been disclosed to the Krasniqi Defence, and that any risk of the further commission of crimes must be avoided.

32. 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).

iii. Conclusion

33. The Panel concludes that at this time there continues to be 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

⁵² SPO Submissions, para. 24.

⁵³ See Krasniqi Response, paras 9-14.

⁵⁴ Seventh Detention Decision, para. 32.

⁵⁵ See *above*, paras 22-26; Seventh Detention Decision, para. 30.

that he will commit further crimes against those perceived as being opposed to the Kosovo Liberation Army, 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.

B. MEASURES ALTERNATIVE TO DETENTION

34. With reference to the Panel's previous findings, the SPO submits that: (i) the risks pursuant to Article 41(6)(b) can only be effectively managed at the SC's detention facilities; (ii) nothing has occurred since the Seventh Detention Decision warranting a different assessment on conditions, either generally or for a discrete period of time; and (iii) rather, the setting of the trial commencement date and attendant further disclosure make the underlying risks higher than ever.⁵⁶

35. 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, which the Kosovo Police is able to implement.⁵⁷ Reiterating previously proposed conditions and the fact that it is now requesting a period of interim release of only two weeks, the Krasniqi Defence avers that the number of visitors whom Mr Krasniqi could receive in this short period of time would in any event be limited and hence any opportunities for communications would also be limited and more amenable to monitoring.⁵⁸ For these reasons, any risk pursuant to Article 41(6)(b) would, according to the Krasniqi Defence, be minimal and could be adequately mitigated by imposing conditions.⁵⁹ Lastly, as regards the disclosure

⁵⁶ SPO Submissions, para. 25, *referring to* Seventh Detention Decision, para. 40.

⁵⁷ Krasniqi Response, para. 15, *referring, inter alia, to* F01181, Specialist Counsel, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, confidential, paras 8-10 (a public redacted version was filed on 25 January 2023, F01181/RED).

⁵⁸ Krasniqi Response, paras 15-16.

⁵⁹ Krasniqi Response, para. 17.

to the Defence of identities and related material of a number of delayed disclosure witnesses on 30 January 2023, the Krasniqi Defence contends that the great majority of those witnesses say nothing at all – or at the very least, nothing incriminating – about Mr Krasniqi.⁶⁰

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).⁶¹ Article 41(12) 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).⁶² 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.⁶³

37. As regards the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel maintains its view that none of the proposed conditions,⁶⁴ nor any additional measures foreseen in Article 41(12), ordered *proprio motu*, could at this stage in the proceedings sufficiently mitigate the existing risks with respect to Mr Krasniqi.⁶⁵ The measures in place at the SC's

⁶⁰ Krasniqi Response, para. 18 and fn. 21.

⁶¹ 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*.

⁶² 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*, 22 May 2020, para. 70. See also ECtHR, [Idalov v. Russia](#) [GC], para. 140 *in fine*.

⁶³ 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.

⁶⁴ See Krasniqi Response, paras 15-16.

⁶⁵ See Seventh Detention Decision, para. 38. See also Sixth Detention Decision, paras 51-52; Fifth Detention Decision, paras 50-53; Fourth Detention Decision, paras 66-71; IA020/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention*,

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.⁶⁶

38. The Panel further maintains its view 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.⁶⁷ Neither the limited duration of release requested by the Krasniqi Defence⁶⁸ nor any other argument raised in the Krasniqi Response is capable of affecting this finding.

39. 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 there are no alternatives to Mr Krasniqi's continued detention capable of adequately averting the risks in Article 41(6)(b)(ii) and (iii).

2 August 2022, confidential, para. 39 (a public redacted version was issued on the same day, IA020/F00005/RED).

⁶⁶ See Seventh Detention Decision, para. 38. See also Sixth Detention Decision, para. 53; Fifth Detention Decision, para. 52; Fourth Detention Decision, para. 71; IA016/F00005, Court of Appeals Panel, *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).

⁶⁷ See Seventh Detention Decision, para. 39. See also Sixth Detention Decision, para. 53; Fifth Detention Decision, para. 52; Fourth Detention Decision, para. 71.

⁶⁸ See also Seventh Detention Decision, para. 39.

C. REASONABLENESS OF DETENTION

40. The SPO argues that Mr Krasniqi's detention remains proportional, referring to the Panel's previous findings, particularly that significant procedural steps have been taken and sensitive information has been or will soon be disclosed to the Krasniqi Defence.⁶⁹ According to the SPO: (i) significant and prompt steps continue to be taken, most notably with the setting of the trial commencement date; and (ii) the short postponement of the trial commencement, which was requested by the Defence, has no impact.⁷⁰

41. The Krasniqi Defence submits that by the target date of 1 April 2025 for the closing of the SPO's case, Mr Krasniqi, who is now 72 years old, will have been detained for four years and five months. It avers that considering (i) the pause necessary for the determination of "no case to answer" submissions following the closing of the SPO's case and (ii) the four Defence cases after that, Mr Krasniqi is likely to spend five years and five months in detention before the closing statements in this case.⁷¹ These are factors which the Panel should, in the Krasniqi Defence's view, take into account when determining whether ongoing detention has ceased to be proportionate.⁷² In light of this timeline, it would according to the Krasniqi Defence be disproportionate not to allow Mr Krasniqi a short period of provisional release before the start of trial.⁷³

42. The Panel recalls that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.⁷⁴ In the Panel's estimation, the special features in this case include the following: (i) Mr Krasniqi is charged with ten counts of serious international crimes in which he

⁶⁹ SPO Submissions, paras 29-33, *referring to Seventh Detention Decision, paras 44-45, and to F01302, Trial Panel II, Decision on Periodic Review of Detention of Hashim Thaçi*, 17 February 2023, para. 47.

⁷⁰ SPO Submissions, para. 33.

⁷¹ Krasniqi Response, para. 20.

⁷² Krasniqi Response, para. 21.

⁷³ Krasniqi Response, para. 22.

⁷⁴ Seventh Detention Decision, para. 43.

is alleged to play a significant role;⁷⁵ (ii) if convicted, Mr Krasniqi could face a lengthy sentence; (iii) the continuing risks under Article 41(6)(b)(ii) and (iii) cannot be sufficiently mitigated by the application of reasonable alternative measures;⁷⁶ (iv) the case against Mr Krasniqi is complex;⁷⁷ (v) the climate of witness intimidation outlined above; and (vi) progress continues to be made towards the start of trial, now set to begin in less than three weeks.

43. In light of these factors, the Panel finds that Mr Krasniqi's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

44. The Panel notes, however, that Mr Krasniqi has already been in detention for a significant period of time, and that the trial in this case is likely to be lengthy. As the Panel previously indicated,⁷⁸ 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.

⁷⁵ F00999/A01, *Annex 1 to Submission of Confirmed Amended Indictment*, 30 September 2022, confidential, paras 10-12, 32, 39-40, 44, 49, 53, 55-57, 176-177 (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

⁷⁶ *See above*, paras 37-39.

⁷⁷ *See e.g.* Sixth Detention Decision, para. 59; Fifth Detention Decision, para. 58; Fourth Detention Decision, para. 81.

⁷⁸ *See e.g.* Seventh Detention Decision, para. 46.

V. DISPOSITION

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

- a) **ORDERS** Mr Krasniqi's continued detention; and
- b) **ORDERS** the SPO to file its submissions on the next review by **Wednesday, 26 April 2023 (at 16:00 hrs)**, with subsequent submissions following the timelines set out in Rule 76.



Charles L. Smith, III

Presiding Judge

Dated this Friday, 17 March 2023

At The Hague, the Netherlands.