

**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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

**Filing Participant:** Defence Counsel for Jakup Krasniqi

**Date:** 8 May 2023

**Language:** English

**Classification:** Confidential

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**Krasniqi Defence Response**

**to Prosecution Submission Pertaining to Periodic Detention Review**

**of Jakup Krasniqi**

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**Acting Specialist Prosecutor**

Alex Whiting

**Counsel for Victims**

Simon Laws KC

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson KC

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

1. The Defence for Jakup Krasniqi ("Defence") hereby issues a response, in part, to the Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi.<sup>1</sup>
2. Pursuant to Rule 82(4) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), this filing is submitted confidentially because it responds to a filing with the same classification. The Defence would have no objection to this filing being reclassified as public.
3. Taking into account prior decisions and the hearings of witness testimony scheduled in May, June and July 2023, the Defence will not file detailed submissions on the periodic review of Mr. Krasniqi's detention at this point in time. For the avoidance of doubt, Mr. Krasniqi does *not* waive his right pursuant to Rule 57(2) of the Rules to have his detention reviewed every two months by the Trial Panel. It therefore remains for the Trial Panel to determine whether the Specialist Prosecutor's Office ("SPO") has discharged its burden of establishing that ongoing detention remains both proportionate and necessary for one or more of the prescribed reasons.
4. The Defence continues to object to the SPO's reliance on cherry-picked and insubstantial material from the Kosovo media to justify Mr Krasniqi's ongoing detention.<sup>2</sup> In particular, from a wide array of media articles, commentary and talk shows addressing the start of this trial, the Prosecution Submission relies on a single talk show to substantiate what it alleges to be a pervasive climate of intimidation.<sup>3</sup>

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<sup>1</sup> KSC-BC-2020-06, F01479, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi* ("Prosecution Submission"), 26 April 2023, public, with Annex 1, public.

<sup>2</sup> KSC-BC-2020-06, F01340, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi* ("Krasniqi Defence Response to Prosecution Submission"), 3 March 2023, public, para. 20; F01181, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, public, para. 11.

<sup>3</sup> Prosecution Submission, para. 17.

Such selective and insubstantial material is insufficient to discharge the burden on the SPO to show that ongoing detention remains justified, proportionate and necessary.

5. Firstly, whilst it is correct that one guest on a talk show alleged that he had received intimidatory comments, the SPO has not produced the comments themselves as evidence in this case, nor is there any way of substantiating these specific allegations beyond what is stated in the talk show itself. The SPO has not done anything to verify the nature of the alleged threats or their source(s). Unverified allegations by a talk show guest have no evidential weight and should be approached with extreme caution. As has been previously argued by the Defence, relying on unverified sources is prejudicial to the rights of the Accused.<sup>4</sup> Given the public nature of this case and the prominence of the Accused as former political figures in Kosovo, it is inevitable that there will be ongoing discourse about the case. However, this should not be relied on to justify ongoing detention.

6. Secondly, the SPO omits to mention that the talk show guest has repeatedly engaged in criticism against KLA sympathisers,<sup>5</sup> the Accused in this case and their supporters.<sup>6</sup> He is a biased commentator who is evidently strongly motivated to allege misconduct by these groups,

7. Thirdly, the SPO has adduced no evidence that anything untoward has ever actually happened to the talk show guest after any of his pronouncements. For instance, one month has passed since the talk show was broadcast with no evidence of any consequences for the guest. Indeed, as set out above he has made similar public

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<sup>4</sup> Krasniqi Defence Response to Prosecution Submission, paras 13-14.

<sup>5</sup> See <https://www.korrektpress.net/qytetari-uan-hajna-veteranet-e-uck-se-gjinovci-faji-i-opozites/> - in which the guest defends a statement referring to KLA veterans as "thieves."

<sup>6</sup> Note a statement given on 14 January 2021, in which he states that "[s]omeone who thinks Thaçi should govern in Kosovo is not normal", <https://www.botasot.info/aktuale-lajme/1482766/gjinovci-vjen-me-nje-deklarate-per-thacin-keto-jane-fjalet-e-tij/?fbclid=IwAR0ESCyAIRD02XnS28jdFH1Edm1O5PAOMv7hRGMTHx7nBB0hyxRUgNp6pRY>

statements previously and is likely to continue to make them. His ability to do so confirms the existence of free speech in Kosovo rather than evidencing a climate of intimidation.

8. Fourthly, in any event, the talk show made no connection between Mr. Krasniqi, or anyone associated with Mr. Krasniqi, and any alleged instances of intimidation. It therefore cannot be a reason to justify his ongoing detention. Neither the guest nor the talk show host are witnesses in this case.

9. Finally, the Defence respectfully gives notice that Mr. Krasniqi will request a short period of interim release over the Summer Recess. The Defence notes that Rule 57(2) provides that detention review shall occur “upon the expiry of two months from the last ruling on detention” or “at any time upon request by the Accused”. The Defence respectfully requests the Trial Panel to set the deadlines for submissions on the next detention review, so that the issue of interim release over the Summer Recess<sup>7</sup> may be fully briefed and adjudicated prior to 24 July 2023.

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<sup>7</sup> The Summer Recess for 2023 is scheduled for Monday 24 July 2023 to Friday, 11 August 2023, KSCPR-2022, F00003, President of the Specialist Chambers, Judicial Recess Periods for 2023, 4 November 2022, public.

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**Venkateswari Alagenda**

Monday, 8 May 2023

Kuala Lumpur, Malaysia.



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**Aidan Ellis**

Monday, 8 May 2023

London, United Kingdom.



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**Victor Băieșu**

Monday, 8 May 2023

The Hague, the Netherlands.