



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

**Date:** 17 May 2023

**Language:** English

**Classification:** Public

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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.<sup>1</sup> Relevant events since the eighth review of Mr Krasniqi’s detention on 17 March 2023 (“Eighth Detention Decision”)<sup>2</sup> include the following.
2. On 26 April 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the ninth review of Mr Krasniqi’s detention (“SPO Submissions”).<sup>3</sup>
3. On 8 May 2023, the Defence for Mr Krasniqi (“Krasniqi Defence”) responded to the SPO Submissions (“Krasniqi Response”).<sup>4</sup>
4. The SPO did not reply to the Krasniqi Response.

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<sup>1</sup> 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).

<sup>2</sup> F01382, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 March 2023, confidential (a public redacted version was issued on 20 March 2023, F01382/RED).

<sup>3</sup> F01479, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 26 April 2023, confidential, with Annex 1, confidential (a public redacted version was filed on the same day, F01479/RED, with Annex 1).

<sup>4</sup> F01506, Specialist Counsel, *Krasniqi Defence Response to Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 8 May 2023, confidential.

## II. SUBMISSIONS

5. The SPO requests the continuation of Mr Krasniqi's detention.<sup>5</sup> It argues that: (i) absent any change in circumstances since the Eighth Detention Decision, Mr Krasniqi's detention remains necessary and reasonable; and (ii) the transfer of the case to the Panel, the commencement of trial, 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.<sup>6</sup>

6. The Krasniqi Defence abstains from making detailed submissions<sup>7</sup> but objects to the SPO's reliance on "cherry-picked and insubstantial material" from the Kosovo media to justify Mr Krasniqi's ongoing detention, and in particular, the reliance on a talk show to substantiate an alleged pervasive climate of intimidation.<sup>8</sup> According to the Krasniqi Defence, the SPO has failed to sufficiently demonstrate that Mr Krasniqi's ongoing detention remains justified, proportionate and necessary.<sup>9</sup> Lastly, the Krasniqi Defence gives advance notice that Mr Krasniqi will request a short period of interim release over the summer recess and requests the Panel to set the deadlines for submissions on the next detention review in a manner that will allow the issue of interim release to be fully briefed and adjudicated prior to 24 July 2023.<sup>10</sup>

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<sup>5</sup> SPO Submissions, para. 37.

<sup>6</sup> SPO Submissions, paras 1, 8.

<sup>7</sup> Krasniqi Response, para. 2.

<sup>8</sup> Krasniqi Response, para. 4.

<sup>9</sup> Krasniqi Response, paras 4-8.

<sup>10</sup> Krasniqi Response, para. 9.

### 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.<sup>11</sup> 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.<sup>12</sup> A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.<sup>13</sup>

#### 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.<sup>14</sup>

10. The SPO argues that – absent any change in circumstances since the decision confirming the indictment (“First Confirmation Decision”),<sup>15</sup> the decision

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<sup>11</sup> See e.g. Sixth Detention Decision, paras 18-21.

<sup>12</sup> 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).

<sup>13</sup> 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).

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

<sup>15</sup> 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).

confirming amendments to the indictment (“Second Confirmation Decision”)<sup>16</sup> and the Eighth Detention Decision – there remains a grounded suspicion that Mr Krasniqi has committed a crime within the SC’s jurisdiction.<sup>17</sup> The Krasniqi Defence does not make specific submissions on this point.

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).<sup>18</sup> 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.<sup>19</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).<sup>20</sup>

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<sup>16</sup> 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.

<sup>17</sup> SPO Submissions, para. 9 (with further references).

<sup>18</sup> First Confirmation Decision, para. 521(a). *See also e.g.* Eighth Detention Decision, para. 11; F01212, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Seventh Detention Decision”), 17 January 2023, confidential, para. 13 (a public redacted version was issued on the same day, F01212/RED); 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).

<sup>19</sup> Second Confirmation Decision, para. 183. *See also* Eighth Detention Decision, para. 11; Seventh Detention Decision, para. 13; Sixth Detention Decision, para. 25; Fifth Detention Decision, para. 24; Fourth Detention Decision, para. 38.

<sup>20</sup> *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).

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 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 further commission of crimes.<sup>21</sup> Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.<sup>22</sup> “Articulable” in this context means specified in detail by reference to the relevant information or evidence.<sup>23</sup> 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.<sup>24</sup>

### a) Risk of Flight

14. The SPO submits that Mr Krasniqi’s fuller knowledge of the scope of the case, including the charges against him and the evidence (to be) presented in relation to these charges, elevates his risk of flight.<sup>25</sup> In the SPO’s view, the fact that

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<sup>21</sup> 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.

<sup>22</sup> 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).

<sup>23</sup> 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”.

<sup>24</sup> First Appeals Decision on Thaçi’s Detention, para. 22.

<sup>25</sup> SPO Submissions, para. 11.

Mr Krasniqi is aware of the serious nature of the charges against him and the lengthy prison sentence that may result therefrom, take on increased significance due to the commencement of trial.<sup>26</sup> The Krasniqi Defence does not make specific submissions on the risk of flight.

15. The Panel has examined the arguments of the SPO, in light of the present stage of the proceedings, and as there are no new relevant factors to consider, reaffirms its prior finding that the SPO has failed to establish its claim of a “sufficiently real possibility”<sup>27</sup> that Mr Krasniqi will abscond if released.<sup>28</sup>

16. 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.<sup>29</sup>

17. While the risk of flight can never be completely ruled out,<sup>30</sup> the Panel 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

18. With reference to previous findings by various Panels, the SPO submits that Mr Krasniqi continues to present a risk of obstructing proceedings.<sup>31</sup> According to the SPO, the (further) disclosure of highly sensitive information to the Krasniqi Defence and Mr Krasniqi continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the

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<sup>26</sup> SPO Submissions, para. 11, *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.

<sup>27</sup> *See e.g.* First Appeals Decision on *Thaçi’s Detention*, para. 24.

<sup>28</sup> *See* Eighth Detention Decision, paras 16-17, 19.

<sup>29</sup> Eighth Detention Decision, para. 18; Seventh Detention Decision, para. 18 and fn. 30.

<sup>30</sup> *See* Eighth Detention Decision, para. 19; Seventh Detention Decision, paras 18-19.

<sup>31</sup> SPO Submissions, paras 12-16 (with further references).

witnesses in question testify.<sup>32</sup> 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.<sup>33</sup> Specifically, the SPO makes reference to the contents of a Kosovo television show (“TV Show”) where: (i) a guest stated that anyone expressing the opinion that the KLA, including the Accused, may have committed crimes is labelled as a “collaborator” and is threatened; and (ii) the moderator noted that there was agreement in the public, at least in online communication, that such persons be killed.<sup>34</sup>

19. The Krasniqi Defence takes issue with the SPO’s reliance on the TV Show to substantiate the alleged pervasive climate of intimidation and the grounds for Mr Krasniqi’s detention.<sup>35</sup> In particular, it avers that: (i) these are unverified allegations by a talk show guest that have no evidential weight and should be approached with extreme caution; (ii) relying on unverified sources is prejudicial to the rights of the Accused; and (iii) there is no connection between Mr Krasniqi, or anyone associated with him, and any alleged instances of intimidation, and therefore, this cannot be a reason to justify his ongoing detention.<sup>36</sup>

20. 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.<sup>37</sup>

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<sup>32</sup> SPO Submissions, para. 18-21.

<sup>33</sup> SPO Submissions, paras 15-17 (with further references).

<sup>34</sup> SPO Submissions, para. 17; *see also* Annex 1 to the SPO Submissions.

<sup>35</sup> Krasniqi Response, para. 4.

<sup>36</sup> Krasniqi Response, paras 5-8.

<sup>37</sup> *See* Eighth Detention Decision, para. 23; 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 day, F01302/RED); F01303, Trial Panel II, *Decision on Periodic Review of Detention of Kadri Veseli*, 17 February 2023, para. 23.



21. 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 willingness and ability to obtain access to confidential information inaccessible to the public, allows for the reasonable conclusion that it is possible for Mr Krasniqi to secure access to confidential information related to matters to which he is currently connected; (ii) his public statements criticising the SC; and (iii) the content of a 24 April 2020 Facebook post targeting “collaborators”.<sup>38</sup> Furthermore, the Court of Appeals has confirmed that: (i) there are indications that Mr Krasniqi is, at least, predisposed to witness intimidation, [REDACTED];<sup>39</sup> 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.<sup>40</sup>

22. As previously noted, in light of the commencement and ongoing nature of trial, the names and personal details of certain highly sensitive witnesses have been and will continue to be disclosed to the Krasniqi Defence,<sup>41</sup> 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

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<sup>38</sup> See e.g. Eighth Detention Decision, para. 24; Seventh Detention Decision, paras 22-24; Sixth Detention Decision, para. 34; Fifth Detention Decision, para. 33.

<sup>39</sup> 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/F0005/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).

<sup>40</sup> First Appeals Decision on Krasniqi’s Detention, para. 50.

<sup>41</sup> See Eighth Detention Decision, para. 25.

possession would not be conducive to the effective protection of witnesses who are yet to testify.<sup>42</sup>

23. As argued by the Krasniqi Defence, the Panel is not satisfied that the discussion during the above-mentioned TV Show, without any further information on the background of this show and its guests, adds to the climate of witness interference. However, the Panel recalls that it 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.<sup>43</sup>

24. 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

25. With reference to the Panel's findings in the Eighth Detention Decision,<sup>44</sup> the SPO submits that Mr Krasniqi continues to present a risk of committing further crimes.<sup>45</sup> According to the SPO, the Panel's conclusion has taken on additional significance in light of the commencement of trial and continuing disclosure of highly sensitive information.<sup>46</sup> 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 the First Confirmation Decision describes Mr Krasniqi's personal participation in the commission of crimes.<sup>47</sup>

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<sup>42</sup> See Eighth Detention Decision, para. 25; Seventh Detention Decision, para. 25.

<sup>43</sup> See Eighth Detention Decision, para. 26, referring to *Mustafa* Trial Judgment, para. 57.

<sup>44</sup> Eighth Detention Decision, paras 30-32.

<sup>45</sup> SPO Submissions, paras 22, 24-25.

<sup>46</sup> SPO Submissions, para. 26.

<sup>47</sup> SPO Submissions, para. 23.

26. The Krasniqi Defence's submissions with respect to the SPO's reliance on the TV Show are summarised in paragraph 19 above relating to the risk of obstruction of proceedings.<sup>48</sup>

27. The Panel recalls its finding in the Eighth Detention Decision that the risk of Mr Krasniqi committing further crimes continues to exist.<sup>49</sup> 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.<sup>50</sup> 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.

28. The Panel highlights the fact that the trial in this case has commenced, that the identities of sensitive witnesses have been disclosed to the Krasniqi Defence, and that any risk of further commission of crimes must be avoided.

29. 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**

30. 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 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

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<sup>48</sup> See Krasniqi Response, paras 4-8.

<sup>49</sup> Eighth Detention Decision, para. 32.

<sup>50</sup> See above, paras 21-23; Eighth Detention Decision, para. 30.

will assess below whether these risks can be adequately addressed by any conditions for his release.

## B. MEASURES ALTERNATIVE TO DETENTION

31. The SPO submits, with reference to the Panel's previous findings, 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 Eighth Detention Decision warranting a different assessment on conditions, either generally or for a discrete period of time; and (iii) rather, the commencement of trial and attendant further disclosure make the underlying risks higher than ever.<sup>51</sup> The Krasniqi Defence does not make specific submissions in this respect.

32. 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).<sup>52</sup> 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).<sup>53</sup> The Panel

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<sup>51</sup> SPO Submissions, paras 27-31, referring to Eighth Detention Decision, paras 37-39.

<sup>52</sup> 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*.

<sup>53</sup> 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*.

must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Krasniqi Defence or the SPO.<sup>54</sup>

33. As regards the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel maintains its view that none of the conditions previously proposed by the Krasniqi Defence, 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.<sup>55</sup> 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.<sup>56</sup>

34. 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.<sup>57</sup>

35. 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

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<sup>54</sup> 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.

<sup>55</sup> See Eighth Detention Decision, para. 37; 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*, 2 August 2022, confidential, para. 39 (a public redacted version was issued on the same day, IA020/F00005/RED).

<sup>56</sup> See Eighth Detention Decision, para. 37; 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).

<sup>57</sup> See Eighth Detention Decision, para. 38; Seventh Detention Decision, para. 39. See also Sixth Detention Decision, para. 53; Fifth Detention Decision, para. 52; Fourth Detention Decision, para. 71.

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).

### C. REASONABLENESS OF DETENTION

36. The SPO argues that, taking all factors into consideration, Mr Krasniqi's detention remains proportional.<sup>58</sup> To that end, the SPO refers to the Panel's previous findings that: (i) Mr Krasniqi is charged with ten counts of serious international crimes in which he is alleged to play a significant role; (ii) if convicted, he 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; (iv) the case against Mr Krasniqi is complex; (v) a climate of witness intimidation exists as outlined above; and (vi) progress continues to be made in the case.<sup>59</sup> The Krasniqi Defence does not make specific submissions in this respect.

37. 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 at the time when such assessment is being made.<sup>60</sup> 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 is alleged to play a significant role;<sup>61</sup> (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

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<sup>58</sup> SPO Submissions, paras 32-35.

<sup>59</sup> SPO Submissions, para. 33.

<sup>60</sup> Eighth Detention Decision, para. 42; Seventh Detention Decision, para. 43.

<sup>61</sup> 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).

application of reasonable alternative measures;<sup>62</sup> (iv) the case against Mr Krasniqi is complex;<sup>63</sup> (v) the climate of witness intimidation outlined above; and (vi) the fact that the trial has commenced.

38. 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.

39. 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,<sup>64</sup> 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.

#### D. FURTHER MATTERS

40. The Panel takes note of the Krasniqi Defence's advance notice that Mr Krasniqi will request a short period of interim release over the summer recess and has taken this into account in setting the deadlines for submissions on the next detention review, as set out in the disposition.

41. Lastly, noting that the Krasniqi Defence does not object to the Krasniqi Response being reclassified as public<sup>65</sup> and considering that said filing does not contain confidential information, the Panel orders the Registry to reclassify the Krasniqi Response as public.

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<sup>62</sup> See above, paras 33-35.

<sup>63</sup> See e.g. Sixth Detention Decision, para. 59; Fifth Detention Decision, para. 58; Fourth Detention Decision, para. 81.

<sup>64</sup> See e.g. Eighth Detention Decision, para. 44; Seventh Detention Decision, para. 46.

<sup>65</sup> Krasniqi Response, para. 2.

V. DISPOSITION

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

- a) **ORDERS** Mr Krasniqi's continued detention;
- b) **ORDERS** the SPO to file its submissions on the next review by **Monday, 26 June 2023 (at 16:00 hrs)**, with subsequent submissions following the timelines set out in Rule 76; and
- c) **ORDERS** the Registry to reclassify the Krasniqi Response (F01506) as public.



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**Charles L. Smith, III**  
**Presiding Judge**

Dated this Wednesday, 17 May 2023

At The Hague, the Netherlands.