



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**Specialist 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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 14 July 2023

**Language:** English

**Classification:** Confidential

---

**Prosecution reply to Krasniqi Defence Response to Prosecution Submissions on  
Detention Review**

---

**Specialist Prosecutor's Office**

Alex Whiting

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Response<sup>1</sup> should be rejected, and Jakup Krasniqi ('Krasniqi') should remain detained. The Response selectively ignores inconvenient facts, willfully misapprehends relevant concepts, and has largely been addressed and rejected by multiple Panels of this Court already.

## II. SUBMISSIONS

### A. THE RISK OF OBSTRUCTING PROCEEDINGS AND COMMITTING FURTHER CRIMES

2. Krasniqi's contention that the underlying basis establishing risk of obstruction somehow lacks value because it is over two years old,<sup>2</sup> misapprehends the rationale of the relevant detention framework. Simply stated, at the time when Krasniqi was at liberty, he engaged in conduct that presented a risk of obstructing proceedings and committing further crimes. As the very purpose of detention is to mitigate this risk, the lack of further relevant conduct underlines the necessity of detention. Therefore, the contention that the actions justifying detention occurred over two years ago, before detention, is of no moment, and certainly does not justify release.

3. Krasniqi's argument that no concrete evidence of witness intimidation has been tendered does not advance his case, having already been properly rejected by this Panel<sup>3</sup> and the Court of Appeals<sup>4</sup> as a requirement.

4. Regarding the alleged deficiency related to relevant conduct specific to Krasniqi,<sup>5</sup> he has provided no support for the bare assertion, already rejected by this

---

<sup>1</sup> Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01626), KSC-BC-2020-06/F01649, 6 July 2023 ('Response').

<sup>2</sup> Response, KSC-BC-2020-06/F01649, para.7.

<sup>3</sup> Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01530, 17 May 2023 ('Ninth Detention Decision'), para.20 *citing* Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01382, 17 March 2023 ('Eighth Detention Decision'), para.23; Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01212, 17 January 2023 ('Seventh Detention Decision'), para.23.

<sup>4</sup> Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, IA003/F00005, 30 April 2021, confidential, para.59.

<sup>5</sup> Response, KSC-BC-2020-06/F01649, para.7.

Panel<sup>6</sup> and the Court of Appeals,<sup>7</sup> that his Facebook posts and public speech do not establish the requisite risk. Krasniqi also conveniently fails to mention that the risk finding was further supported by other highly relevant considerations.<sup>8</sup> As multiple Panels of this Court have repeatedly confirmed that all of these factors taken together establish the relevant risk, a cursory challenge to only two of them cannot prevail.

5. Similarly, regarding the climate of witness interference, while the Panel may have been unable to establish that the referenced Kosovo TV show added to this climate, the Panel was unequivocal 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 KSC.<sup>9</sup> Robert Reid's general assertion that he has never seen witness intimidation on the level that exists in Kosovo, taken nearly word for word from a quote in an effort avoid mischaracterization or misrepresentation,<sup>10</sup> has properly been relied upon to come to this conclusion.<sup>11</sup> That SPO submissions regarding the general climate of witness interference apply to multiple Accused is not 'telling'<sup>12</sup> in any meaningful sense, rather it is only logical.

6. Krasniqi's argument that the evidence elicited from the first 11 witness does does not support his characterisation as a person likely to interfere with witness or commit further crime<sup>13</sup> represents a wilful disregard for how this case is charged. The

---

<sup>6</sup> Ninth Detention Decision, KSC-BC-2020-06/F01530, para.21.

<sup>7</sup> Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, IA002/F00005, 30 April 2021, confidential, paras 50, 62; Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention, IA006/F00005, 1 October 2021, confidential, para.30.

<sup>8</sup> See Ninth Detention Decision, KSC-BC-2020-06/F01530, para.21.

<sup>9</sup> Ninth Detention Decision, KSC-BC-2020-06/F01530, para.23.

<sup>10</sup> See Response, KSC-BC-2020-06/F01649, para.7.

<sup>11</sup> The referenced representations of the Veseli Defence (Response, KSC-BC-2020-06/F01649, para.7 citing Veseli Defence Response to Prosecution Submissions on Veseli Detention Review (KSC-BC-2020-06/F00790) with Confidential Annex 1, KSC-BC-2020-06/F00800, 12 May 2022, confidential) do not engage with the quote at issue, and were also found to be unpersuasive in the larger analysis (Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00819, 26 May 2022, paras 29-35).

<sup>12</sup> See Response, KSC-BC-2020-06/F01649, para.7.

<sup>13</sup> Response, KSC-BC-2020-06/F01649, para.9.

Court of Appeals has made clear that the existence of direct or personal perpetration is not dispositive as to whether the relevant crimes against humanity and war crimes were committed pursuant to the modes of liability charged in this case.<sup>14</sup> With that understanding, Krasniqi's motivation to intimidate protected witnesses in this case, even if they do not identify him as a direct perpetrator of crimes, is not as difficult to understand as he suggests.<sup>15</sup> The early witnesses in this trial have also further testified to the climate of witness intimidation in Kosovo, particularly W04748's testimony on the murder of Hasan Rrustemi and the desecration of his body.<sup>16</sup>

#### B. THE PROPOSED CONDITIONS

7. Krasniqi's contention that his proposed conditions of release go further than any previously suggested<sup>17</sup> is incorrect<sup>18</sup> and ignores the unambiguous conclusion of the Panel that, even after consideration of 'all reasonable alternative measures that could be imposed and not only those raised by the Krasniqi Defence or the SPO'<sup>19</sup>, the 'risks of obstructing the proceedings and committing further offences can only be effectively managed at this stage of the proceedings if [Krasniqi] remains at the SC's detention facilities', and 'there are no alternatives to [Krasniqi's] continued detention capable of adequately averting the risks in Article 41(6)(b)(ii) and (iii)'<sup>20</sup>. Therefore, this Panel has already necessarily considered and rejected the conditions proposed by Krasniqi, including a short, temporary release.

---

<sup>14</sup> Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004, paras 22-24.

<sup>15</sup> See Response, KSC-BC-2020-06/F01649, para.9.

<sup>16</sup> Transcript (Trial Proceedings), 11 May 2023, p.3559-60.

<sup>17</sup> Response, KSC-BC-2020-06/F01649, para.9.

<sup>18</sup> See Krasniqi Defence Response to Prosecution Submissions Pertaining Periodic Detention Review of Jakup Krasniqi, KSC-BC-2020-06/F01340, 3 March 2023, para.15, stating that Krasniqi is 'willing to abide by any conditions laid down by the Trial Panel'.

<sup>19</sup> Ninth Detention Decision, KSC-BC-2020-06/F01530, para.32.

<sup>20</sup> Ninth Detention Decision, KSC-BC-2020-06/F01530, para.35.

### C. PROPORTIONALITY

8. Krasniqi's assertion that detention until the end of trial is disproportionate,<sup>21</sup> is premature and ignores the Panel's repeatedly expressed sensitivity to this issue. Each decision of the Panel extends detention for only a period of a further two months, expressly notes that detention has already existed for 'a significant amount of time', and commits to 'continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable'.<sup>22</sup> It would be contrary to the relevant law and basic logic to decide whether detention is justified for the next sixty days on the basis of things that may or may not happen years in the future.

9. Regarding the submissions made on Krasniqi's health,<sup>23</sup> the Rules of Detention guarantee that he enjoys at least the same standards of health care as are available in the Host State.<sup>24</sup>

10. As to Krasniqi's request for additional visits during the summer recess,<sup>25</sup> this amounts to a complaint regarding conditions of detention of general applicability to all Detainees,<sup>26</sup> which must generally be raised to the Chief Detention Officer<sup>27</sup> and the Registrar<sup>28</sup> before it can be raised to the Competent Panel.<sup>29</sup>

### III. CLASSIFICATION

11. This filing is submitted confidentially pursuant to Rule 82(4), however the SPO does not object to its reclassification as public.

---

<sup>21</sup> Response, KSC-BC-2020-06/F01649, para.14.

<sup>22</sup> See Ninth Detention Decision, KSC-BC-2020-06/F01530, paras 38-39; Eighth Detention Decision, KSC-BC-2020-06/F01382, paras 43-44; Seventh Detention Decision, KSC-BC-2020-06/F01212, 17, paras 45-46.

<sup>23</sup> Response, KSC-BC-2020-06/F01649, para.10.

<sup>24</sup> Rules of Detention, KSC-BD-08-Rev1, 23 September 2020, Rule 30(2).

<sup>25</sup> Response, KSC-BC-2020-06/F01649, para.15.

<sup>26</sup> Practice Direction on Complaints, KSC-BD-11-Rev1, 23 September 2020 ('PD on Complaints'), art.6(1).

<sup>27</sup> PD on Complaints, KSC-BD-11-Rev1, art.6.

<sup>28</sup> PD on Complaints, KSC-BD-11-Rev1, art.7.

<sup>29</sup> PD on Complaints, KSC-BD-11-Rev1, art.9.

IV. RELIEF REQUESTED

12. For the foregoing reasons, the Trial Panel should reject the Response and extend Krasniqi's detention.

**Word count: 1266**



**Alex Whiting**

**Acting Specialist Prosecutor**

Friday, 14 July 2023

At The Hague, the Netherlands.