

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 Submissions on

Detention Review (F01626), KSC-BC-2020-06/F01649, dated 6 July 2023

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I. INTRODUCTION

1. Pursuant to the permission granted by the Trial Panel,¹ the Defence for Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s (“Prosecution”) submissions supporting Mr. Krasniqi’s ongoing detention.²

2. The Defence requests the Trial Panel to authorise Mr. Krasniqi’s interim release for a period of two weeks, to allow him to spend part of the recess in Kosovo with his family, pursuant to Article 41(6) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“the Law”) and Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”).

3. Mr. Krasniqi has now been in detention for 2 years and 8 months. Throughout this time, the Prosecution has relied upon assertions about the nature and existence of the so-called ‘climate of intimidation’ that allegedly exists in Kosovo, using it as a tool to justify the ongoing detention of the Accused and to sustain an overextended protective measures regime. Given the time that he has already spent away from his family, the Defence submits that the available evidence about the need for detention – much of which is now well over two years old – is no longer sufficient to justify denying conditional release for a limited period of time, in the individual circumstances of Mr. Krasniqi, under close supervision [REDACTED], and with additional conditions to facilitate Mr. Krasniqi’s time with his family.

II. SUBMISSIONS

¹ KSC-BC-2020-06, F01530, Trial Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“17 May Decision”), 17 May 2023, confidential.

² KSC-BC-2020-06, F01626, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 26 June 2023, public (“Prosecution Submission”).

4. At the outset, the Defence continues to emphasise that detention is the exception, rather than the rule.³ However, at the Kosovo Specialist Chambers, the approach appears to be exactly the opposite. Mr. Krasniqi is now 72 years old and has been detained for two years and eight months, with each two monthly detention review reciting the same evidence as justification for what is on any view already a lengthy period of imprisonment. This case is proceeding much more slowly than has been promised by the Prosecution in the past,⁴ or anticipated by the Trial Panel.⁵ The amount of time that Mr. Krasniqi has already spent in detention is highly relevant to this detention review. The more months an Accused person spends in detention, the greater the burden on the Prosecution to establish that the risks identified under Article 41(6)(b) do in fact continue to exist, and are sufficient to warrant the ongoing confinement of a man entitled to the presumption of innocence⁶ and to be tried within a reasonable time.⁷

5. Part of the test to determine whether the ongoing detention of an accused is justified, places a burden on the Prosecution to establish that the detention is necessary. Article 41(6)(b) lays out three bases on which detention may be considered necessary: there must be a risk of flight; a risk of obstruction of the proceedings; and a risk of further commission of the crimes. These grounds must be “articulable”,

³ Section III of the Rules governs the rules of detention at the Kosovo Specialist Chambers. *See also* KSC-BC-2020-07, IA001-F00004, Gucati Defence, *Appellant Reply to Prosecution Response*, 18 November 2020, public, para. 16.

⁴ *See* KSC-BC-2020-06, F00097, Specialist Prosecutor, *Prosecution Submissions Further to the Status Conference of 18 November 2020*, 23 November 2020, public, para. 14, in which the Prosecution submitted that this trial could begin in summer “or no later than September 2021.”

⁵ KSC-BC-2020-06, *Trial Hearing*, 15 July 2023, p. 4982, lines 5-17.

⁶ Article 21(3).

⁷ Article 21(4)(d).

meaning that they “must be specified in detail by reference to the relevant information or evidence.”⁸ The standard requires more than the mere possibility of a risk arising.⁹

6. Mr. Krasniqi does not pose a flight risk. The Prosecution’s submissions related to Mr. Krasniqi’s perceived state of mind are in fact not articulable grounds at all, but a vague projection of his supposedly “fuller knowledge of the case against him.”¹⁰ Recent decisions by the Trial Panel show that Mr. Krasniqi is, in fact, not considered to be a flight risk, and has not been for some time.¹¹ Nor does an enhanced knowledge of the case against him carry anything other than, according to the Trial Panel, a “limited weight” in assessing these risks.¹²

7. The Prosecution’s submissions supporting Mr. Krasniqi’s risk of obstructing proceedings and committing further crime rests on a combination of evidence that has been found to lack weight and probative value,¹³ and materials that are, at this stage, over two years old.¹⁴ It is telling that the Prosecution’s most recent submissions to substantiate Mr. Krasniqi’s risk of obstruction are an almost facsimile of not only its previous submissions related to Mr. Krasniqi, but also of those related to the other Accused in this case. In relation to these factors, the Defence maintains its previous submissions that: the oft-referenced Facebook posts written by Mr. Krasniqi in 2020, are not sufficient evidence to suggest that Mr. Krasniqi will, at this stage, obstruct

⁸ 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”.

⁹ KSC-BC-2020-06, F01212, Trial Panel II, *Decision on Periodic Detention Review of Jakup Krasniqi* (“Trial Panel Decision”), 17 January 2023, confidential, para. 15.

¹⁰ Prosecution Submission, para. 10.

¹¹ 17 May Decision, paras 14-17; F01382, Trial Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 March 2023, confidential, paras 14-19.

¹² Trial Panel Decision, para. 18.

¹³ The Prosecution has submitted two pieces of independent ‘evidence’ in its February and April 2023 submissions. The former, a publication in the *Skenderaj Press* which bore no relation to Mr. Krasniqi, and a Kosovo TV show, which the Trial Panel was not satisfied, absent further information, actually added to the climate of witness interference. See 17 May Decision, para. 23.

¹⁴ Prosecution Submission, paras 12-13.

proceedings;¹⁵ Mr. Krasniqi's public statements are an exercise of free speech and not sufficient on their own to indicate a propensity towards witness interference;¹⁶ and the Prosecution's strategic use of the testimony of Robert Reid, mischaracterises and misrepresents past instances of so-called witness interference.¹⁷

8. However, now that two years and eight months of detention have elapsed, the same factors are no longer sufficient to justify ongoing detention and the Trial Panel should review the position in the light of developments since trial opened. First, at a status conference convened by the Panel to address issues of publicity, the Prosecution was forced to concede that it was unaware of any incidents in which witnesses had been intimidated after giving evidence.¹⁸ No concrete evidence has been tendered that any witness has been intimidated prior to testimony either, still less by any individual linked in any way to Mr. Krasniqi. The absence of any actual evidence that Mr. Krasniqi has been involved in any witness intimidation in these proceedings is telling and calls into question the need for ongoing detention.

9. Second, Mr. Krasniqi's awareness of the progress of the case over the past four months in fact *decreases* the likelihood of him engaging in any prohibited activity. The Prosecution has now called its first 11 witnesses. None have spoken badly of Mr. Krasniqi. [REDACTED].¹⁹ The evidence that the Panel has heard does not support the characterisation of Mr. Krasniqi as a person likely to interfere with witness or commit further crime. Moreover, it is difficult to understand what the Prosecution imagines would be Mr. Krasniqi's motivation to intimidate the protected victim witnesses in this case – the vast majority of whom, as the Trial Panel will have observed, make no

¹⁵ KSC-BC-2020-06, F01181, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, confidential.

¹⁶ KSC-BC-2020-06, IA0002-F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Jakup Krasniqi's Application for Interim Release*, 3 February 2021, confidential, paras 21-25.

¹⁷ KSC-BC-2020-06-F00800, Veseli Defence, *Veseli Defence Response to Prosecution Submissions on Veseli Detention Review (KSC-BC-2020-06/F00790) with Confidential Annex 1*, 12 May 2022, confidential.

¹⁸ KSC-BC-2020-06, *Trial Hearing*, 20 June 2023, p. 5233, line 25 – p. 5234, line 16.

¹⁹ [REDACTED]

mention of Mr. Krasniqi at all or say merely that they knew that he was the spokesperson of the KLA.

10. Third, the Panel now has some observed experience of the effect of prolonged detention and trial upon Mr. Krasniqi. At 72 years old, he is significantly older than other Accused in this case. [REDACTED].²⁰

11. Accordingly, the Defence submit that at this point in time – two years and 8 months after his initial detention – any risks identified are no longer sufficiently likely to justify ongoing detention.

12. Finally, even if the Panel is satisfied that the necessity of ongoing detention has been established, the Defence respectfully requests the Trial Panel to consider a short-term conditional release for Mr. Krasniqi²¹ over the court recess,²² subject to the following conditions:

- a. Release for a period of approximately two weeks;
- b. Mr. Krasniqi would reside [REDACTED];
- c. Mr. Krasniqi would be limited to contact [REDACTED];
- d. Anyone residing with Mr. Krasniqi [REDACTED];
- e. [REDACTED].²³

²⁰ [REDACTED]

²¹ Pursuant to Rule 56(3) and (5) of the Rules, the Panel may order the release of a detained person “subject to such conditions as deemed appropriate to ensure the[ir] presence.”

²² ICTY, *Prlić et al.* (IT-04-74), *Decision on Prosecution’s Appeal against the Trial Chamber’s Decision on Slobodan Praljak’s Motion for Provisional Release*, 8 July 2009, para. 10.

²³ [REDACTED].

13. The combination of these measures goes further than any previously suggested by the Defence. [REDACTED]. The result is that the breadth and scope of these restrictions comes as close as possible to mirroring the regime at the Detention Unit. It is highly improbable that anyone in this small group of people, aware of the possibility of communications being monitored and the effect that any transgression would have on future interim release applications, would attempt to breach any stipulations laid down by the Panel. Moreover, the Defence maintains that the short period of release sought makes it more likely for such measures to be effective. The limited period provides less opportunity to breach the conditions and it is easier to enforce rules intensely over a shorter period of time.

14. Finally, the Defence does not concede that ongoing detention is proportionate. Mr. Krasniqi has been in detention for 2 years and 8 months. Assuming that the Prosecution closes its case in line with the current target of April 2025, Mr. Krasniqi will have been in detention for 4 years and 4 months before the conclusion of the Prosecution case – and likely to be five years by the time that evidential proceedings are concluded. This is disproportionate especially in the light of his advanced age.

15. In the alternative, the Defence requests that, should interim release be denied, Mr. Krasniqi be permitted additional private visits to the Detention Unit during the summer recess.²⁴ This would allow for the preservation of existing monitoring conditions, while also allowing Mr. Krasniqi to have valuable additional time with his family over the recess period.

²⁴ Private visits to detainees are limited to ten (10) calendar days per month, per *Detention Management Unit Instruction: Visiting Procedures for Family Members and Other Personal Visitors*, 21 September 2020, Section 11(1).

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