



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 ninth review of Mr Krasniqi’s detention on 17 May 2023 (“Ninth Detention Decision”)² include the following.
2. On 26 June 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the tenth review of Mr Krasniqi’s detention (“SPO Submissions”).³
3. On 6 July 2023, the Defence for Mr Krasniqi (“Krasniqi Defence”) responded to the SPO Submissions (“Response”).⁴
4. On 14 July 2023, the SPO replied to the Response (“Reply”).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 F01530, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 May 2023, confidential (a public redacted version was issued on 22 May 2023, F01530/RED).

³ F01626, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 26 June 2023.

⁴ F01649, Specialist Counsel, *Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01626)*, 6 July 2023, confidential.

⁵ F01674, Specialist Prosecutor, *Prosecution Reply to Krasniqi Defence Response to Prosecution Submissions on Detention Review*, 14 July 2023, confidential.

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 Ninth Detention Decision, Mr Krasniqi's detention remains necessary and reasonable; and (ii) the continued progression 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.⁷

6. The Krasniqi Defence requests the Panel to authorise Mr Krasniqi's interim release, subject to certain conditions, for a period of two weeks over the summer court recess ("Recess"), to allow him to spend time in Kosovo with his family ("Request for Release").⁸ It argues that the available evidence about the need for detention is no longer sufficient to justify denying Mr Krasniqi's conditional release for a limited period of time.⁹ In the alternative, the Krasniqi Defence requests that Mr Krasniqi be permitted additional private visits in the detention facilities of the Specialist Chambers ("SC" and "SC Detention Facilities") during Recess ("Request for Additional Visits").¹⁰

7. The SPO replies that the Response should be rejected and Mr Krasniqi's detention extended.¹¹ It submits that: (i) the Response selectively ignores inconvenient facts and wilfully misapprehends relevant concepts; and (ii) the submissions contained in the Response have already largely been addressed and rejected by multiple panels of the SC.¹²

⁶ SPO Submissions, para. 32.

⁷ SPO Submissions, paras 1, 7.

⁸ Response, paras 2, 12.

⁹ Response, paras 3-4, 11.

¹⁰ Response, para. 15.

¹¹ Reply, paras 1, 12.

¹² Reply, para. 1.

III. APPLICABLE LAW

8. 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.¹³ The Panel will apply these standards to the present decision.

IV. PERIODIC REVIEW OF DETENTION

9. 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.¹⁴ A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.¹⁵

A. ARTICLE 41 CRITERIA

i. Grounded Suspicion

10. 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.¹⁶

11. The SPO argues that – absent any change in circumstances since the decision confirming the indictment (“First Confirmation Decision”),¹⁷ the decision

¹³ See e.g. Sixth Detention Decision, paras 18-21.

¹⁴ 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).

¹⁵ 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).

¹⁶ See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹⁷ 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”)¹⁸ and the Ninth Detention Decision – there remains a grounded suspicion that Mr Krasniqi has committed a crime within the SC’s jurisdiction.¹⁹ The Krasniqi Defence does not make specific submissions on this point.

12. 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).²⁰ 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.²¹ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).²²

¹⁸ 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.

¹⁹ SPO Submissions, para. 8 (with further references).

²⁰ First Confirmation Decision, para. 521(a). *See also e.g.* Ninth Detention Decision, para. 11; F01382, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Eighth Detention Decision”), 17 March 2023, para. 11 (a public redacted version was issued on 20 March 2023, F01382/RED); F01212, Panel, *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).

²¹ Second Confirmation Decision, para. 183. *See also* Ninth Detention Decision, para. 11; 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.

²² *See e.g.* IA008/F00004, Court of Appeals Panel, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention* (“Appeals Decision on Veseli’s Detention”), 1 October 2021, confidential, para. 21 (a public redacted version was issued on the same day, IA008/F00004/RED).

13. 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

14. 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.²³ Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.²⁴ “Articulable” in this context means specified in detail by reference to the relevant information or evidence.²⁵ 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.²⁶

a) Risk of Flight

15. 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.²⁷ In the SPO’s view, the fact that

²³ 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.

²⁴ 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).

²⁵ 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”.

²⁶ First Appeals Decision on Thaçi’s Detention, para. 22.

²⁷ SPO Submissions, para. 10.

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 with the continuation of trial.²⁸

16. The Krasniqi Defence submits that Mr Krasniqi does not pose a flight risk and that the SPO failed to demonstrate articulable grounds in this respect.²⁹

17. The SPO does not reply in this regard.

18. 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”³⁰ that Mr Krasniqi will abscond if released.³¹

19. 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.³²

20. While the risk of flight can never be completely ruled out,³³ 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

21. With reference to previous findings by various Panels, the SPO submits that Mr Krasniqi continues to present a risk of obstructing proceedings.³⁴ According to

²⁸ SPO Submissions, para. 10, 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.

²⁹ Response, para. 6.

³⁰ See e.g. First Appeals Decision on Thaçi’s Detention, para. 24.

³¹ See Ninth Detention Decision, paras 15, 17.

³² Ninth Detention Decision, para. 16; Eighth Detention Decision, para. 18; Seventh Detention Decision, para. 18 and fn. 30.

³³ See Ninth Detention Decision, para. 17; Eighth Detention Decision, para. 19; Seventh Detention Decision, paras 18-19.

³⁴ SPO Submissions, paras 11-17 (with further references).

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 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

22. The Krasniqi Defence avers that the SPO's submissions with respect to the risk of obstruction rest on a combination of evidence that has been found by the Panel to lack weight and probative value, and on material that is over two years old.³⁷ It maintains its previous submissions regarding the factors relied upon by the SPO, which, in the Krasniqi Defence's view, are insufficient to justify his ongoing detention.³⁸ In particular, the Krasniqi Defence avers that there is no evidence that any witness has been intimidated prior to or after testifying, let alone by any individual linked in any way to Mr Krasniqi.³⁹ Furthermore, the Krasniqi Defence contends that Mr Krasniqi's awareness of the progress of the case over the past four months decreases the likelihood of him engaging in any prohibited activity, particularly as the evidence heard thus far does not support the characterisation of Mr Krasniqi as a person likely to interfere with witnesses or commit further crimes.⁴⁰

23. In its Reply, the SPO submits that the Krasniqi Defence's contention that the underlying basis establishing a risk of obstruction somehow lacks value because it is over two years old, misapprehends the rationale of the relevant detention framework.⁴¹ It further takes issue with the Krasniqi Defence's arguments relating

³⁵ SPO Submissions, paras 15-17.

³⁶ SPO Submissions, para. 14 (with further references).

³⁷ Response, para. 7.

³⁸ Response, para. 7.

³⁹ Response, para. 8.

⁴⁰ Response, para. 9.

⁴¹ Reply, para. 2.

to the purported absence or deficiency of concrete evidence of witness intimidation and relevant conduct specific to Mr Krasniqi.⁴²

24. 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.⁴³

25. 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”.⁴⁴ Furthermore, the Court of Appeals has confirmed that: (i) there are indications that Mr Krasniqi is, at least, predisposed to witness intimidation, [REDACTED];⁴⁵ and (ii) in assessing whether there is a risk that Mr Krasniqi will obstruct the proceedings if released, it was not unreasonable to

⁴² Reply, paras 3-6.

⁴³ See Ninth Detention Decision, para. 20; 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, Panel, *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, Panel, *Decision on Periodic Review of Detention of Kadri Veseli*, 17 February 2023, para. 23.

⁴⁴ See e.g. Ninth Detention Decision, para. 21; Eighth Detention Decision, para. 24; Seventh Detention Decision, paras 22-24; Sixth Detention Decision, para. 34; Fifth Detention Decision, para. 33.

⁴⁵ 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* (“Second Appeals Decision on Krasniqi's Detention”), 1 October 2021, confidential, para. 30 (a public redacted version was issued on the same day, IA006/F00005/RED).

take into account, among other factors, Mr Krasniqi's public statements criticising the SC or the Facebook post of 24 April 2020.⁴⁶

26. 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,⁴⁷ and will therefore become known to a broader range of people, including to Mr Krasniqi. The Panel maintains its view that 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.⁴⁸ Accordingly, the respective submissions by the Krasniqi Defence⁴⁹ are rejected.

27. Furthermore, with regard to the Krasniqi Defence's submissions on the alleged absence of any witness intimidation,⁵⁰ 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.⁵¹

28. In light of the above, the Panel concludes that the risk that Mr Krasniqi will obstruct the progress of SC proceedings continues to exist.

⁴⁶ First Appeals Decision on Krasniqi's Detention, para. 50.

⁴⁷ See Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 25.

⁴⁸ See Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 25; Seventh Detention Decision, para. 25.

⁴⁹ Response, paras 7, 9.

⁵⁰ Response, para. 8.

⁵¹ See Ninth Detention Decision, para. 23; Eighth Detention Decision, para. 26, referring to *Mustafa* Trial Judgment, para. 57.

c) Risk of Committing Further Crimes

29. With reference to the Panel's findings in the Ninth Detention Decision,⁵² the SPO submits that Mr Krasniqi continues to present a risk of committing further crimes.⁵³ According to the SPO, the Panel's conclusion that the continuing disclosure of sensitive information presented an unacceptable risk for the commission of further crimes has taken on additional significance in light of the continuing progress of the trial.⁵⁴ 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.⁵⁵

30. The Krasniqi Defence's submissions with respect to the risk of committing further crimes are generally identical to those summarised in paragraph 22 above relating to the risk of obstruction of proceedings.⁵⁶ Furthermore, the Krasniqi Defence argues that Mr Krasniqi's advanced age and health condition militate against the risk of him committing further crimes.⁵⁷

31. The SPO's submissions in the Reply with respect to the risk of committing further crimes are generally identical to those summarised in paragraph 23 above relating to the risk of obstruction.

32. The Panel recalls its finding in the Ninth Detention Decision that the risk of Mr Krasniqi committing further crimes continues to exist.⁵⁸ The Panel finds that

⁵² Ninth Detention Decision, paras 27-29.

⁵³ SPO Submissions, paras 18-22.

⁵⁴ SPO Submissions, para. 22.

⁵⁵ SPO Submissions, para. 20.

⁵⁶ See Response, paras 7-9.

⁵⁷ Response, para. 10.

⁵⁸ Ninth Detention Decision, para. 29.

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.⁵⁹ 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.

33. 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.

34. 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

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

B. MEASURES ALTERNATIVE TO DETENTION

36. 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 Detention Facilities; (ii) nothing has occurred since the Ninth Detention

⁵⁹ See above, paras 25-27; Ninth Detention Decision, para. 27.

Decision warranting a different assessment on conditions, either generally or for a discrete period of time; and (iii) rather, the continuation of trial and attendant further disclosure make the underlying risks higher than ever.⁶⁰

37. In the context of its Request for Release, the Krasniqi Defence proposes the following conditions:

- a) Release for a period of approximately two weeks;
- b) Mr Krasniqi would reside in his home in [REDACTED], where he would be able to isolate from neighbours;
- c) Contact would be limited to Mr Krasniqi's immediate family, who would reside with him in [REDACTED];
- d) Anyone residing with Mr Krasniqi in [REDACTED] would voluntarily relinquish any and all communication devices; and
- e) Mr Krasniqi would adhere to the additional restrictions set out by the Kosovo Police, which would replicate the degree of monitoring in the SC Detention Facilities as closely as possible and mitigate the risk of obstruction of proceedings, as previously guaranteed by the Kosovo Police and discussed by the Defence.⁶¹

38. The Krasniqi Defence avers that: (i) the combination of these measures goes further than any measures it previously suggested; (ii) the breadth and scope of these restrictions come as close as possible to mirroring the regime at the SC Detention Facilities; and (iii) the short period of release sought and the small group of people that would reside with Mr Krasniqi in [REDACTED] make the measures more likely to be effective and easier to be enforced, and render any breach of any stipulations laid down by the Panel highly improbable.⁶²

⁶⁰ SPO Submissions, paras 23-27, referring to Ninth Detention Decision, paras 33-35.

⁶¹ Response, para. 12, referring to F00548/eng, Court Management Unit, Answer to the Request Number KSC-BC-2020-06, dated 13 October 2021, 3 November 2021, confidential, and F00568, Specialist Counsel, Krasniqi Defence Observations on Kosovo Police Submissions, 12 November 2021, confidential.

⁶² Response, para. 13.

39. The SPO replies that the Krasniqi Defence's assertion that the proposed conditions go further than any conditions previously suggested is incorrect and ignores the Panel's respective conclusions.⁶³

40. 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).⁶⁴ 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).⁶⁵ 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.⁶⁶

41. As regards the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel has repeatedly held that:

- a) 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,⁶⁷

⁶³ Reply, para. 7.

⁶⁴ 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*.

⁶⁵ 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*.

⁶⁶ 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.

⁶⁷ See Ninth Detention Decision, para. 33; 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* ("Fourth Appeals Decision on

- b) The measures in place at the SC 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;⁶⁸ and
- c) That it is only through the communication monitoring framework applicable at the SC 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.⁶⁹

42. With respect to the limited duration of release requested by the Krasniqi Defence, the Panel has already determined that the temporally limited nature of the release (two weeks) would not alter the Panel's conclusion that it is only through the communication monitoring applicable at the SC Detention Facilities that Mr Krasniqi's communications can be restricted in a manner which would sufficiently mitigate the risks of obstruction and commission of further crimes.⁷⁰

43. The Panel further notes that the Krasniqi Defence also proposes that: (i) Mr Krasniqi would reside, for the limited duration of release, in his home in [REDACTED], where he would be able to isolate from neighbours; (ii) contact would be limited to his immediate family, who would reside with him at that

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

⁶⁸ See Ninth Detention Decision, para. 33; 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* ("Third Appeals Decision on Krasniqi's Detention"), 25 March 2022, confidential, para. 30 (a public redacted version was issued on the same day, IA016/F00005/RED).

⁶⁹ See Ninth Detention Decision, para. 34; 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.

⁷⁰ Eighth Detention Decision, para. 38. See also Seventh Detention Decision, para. 39.

location; and (iii) anyone residing with him at that location would voluntarily relinquish any and all communication devices.⁷¹

44. The Panel observes, at the outset, that the Krasniqi Defence did not indicate how many persons his 'immediate family' would comprise nor did it provide any details that would buttress its submissions that: (i) in his home in [REDACTED], Mr Krasniqi would be able to isolate from neighbours; and (ii) anyone residing with him at that location would voluntarily relinquish any and all communication devices. Even if: (i) the numbers of persons residing with Mr Krasniqi would be very low; (ii) the residence were sufficiently isolated from neighbours; and (iii) anyone residing with Mr Krasniqi would voluntarily relinquish any and all communication devices, the Panel recalls the finding by the Court of Appeals Panel that the permanent presence of the Accused's close family members at his residence, and their unlimited and unmonitored access to the Accused, are not comparable to the limited, yet regular, visits the Accused receives from them in the controlled, high-security environment of the SC Detention Facilities.⁷² While Mr Krasniqi has the possibility of having unmonitored communications at the SC Detention Facilities, these are strictly regulated and subject to safeguards limiting the risk of improper passing of information.⁷³

45. In addition, the Registry is in the unique position of managing and administering the SC Detention Facilities and has access to the relevant information and a detailed understanding of the reasons giving rise to the need to implement measures to protect witnesses, victims and others at risk on account of testimony given by witnesses in the present case.⁷⁴ In contrast, the Kosovo Police:

⁷¹ Response, para. 12.

⁷² Fourth Appeals Decision on Krasniqi's Detention, para. 30 (with further references).

⁷³ Fourth Detention Decision, para. 69; F00582, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi* ("Third Detention Decision"), 26 November 2021, confidential, para. 71 (a public redacted version was issued on 8 December 2021, F00582/RED); Fourth Appeals Decision on Krasniqi's Detention, para. 30; Appeals Decision on Veseli's Detention, fn. 95.

⁷⁴ See also Third Detention Decision, para. 72.

(i) do not and cannot have access to all relevant information pertaining to witnesses, victims and others at risk on account of testimony given by witnesses in the present case; and (ii) in the absence of such information, the Kosovo Police are not in a position to clearly evaluate the risks involved and to ensure a degree of protection comparable to detention at the SC Detention Facilities, particularly with respect to confidential information potentially exchanged.⁷⁵

46. Therefore, even if the interior of Mr Krasniqi's residence were monitored during the period of interim release, this would, outside the controlled environment of the SC Detention Facilities, still leave considerable opportunities for unmonitored forms of communications, including for the purposes of obstructing SC proceedings or committing further crimes.⁷⁶ Moreover, even if instances of (potential) breaches were detected and promptly reported by the Kosovo Police to the Registry, adding a further step in the reporting cycle, involving institutions outside the SC, and the inevitable time lapse caused thereby, would offer additional opportunities for passing on information.⁷⁷

47. In light of the above, the Panel considers that the conditions proposed in the Response could not adequately prevent Mr Krasniqi from passing on confidential information and/or from asking a family member to pass on a message orally or

⁷⁵ Fourth Appeals Decision on Krasniqi's Detention, para. 35; Third Appeals Decision on Krasniqi's Detention, paras 31-32. *See also* Third Detention Decision, para. 74.

⁷⁶ *See also* Fourth Detention Decision para. 68; Third Detention Decision, para. 74; F00371, Pre-Trial Judge, *Decision on Review of Detention of Jakup Krasniqi* ("Second Detention Decision"), 25 June 2021, confidential, para. 52 (a public redacted version was issued on 30 June 2021, F00371/RED); Fourth Appeals Decision on Krasniqi's Detention paras 33-34 (also with respect to the feasibility of live monitoring by a Registry official of communications with family members); Third Appeals Decision on Krasniqi's Detention, para. 28.

⁷⁷ *See also* Fourth Detention Decision, para. 68; Fourth Appeals Decision on Krasniqi's Detention, para. 35 (*see also* para. 34 on the feasibility of live monitoring by a Registry official); Third Appeals Decision on Krasniqi's Detention, para. 32.

transmit covert messages for the purposes of obstructing SC proceedings or committing further crimes.⁷⁸

48. In light of the above, the Panel maintains its view that neither the conditions proposed by the Defence, nor any additional measures foreseen in Article 41(12), ordered *proprio motu*, could at this stage in the proceedings sufficiently, and to a degree comparable to that of detention at the SC Detention Facilities, mitigate the existing risks with respect to Mr Krasniqi.

49. In light of the foregoing, the Panel remains persuaded of the conclusions previously reached, as summarised in paragraph 41 above, and 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 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), either generally or for a discrete period of time.

C. REASONABLENESS OF DETENTION

50. The SPO argues that, taking all factors into consideration, Mr Krasniqi's detention remains proportional.⁷⁹ 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

⁷⁸ See also Fourth Detention Decision, para. 66; Third Detention Decision, para. 70; Second Detention Decision, para. 52; Second Appeals Decision on Krasniqi's Detention, paras 52-53; Fourth Appeals Decision on Krasniqi's Detention, para. 29.

⁷⁹ SPO Submissions, paras 28-31.

climate of witness intimidation exists as outlined above; and (vi) progress continues to be made in the case.⁸⁰

51. The Krasniqi Defence contests the proportionality of Mr Krasniqi's ongoing detention, arguing that it is likely that he will have spent five years in detention by the time that the evidentiary proceedings are concluded in this case, and that his advanced age and health condition also militate against the reasonableness of detention.⁸¹

52. The SPO replies that the Krasniqi Defence's assertion that detention until the end of trial is disproportionate is premature and ignores the Panel's repeatedly expressed sensitivity to this issue.⁸² With respect to the health-related submissions, the SPO avers that the Rules of Detention⁸³ guarantee that Mr Krasniqi enjoys at least the same standards of health care as are available in the host state.⁸⁴

53. 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.⁸⁵ 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;⁸⁶ (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;⁸⁷ (iv) the case against Mr Krasniqi is

⁸⁰ SPO Submissions, para. 29. *See also* SPO Submissions, para. 30.

⁸¹ Response, paras 10, 14.

⁸² Reply, para. 8.

⁸³ KSC-BD-08-Rev1/2020, *Registry Practice Direction on Rules of Detention* ("Rules of Detention"), 23 September 2020.

⁸⁴ Reply, para. 9.

⁸⁵ Ninth Detention Decision, para. 37; Eighth Detention Decision, para. 42; Seventh Detention Decision, para. 43.

⁸⁶ 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).

⁸⁷ *See above*, paras 41-49.

complex;⁸⁸ (v) the climate of witness intimidation outlined above; and (vi) the fact that the trial has commenced.

54. 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.

55. Mindful that age is among the factors to be taken into account under Article 3 of the European Convention on Human Rights and Fundamental Freedoms in assessing a person's suitability for detention,⁸⁹ the Panel is satisfied that Mr Krasniqi's health and well-being are currently adequately secured in the SC Detention Facilities and that Mr Krasniqi's age does not render, at this stage of the proceedings, his detention disproportionate.

56. 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,⁹⁰ 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.

V. REQUEST FOR ADDITIONAL VISITS

57. With respect to the Request for Additional Visits, the Krasniqi Defence argues that this would allow for the preservation of existing monitoring conditions, while also allowing Mr Krasniqi to have valuable additional time with his family during Recess.⁹¹

⁸⁸ See e.g. Sixth Detention Decision, para. 59; Fifth Detention Decision, para. 58; Fourth Detention Decision, para. 81.

⁸⁹ See also Fifth Detention Decision, para. 62; Fourth Detention Decision, para. 83; ECtHR, *Mouisel v. France*, no. 67263/01, [Judgment](#), 14 November 2002, para. 38.

⁹⁰ See e.g. Ninth Detention Decision, para. 39; Eighth Detention Decision, para. 44; Seventh Detention Decision, para. 46.

⁹¹ Response, para. 15.

58. The SPO replies that this request amounts to a complaint regarding conditions of detention of general applicability to all detainees, which must generally be raised to the Chief Detention Officer of the Registry's Detention Management Unit ("Chief Detention Officer") and the Registry, before it can be raised to the competent panel.⁹²

59. The Panel notes that the Krasniqi Defence has not provided a basis on which the Panel would be authorised to intervene at this point in respect of its Request for Additional Visits. The Panel observes that: (i) the Registrar bears primary responsibility for managing and administering the detention function and facilities for the SC;⁹³ (ii) all decisions concerning the daily management of the Detention Facilities are first taken by the Chief Detention Officer;⁹⁴ and (iii) visits to the Detention Facilities – including who may visit, when such visits take place, and any restrictions on visits – are generally managed by the Chief Detention Officer.⁹⁵ As noted in the SPO's Reply, the Panel finds that it does not appear that Mr Krasniqi has requested additional visits from the authorities that are primarily competent in this respect.

60. In light of the above, the Panel rejects the Request for Additional Visits.

VI. CLASSIFICATION

61. Noting that the Response was filed confidentially, the Panel orders the Krasniqi Defence to file a public redacted version of the Response by Monday, 24 July 2023. The Panel takes note of the SPO's indication that it does not object to

⁹² Reply, para. 10.

⁹³ Article 34(12) of the Law. *See also* Articles 3(5) and 41(7) and (8) of the Law; Detention Rule 4 of the Rules of Detention.

⁹⁴ Detention Rule 4(1) and (3) of the Rules of Detention.

⁹⁵ *See* KSC-BD-09/Rev1/2020, *Registry Practice Direction on Detainees: Visits and Communications*, 23 September 2020, Articles 11-12; KSC-BD-33, *Detention Management Unit Instruction on Visiting Procedures for Family Members and Other Personal Visitors* ("DMU Instruction"), 23 September 2020, Sections 6(4), 8(3), 10(2), 13(2), 14(1) and (2), 16(2), 17(1). *See also* Sections 2(1), 3, 4(1), 5, 6 and 8(1) of Annex A (Private Visits) to the DMU Instruction; Detention Rule 4 of the Detention Rules.

the reclassification of the Reply from confidential to public⁹⁶ and will decide on any reclassification of the Reply in due course.

VII. DISPOSITION

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

- a) **REJECTS** the Krasniqi Defence's Request for Release;
- b) **ORDERS** Mr Krasniqi's continued detention;
- c) **REJECTS** the Krasniqi Defence's Request for Additional Visits;
- d) **ORDERS** the SPO to file its submissions on the next review by **Friday, 25 August 2023 (at 16:00 hrs)**, with subsequent submissions following the timelines set out in Rule 76; and
- e) **ORDERS** the Krasniqi Defence to file a public redacted version of the Response by **Monday, 24 July 2023**.



Charles L. Smith, III
Presiding Judge

Dated this Monday, 17 July 2023
At The Hague, the Netherlands.

⁹⁶ Reply, para. 11.