



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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 25 October 2023

Language: English

Classification: Public

Prosecution submission pertaining to periodic detention review of Jakup Krasniqi

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of the Accused Jakup Krasniqi ('Krasniqi'). The Pre-Trial Judge, the Court of Appeals, and this Panel have repeatedly held that Krasniqi's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chambers' ('KSC') detention facilities would be sufficient to mitigate the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of this Panel on 15 September 2023,³ there has been no change in circumstances that merits deviating from that determination. Indeed, the continued progression of trial and other significant developments that show steady progress and will continue to give Krasniqi further access to information regarding sensitive witnesses and the case against him buttress the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. The relevant procedural history regarding Krasniqi's detention is referenced in the Panel's most recent detention decision as having been set out extensively in previous decisions.⁴

3. On 3 April 2023, the trial commenced.⁵

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Public Redacted Version of Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01795/RED, 15 September 2023 ('Eleventh Detention Decision').

⁴ Eleventh Detention Decision, KSC-BC-2020-06/F01795, paras 1-3.

⁵ Transcript (Opening Statements), 3 April 2023.

4. On 17 October 2023, testimony of the thirtieth (30th) witness concluded.⁶

III. SUBMISSIONS

5. The relevant applicable law is set out in Article 41, and Rules 56 and 57, and has been laid out extensively in earlier decisions.⁷

6. Since the most recent detention decision, there have been no developments that diminish the factors supporting the need and reasonableness of detention. Indeed, the continued progression of trial through the testimony of the thirtieth (30th) witness and other developments in the case augment the necessity of detention.

A. GROUNDED SUSPICION

7. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.⁸ There remains a grounded suspicion that Krasniqi has done so.⁹ The Confirmation Decision determined that there is a suspicion that Krasniqi is liable for crimes against humanity and war crimes as identified in Articles 13, 14, and 16,¹⁰ to a standard that exceeds the 'grounded suspicion' required for detention.¹¹ The Pre-Trial Judge later also confirmed amendments to the Indictment that added further, similar charges against Krasniqi.¹² Nothing has occurred since the confirmation decisions that would detract from this

⁶ Transcript (Trial Proceedings), 17 October 2023, p.9095. While the testimony of W04769 did conclude on that day, the testimony of an earlier witness, W04577, has been adjourned (*see* Transcript, 18 October 2023, pp.9097-9112).

⁷ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.5.

⁸ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.7.

⁹ *See* Article 41(6)(a); Eleventh Detention Decision, KSC-BC-2020-06/F01795, paras 9-10.

¹⁰ Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020, para.521(a).

¹¹ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.9.

¹² Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777/RED, 22 April 2022, para.185; *see also* Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.9.

determination. Indeed, it has been repeatedly confirmed that there remains a well-grounded suspicion that Krasniqi has committed crimes within the KSC's jurisdiction.¹³

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

8. The Court of Appeals has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.¹⁴ The three grounds under Article 41(6)(b) justifying detention are: (i) risk of flight; (ii) potential obstruction; and (iii) risk of additional crimes.¹⁵ The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.¹⁶ The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence'.¹⁷ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.¹⁸ The Panel has noted that 'articulable' in this context means specified in detail by reference to the relevant information or evidence.¹⁹ In considering whether an accused should be detained or released, the relevant chamber must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.²⁰

¹³ See, e.g., Eleventh Detention Decision, KSC-BC-2020-06/F01795, paras 9-10.

¹⁴ See *Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49.

¹⁵ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.11.

¹⁶ Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005, 30 April 2021 ('First Appeals Decision'), paras 24-28.

¹⁷ First Appeals Decision, KSC-BC-2020-06/IA002/F00005, para.22.

¹⁸ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.11; First Appeals Decision, KSC-BC-2020-06/IA002/F00005, para.26; *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021 ('Haradinaj Decision'), para.28.

¹⁹ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.11 *citing* Article 19.1.31 of the Kosovo Criminal Procedure Code 2012, Law No. 08/L-032 defining 'articulable' as: 'the party offering the information or evidence must specify in detail the information or evidence being relied upon'.

²⁰ 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 the Law no. 05/L-

i. Risk of Flight (Article 41(6)(b)(i))

9. Krasniqi is aware of the serious confirmed charges against him, the possible lengthy prison sentence that may result therefrom, and through the ongoing disclosure process, he is constantly gaining more knowledge about the evidence in relation to those crimes.²¹ However, the continuation of trial takes the risk of flight to an even higher level, as Krasniqi now sees the evidence against him steadily entering the record. The combination of continuing to gain a fuller knowledge of the case against him and actually seeing inculpatory evidence enter the record elevates Krasniqi's risk of flight to a 'sufficiently real possibility'.²²

ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))

10. Krasniqi continues to present a risk of obstructing proceedings. This Panel has recently concluded that the risk that Krasniqi will obstruct the progress of KSC proceedings continues to exist.²³

11. The Panel reiterated its previous determination that there is a risk of Krasniqi obstructing KSC 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 Krasniqi to secure access to confidential information related to matters to which he is currently connected; (ii) his public statements criticising the KSC; and (iii) the content of a 24 April 2020 Facebook post targeting 'collaborators'.²⁴ Furthermore, the Court of Appeals has confirmed that: (i) there are indications that Krasniqi is, at least,

053 on Specialist Chambers and Specialist Prosecutor's Office, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

²¹ Decision on Jakup Krasniqi's Application for Interim Release, KSC-BC-2020-06/F00180, 22 January 2021, para.29.

²² See e.g. First Appeals Decision, KSC-BC-2020-06/IA002/F00005, para.28.

²³ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.21.

²⁴ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.19.

predisposed to witness intimidation; and (ii) in assessing whether there is a risk that Krasniqi will obstruct the proceedings if released, it was not unreasonable to take into account, among other factors, Krasniqi's public statements criticising the KSC or the Facebook post of 24 April 2020.²⁵

12. There is a persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo,²⁶ which the Court of Appeals has agreed is a relevant 'contextual consideration'.²⁷ Similar findings were made in the *Mustafa* Trial Judgment²⁸ and the *Gucati and Haradinaj* Appeal Judgment.²⁹ The Case 7 Trial Panel considered that 'witness protection has continued to be a live and critical issue in Kosovo',³⁰ and credited the testimony of Defence Expert Robert Reid, who remarked that, in over 20 years in the field, he had never seen witness intimidation on the level that exists in Kosovo.³¹

13. Moreover, Krasniqi has received information concerning the witnesses the SPO intends to call in upcoming evidentiary blocks and will continue to receive such information every three months,³² and the risk of obstruction increases as the

²⁵ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.19.

²⁶ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.32.

²⁷ Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

²⁸ *Prosecutor v. Mustafa*, Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, para.57.

²⁹ *Prosecutor v. Guçati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023, para.438 (quoting KSC-BC-2020-07, Transcript, 18 May 2022, pp.3858-3859).

³⁰ *Prosecutor v. Guçati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2022-01/F00611/RED, 18 May 2022 ('Case 7 Judgment'), para.579.

³¹ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, para.577.

³² Prosecution submission of list of witnesses for 30 October to 13 December 2023, KSC-BC-2020-06/F01828, 2 October 2023.

remaining delayed disclosure witnesses have their identities lifted in the course of trial.

14. In this regard, the Panel has previously noted that the disclosure of such highly sensitive information to the Krasniqi Defence necessarily results in it becoming known to a broader range of persons, including the Accused.³³ This continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence,³⁴ which, in the context of the release of an Accused, would not be conducive to the effective protection of witnesses who are yet to testify.³⁵ Therefore, there remains a risk that Krasniqi would interfere with the proceedings.

15. As held by the Trial Panel in Case 7, 'the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.'³⁶

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

16. Krasniqi continues to present a risk of committing further crimes. This Panel has recently concluded that the risk that Krasniqi will commit further crimes continues to exist.³⁷

17. The Panel recalled its previous finding that the risk of Krasniqi committing further crimes continues to exist, opined 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 committing

³³ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.20.

³⁴ See Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.20.

³⁵ See Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.20.

³⁶ Haradinaj Decision, KSC-BC-2020-07/F00507/RED, para.36.

³⁷ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.25.

further crimes, and concluded that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.³⁸

18. Moreover, the crimes against humanity and war crimes that Krasniqi is charged with are extremely serious, they are alleged to have been committed in cooperation with others, and the Confirmation Decision describes Krasniqi's personal participation in the commission of crimes.

19. The Panel highlighted the fact that the trial in this case has started, that the identities of sensitive witnesses have been disclosed to the Krasniqi Defence, and that any risk of the further commission of crimes must be avoided.³⁹

20. This Panel's previous conclusion that the continuing disclosure of sensitive information presented an unacceptable risk for the commission of further crimes⁴⁰ applies even more forcefully as trial continues to progress.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

21. The relevant risks, including those regarding flight, can only be effectively managed at the KSC's detention facilities. This Panel has recently concluded that the risks of obstructing the proceedings and committing further offences can only be effectively managed at the KSC's detention facilities.⁴¹

22. Regarding the risks of obstructing the progress of KSC proceedings and committing further crimes, the Panel found that none of the proposed conditions, nor any additional measures foreseen in Article 41(12), ordered *proprio motu*, could, at this

³⁸ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.23.

³⁹ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.24.

⁴⁰ Eleventh Detention Decision, KSC-BC-2020-06/F01795, paras 23-25.

⁴¹ Eleventh Detention Decision, KSC-BC-2020-06/F01795, paras 30-31.

stage in the proceedings, sufficiently, and to a degree comparable to that of detention at the KSC Detention Facilities, mitigate the existing risks with respect to Krasniqi.⁴²

23. Further, the Panel found that the measures in place at the KSC 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.⁴³

24. The Panel has concluded that it is only through the communication monitoring framework applicable at the KSC detention facilities that Krasniqi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁴⁴

25. Nothing has occurred since the previous determination warranting a different assessment on conditions, either generally or for a discrete period of time; rather, the continuation of trial and attendant further disclosure make the underlying risks higher than ever.

D. DETENTION REMAINS PROPORTIONAL

26. Detention remains proportional. At the last detention review, this Panel found that Krasniqi's detention for a further two months was necessary and reasonable in the specific circumstances of the case.⁴⁵

27. In that regard, the Panel recalled that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special

⁴² Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.30.

⁴³ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.29.

⁴⁴ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.29.

⁴⁵ Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.34.

features, which, in this case, include: (i) that Krasniqi is charged with ten counts of serious international crimes in which he is alleged to play a significant role; (ii) that, if convicted, Krasniqi could face a lengthy sentence; (iii) the continuing risks under Article 41(6)(b)(ii)-(iii) cannot be sufficiently mitigated by the application of reasonable alternative measures; (iv) the case against Krasniqi is complex; (v) the climate of witness intimidation outlined above; and (vi) the fact that the trial is ongoing.⁴⁶

28. Here, taking these same, and additional, factors into consideration, Krasniqi's detention continues to be reasonable, especially in light of the continuing, reasonable progression of proceedings.⁴⁷

IV. CONCLUSION

29. For the foregoing reasons, the SPO respectfully submits that Krasniqi should remain detained.

Word count: 2,537



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Wednesday, 25 October 2023

At The Hague, the Netherlands.

⁴⁶ Eleventh Detention Decision, KSC-BC-2020-06/F01795, paras 33-34.

⁴⁷ In this regard, *see* Eleventh Detention Decision, KSC-BC-2020-06/F01795, para.34; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01861, 16 October 2023, paras 39-40; Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01862, 16 October 2023, paras 34-35.