



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: 13 November 2023

Language: English

Classification: Confidential

**Prosecution reply to Krasniqi Defence Response to Prosecution Submissions on
Detention Review (F01886)**

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I. INTRODUCTION

1. The Response¹ should be rejected, and Jakup Krasniqi ('Krasniqi') should remain detained. The Response disproportionately relies upon limited favourable facts, wilfully misapprehends relevant concepts, and has largely been addressed and rejected by multiple Panels of this Court already.

II. SUBMISSIONS

A. THERE CONTINUES TO EXIST A SUFFICIENTLY REAL POSSIBILITY THAT KRASNIQI WILL OBSTRUCT PROCEEDINGS AND COMMIT FURTHER CRIMES

2. Krasniqi's arguments in this regard largely rehash those already made² and rejected by this Panel.³

3. Krasniqi minimizes the now well-established 'persistent climate of intimidation of witnesses', insisting that it must be balanced against actual evidence of any intimidation connected to these proceedings, but is then forced to acknowledge that

¹ Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01886), KSC-BC-2020-06/F01909, 6 November 2023 ('Response').

² See Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01626), KSC-BC-2020-06/F01649, 6 July 2023, Confidential.

³ See Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01679, 17 July 2023, Confidential ('July Decision') paras 21-28.

the Specialist Prosecutor's Office ('SPO') has, in fact, already provided such actual evidence.⁴ Further, specific examples of such conduct continue to occur.⁵

4. Krasniqi's related argument⁶ that such factors require a link to conduct specific to him, has repeatedly been properly rejected by this Panel⁷ and the Court of Appeals⁸ as a requirement.

5. Krasniqi's argument that the evidence elicited from the first 31 witness demonstrates personal character inconsistent with the kind of person likely to intimidate witnesses or obstruct the process of the KSC⁹ places misleading and disproportionate weight on evidence of direct perpetration alone. The Court of Appeals ruling that the evidence 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, applies with equal force to evidence of direct engagement in witness interference.¹⁰ In any case, such evidence is squarely contradicted by relevant actions of Krasniqi, including but not limited to, public statements criticizing the KSC and the content of his 24 April 2020 Facebook post targeting 'collaborators'.¹¹ A post which was written only months before

⁴ Response, KSC-BC-2020-06/F01909, paras 9-10.

⁵ See Disclosure Package 1010.

⁶ Response, KSC-BC-2020-06/F01909, paras 9-10.

⁷ See Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01795, 15 September 2023 ('September Decision'), para.18; July Response Decision, KSC-BC-2020-06/F01679, para.24.

⁸ Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, IA003/F00005, 30 April 2021, confidential, para.59.

⁹ Response, KSC-BC-2020-06/F01909, paras 11-12.

¹⁰ Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004, paras 22-24.

¹¹ September Decision, KSC-BC-2020-06/F01795, para.19.

Krasniqi's arrest and at a time when he was aware that active SPO investigations were ongoing.

6. Krasniqi's arguments about the quality and age of the evidence supporting his risk of obstructing proceedings,¹² were addressed by the SPO¹³ and rejected by this Court less than four months ago.¹⁴ In the Response, the Defence simultaneously presents Krasniqi as 'a significant figure', who – according to a former senior KLA member – in 'one of the most respected figures' in Kosovo, and to claim that he has no continuing influence.¹⁵ Both cannot be true.

B. DETENTION REMAINS PROPORTIONAL

7. Krasniqi makes the vague and largely unsupported assertion, apparently linked to the number of live witnesses heard to date, that the trial is proceeding 'much more slowly' than anticipated.¹⁶ This assessment ignores several relevant considerations. For one, the progress of trial cannot be measured solely by the metric of witnesses heard live; a considerable additional volume of evidence, including witness statements, have been admitted through the bar table¹⁷ and Rules 153¹⁸ and 155¹⁹ of

¹² Response, KSC-BC-2020-06/F01909, para.16.

¹³ Prosecution reply to Krasniqi Defence Response to Prosecution Submissions on Detention Review, KSC-BC-2020-06/F01674, 14 July 2023, confidential, paras 2, 5.

¹⁴ July Decision, KSC-BC-2020-06/F01679, paras 24-28.

¹⁵ Response, KSC-BC-2020-06/F01909, paras 12-13.

¹⁶ Response, KSC-BC-2020-06/F01909, para.16.

¹⁷ See Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, confidential; Second Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01596, 9 June 2023, confidential; Third Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01705, 27 July 2023, confidential; Fourth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01716, 8 August 2023, confidential; Fifth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01832, 3 October 2023, confidential.

¹⁸ See Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904, 3 November 2023, confidential.

¹⁹ See Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, confidential; Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01864, 17 October 2023, confidential.

the Rules.²⁰ Second, it has no regard to the length or complexity of individual witnesses. Third, it fails to take account of scheduled sitting hours, or the manner in which blocks are broken up.²¹ Fourth, and importantly, this calculation also ignores streamlining avenues available to and utilized by the SPO to reduce courtroom time going forward, including, but not limited to, shortening examination times, making further recourse to Rule 154, and electing not to call witnesses after the evidence of other witnesses make their testimony cumulative. Notable in this regard, recent filings for admission of evidence pursuant to Rule 154 demonstrate the commitment of the SPO to expeditiousness and significant reductions in examination time for forthcoming witnesses.²² Many further such decisions can only be made as the case progresses, and in light of already admitted evidence.

8. However, ultimately, the assertion that detention until the end of trial is disproportionate,²³ 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'.²⁴ It would be contrary to the relevant law and basic logic to decide whether detention is

²⁰ 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.

²¹ Given that there are one, two or – over recess periods – three week breaks between blocks, where a witness finishes early on the last day of that block it is often not possible to start and complete a testimony within the time remaining available.

²² See Prosecution motion for admission of evidence of Witnesses W00208, W02082, W02475, W04147, W04325, W04491, and W04753 pursuant to Rule 154 with confidential Annexes 1-7, KSC-BC-2020-06/F01788, 14 September 2023, Confidential, para.1 fn.3; Prosecution motion for admission of evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 pursuant to Rule 154 and related request with confidential Annexes 1-7, KSC-BC-2020-06/F01830, 3 October 2023, Confidential, para.1 fn.5.

²³ Response, KSC-BC-2020-06/F01909, para.21.

²⁴ See September Decision, KSC-BC-2020-06/F01795, para.35.

justified for the next sixty days on the basis of things that may or may not happen years in the future.


III. CLASSIFICATION

9. This filing is submitted confidentially pursuant to Rule 82(4). The SPO does not object to its reclassification as public.

IV. CONCLUSION

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

Word count: 1180



Kimberly P. West

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Monday, 13 November 2023

At The Hague, the Netherlands.