



**In:** KSC-BC-2020-06

**The 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:** Fidelma Donlon

**Date:** 15 November 2023

**Language:** English

**Classification:** Public

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**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.<sup>1</sup> Relevant events since the eleventh review of Mr Krasniqi’s detention on 15 September 2023 (“Eleventh Detention Decision”)<sup>2</sup> include the following.
2. On 25 October 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the twelfth review of Mr Krasniqi’s detention (“SPO Submissions”).<sup>3</sup>
3. On 6 November 2023, the Defence for Mr Krasniqi (“Krasniqi Defence”) responded to the SPO submissions (“Response”).<sup>4</sup>
4. On 13 November 2023, the SPO replied to the Response (“Reply”).<sup>5</sup>

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<sup>1</sup> 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).

<sup>2</sup> F01795, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 September 2023, confidential (a public redacted version was issued on the same day, F01795/RED).

<sup>3</sup> F01886, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 25 October 2023.

<sup>4</sup> F01909, Specialist Counsel, *Krasniqi Defence Response to Prosecution Submissions on Detention Review* (F01886), 6 November 2023, confidential.

<sup>5</sup> F01923, Specialist Prosecutor, *Prosecution Reply to Krasniqi Defence Response to Prosecution Submissions on Detention Review* (F01886), 13 November 2023, confidential.

## II. SUBMISSIONS

5. The SPO requests the continuation of Mr Krasniqi's detention.<sup>6</sup> It argues that: (i) absent any change in circumstances since the Eleventh Detention Decision, Mr Krasniqi's detention remains necessary and reasonable; and (ii) the continued progression of trial, and further disclosures giving Mr Krasniqi greater access to information regarding sensitive witnesses and the case against him buttress the necessity and reasonableness of his detention.<sup>7</sup>

6. The Krasniqi Defence requests Mr Krasniqi's immediate release, subject to such conditions as the Panel deems appropriate.<sup>8</sup> It submits that, at this point in time, three years after his initial detention, any remaining risks identified by the Panel are insufficient to justify Mr Krasniqi's ongoing detention.<sup>9</sup>

7. In its Reply, the SPO submits that the Response should be rejected and maintains that Mr Krasniqi should remain in detention.<sup>10</sup> It argues that the Response disproportionately relies upon limited favourable facts, wilfully misapprehends relevant concepts, and has largely been addressed and rejected by multiple Panels of the Specialist Chambers ("SC").<sup>11</sup>

## 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.<sup>12</sup> The Panel will apply these standards to the present decision.

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<sup>6</sup> SPO Submissions, paras 1, 29.

<sup>7</sup> SPO Submissions, paras 1, 6, 13.

<sup>8</sup> Response, paras 3, 22.

<sup>9</sup> Response, paras 3, 7, 22.

<sup>10</sup> Reply, paras 1, 10.

<sup>11</sup> Reply, para. 1.

<sup>12</sup> See e.g. Sixth Detention Decision, paras 18-21.

#### 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.<sup>13</sup> A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.<sup>14</sup>

##### A. ARTICLE 41 CRITERIA

###### i. Grounded Suspicion

10. Regarding 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 SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.<sup>15</sup>

11. The SPO argues that – absent any change in circumstances since the decision confirming the indictment and the Eleventh Detention Decision, there remains a grounded suspicion that Mr Krasniqi has committed a crime within the SC's jurisdiction.<sup>16</sup> The Krasniqi Defence does not make specific submissions on this point.

12. The Panel recalls that 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,

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<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> See ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

<sup>16</sup> SPO Submissions, para. 7 (with further references).

14(1)(c) and 16(1)(a).<sup>17</sup> 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.<sup>18</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).<sup>19</sup>

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).

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<sup>17</sup> 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*, para. 521(a)(i)-(ii). A confidential redacted version was filed on 19 November 2020, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED. The Specialist Prosecutor submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the Specialist Prosecutor submitted a confidential, corrected, and lesser redacted version of the confirmed indictment, F00647/A01.

<sup>18</sup> F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. 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 2022, 6 May 2022 and 16 May 2022. The requested amendments are detailed at para. 11. A confirmed amended indictment was then filed by the SPO on 29 April 2022, strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions. On 30 September 2022, the SPO submitted a confirmed further amended indictment (“Confirmed Indictment”), strictly confidential and *ex parte* (F00999/A01), with confidential redacted (F00999/A02) and public redacted versions (F00999/A03), as ordered by the Pre-Trial Judge (F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment*, 22 July 2022, para. 49(e); F00993, Pre-Trial Judge, *Decision on the Prosecution Request to Amend the Indictment*, 29 September 2022, confidential, para. 24(b); a public redacted version was filed on the same day, F00993/RED).

<sup>19</sup> See e.g. IA008/F00004, Court of Appeals Panel, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 21 (a public redacted version was issued on the same day, IA008/F00004/RED).

## 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.<sup>20</sup> Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.<sup>21</sup> “Articulable” in this context means specified in detail by reference to the relevant information or evidence.<sup>22</sup> 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.<sup>23</sup>

### 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.<sup>24</sup>

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.<sup>25</sup>

17. 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,

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<sup>20</sup> 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.

<sup>21</sup> 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).

<sup>22</sup> Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”.

<sup>23</sup> First Appeals Decision on Thaçi’s Detention, para. 22.

<sup>24</sup> SPO Submissions, para. 9.

<sup>25</sup> Response, para. 8.

reaffirms its prior finding that the SPO has failed to establish its claim of a “sufficiently real possibility”<sup>26</sup> that Mr Krasniqi will abscond if released.<sup>27</sup>

18. 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.<sup>28</sup>

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

20. With reference to previous findings by various Panels, the SPO submits that Mr Krasniqi continues to present a risk of obstructing proceedings.<sup>29</sup> According to 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.<sup>30</sup> 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.<sup>31</sup>

21. The Krasniqi Defence argues that there is no sufficiently real possibility that Mr Krasniqi will obstruct proceedings.<sup>32</sup> It submits, in particular, that there is no evidence linking the climate of witness intimidation to Mr Krasniqi and only

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<sup>26</sup> See e.g. First Appeals Decision on Thaçi’s Detention, para. 24.

<sup>27</sup> See Eleventh Detention Decision, para. 13.

<sup>28</sup> F01212, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Seventh Detention Decision”), 17 January 2023, confidential, para. 18 and fn 30 (a public redacted version was issued on the same day, F01212/RED).

<sup>29</sup> SPO Submissions, paras 10-16 (citing, in particular, Eleventh Detention Decision, para. 21).

<sup>30</sup> SPO Submissions, paras 13-15.

<sup>31</sup> SPO Submissions, para. 12 (with further references).

<sup>32</sup> Response, paras 9-16.

limited actual evidence of any intimidation connected to these proceedings.<sup>33</sup> The Krasniqi Defence also avers that none of the SPO witnesses heard thus far have substantiated any direct allegation against Mr Krasniqi. Rather, some SPO witnesses have provided character references for Mr Krasniqi.<sup>34</sup> The Krasniqi Defence also takes issue with claims regarding Mr Krasniqi's alleged influence in Kosovo.<sup>35</sup> Furthermore, it contends that the SPO's submissions in support of the risk of obstruction rest on a combination of evidence that has been found to lack weight and probative value, and materials that are by now almost three years old.<sup>36</sup>

22. The SPO replies that: (i) the Krasniqi Defence's arguments in this regard largely rehash those already made and rejected by the Panel.<sup>37</sup> It submits, in particular, that: (i) the Krasniqi Defence minimises the now well-established "persistent climate of intimidation of witnesses";<sup>38</sup> and (ii) the argument that the evidence elicited from the witnesses heard thus far does not support the SPO's claim in relation to the risk of obstruction, places misleading and disproportionate weight on evidence of direct perpetration alone.<sup>39</sup>

23. 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.<sup>40</sup>

24. 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

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<sup>33</sup> Response, paras 9-10, 14-16.

<sup>34</sup> Response, paras 11-12. *See also* Response, para. 2.

<sup>35</sup> Response, para. 13.

<sup>36</sup> Response, para. 16.

<sup>37</sup> Reply, paras 2, 4, 6.

<sup>38</sup> Reply, para. 3.

<sup>39</sup> Reply, para. 5.

<sup>40</sup> *See* 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).

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”.<sup>41</sup> Furthermore, the Court of Appeals has confirmed that: (i) there are indications that Mr Krasniqi is, at least, predisposed to witness intimidation, for reasons earlier stated;<sup>42</sup> and (ii) in assessing whether there is a risk that Mr Krasniqi will obstruct the proceedings if released, it was not unreasonable to take into account, among other factors, Mr Krasniqi’s public statements criticising the SC or the Facebook post of 24 April 2020.<sup>43</sup>

25. As previously noted, in light of the ongoing nature of the trial, the names and personal details of certain highly sensitive witnesses have been and will continue to be disclosed to the Krasniqi Defence,<sup>44</sup> 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

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<sup>41</sup> See e.g. F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Fourth Detention Decision”), 13 May 2022, confidential and *ex parte*, para. 48 (a confidential redacted version, F00801/CONF/RED, and a public redacted version, F00801/RED, were issued on 13 and 24 May 2022, respectively).

<sup>42</sup> 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).

<sup>43</sup> First Appeals Decision on Krasniqi’s Detention, para. 50.

<sup>44</sup> See Eleventh Detention Decision, para. 20; F01679, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Tenth Detention Decision”), 17 July 2023, para. 26 (a public redacted version was issued on 9 August 2023, F01679/RED); F01530, Trial Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Ninth Detention Decision”), 17 May 2023, confidential (a public redacted version was issued on 22 May 2023, F01530/RED), para. 22; F01382, Panel, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“Eighth Detention Decision”), 17 March 2023, para. 25 (a public redacted version was issued on 20 March 2023, F01382/RED).

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.<sup>45</sup>

26. Furthermore, with regard to the Krasniqi Defence's submissions challenging the SPO's evidence of a general climate of witness intimidation,<sup>46</sup> the fact that some SPO witnesses may have discussed these proceedings with other members of the public has little relevance. Importantly, this does not contradict the Panel's previous finding 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 other before the SC.<sup>47</sup>

27. In light of the above considerations, the respective submissions by the Krasniqi Defence<sup>48</sup> are rejected.

28. Accordingly, the Panel concludes that the risk that Mr Krasniqi will obstruct the progress of SC proceedings if released continues to exist.

### c) Risk of Committing Further Crimes

29. With reference to the Panel's findings in the Eleventh Detention Decision, the SPO submits that Mr Krasniqi continues to present a risk of committing further crimes.<sup>49</sup> 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

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<sup>45</sup> See Eleventh Detention Decision, para. 20; Tenth Detention Decision, para. 26; Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 25; Seventh Detention Decision, para. 25.

<sup>46</sup> Response, paras 14-15.

<sup>47</sup> See Tenth Detention Decision, para. 27; Ninth Detention Decision, para. 23; Eighth Detention Decision, para. 26, referring to KSC-BC-2020-05, F00494/RED/COR, Trial Panel I, *Corrected Version of Public Redacted Version of Trial Judgment*, 24 January 2023, para. 57.

<sup>48</sup> Response, paras 9-16.

<sup>49</sup> SPO Submissions, paras 16-20 (*citing, in particular*, Eleventh Detention Decision, para. 25).

continuing progress of the trial.<sup>50</sup> Furthermore, the SPO argues that the extremely serious nature of the charges against Mr Krasniqi needs to be taken into account.<sup>51</sup>

30. The Krasniqi Defence submits that there is insufficient evidence establishing a sufficiently real risk that Mr Krasniqi will commit further crimes.<sup>52</sup> In particular, it avers that the SPO's submissions in support of the risk of committing further crimes rests on a combination of evidence that has been found to lack weight and probative value, and materials that are by now almost three years old.<sup>53</sup>

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 22 above relating to the risk of obstruction.

32. The Panel recalls its finding in the Eleventh Detention Decision that the risk of Mr Krasniqi committing further crimes continues to exist.<sup>54</sup> The Panel finds 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 Mr Krasniqi committing further crimes.<sup>55</sup> 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 is ongoing, that the identities of sensitive witnesses continue to be 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).

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<sup>50</sup> SPO Submissions, para. 20.

<sup>51</sup> SPO Submissions, para. 18.

<sup>52</sup> Response, para. 17. *See also* Response, para. 2.

<sup>53</sup> Response, para. 16.

<sup>54</sup> Eleventh Detention Decision, para. 23.

<sup>55</sup> Eleventh Detention Decision, para. 23.

### 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 Eleventh Detention 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.<sup>56</sup>

37. The Krasniqi Defence defers to the Panel as regards the conditions deemed appropriate.<sup>57</sup>

38. 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).<sup>58</sup>

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<sup>56</sup> SPO Submissions, paras 21-25 (*referring to* Eleventh Detention Decision, paras 29-31).

<sup>57</sup> Response, paras 3, 22.

<sup>58</sup> 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*.

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).<sup>59</sup> 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.<sup>60</sup>

39. 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;<sup>61</sup>
- 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;<sup>62</sup> and

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<sup>59</sup> 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*.

<sup>60</sup> 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.

<sup>61</sup> See Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 33; Eighth Detention Decision, para. 37; Seventh Detention Decision, para. 38. See also IA020/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention* ("Fourth Appeals Decision on Krasniqi's Detention"), 2 August 2022, confidential, para. 39 (a public redacted version was issued on the same day, IA020/F00005/RED).

<sup>62</sup> See Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 33; Eighth Detention Decision, para. 37; Seventh Detention Decision, para. 38. See also 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).

- c) 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.<sup>63</sup>

40. The Panel maintains its view that no 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.

41. In light of the foregoing, the Panel remains persuaded of the conclusions previously reached, as summarised in paragraph 39 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

42. The SPO argues that, taking all factors into consideration, Mr Krasniqi's detention remains proportional.<sup>64</sup> 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

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<sup>63</sup> See Eleventh Detention Decision, para. 29; Tenth Detention Decision, para. 41; Ninth Detention Decision, para. 34; Eighth Detention Decision, para. 38; Seventh Detention Decision, para. 39.

<sup>64</sup> SPO Submissions, paras 26-28.

climate of witness intimidation exists as outlined above; and (vi) progress continues to be made in the case.<sup>65</sup>

43. The Krasniqi Defence argues that Mr Krasniqi's ongoing detention is disproportionate.<sup>66</sup> It avers, in particular, that the impact on his family and family life has been and will be enormous, particularly as Mr Krasniqi is missing key moments in the lives of his family members and as compassionate leave would not be a viable alternative.<sup>67</sup> Furthermore, the Krasniqi Defence submits that the Panel needs to take into account the amount of time Mr Krasniqi has already spent in detention, the slow progress of trial made thus far, and related to that, Mr Krasniqi's right to be tried within a reasonable time, pursuant to Article 21(4)(d).<sup>68</sup>

44. The SPO replies that the Krasniqi Defence's assertion that the trial is proceeding "much more slowly" than anticipated is vague and largely unsupported.<sup>69</sup> It also submits that this assertion ignores several relevant considerations, such as: (i) the considerable additional volume of evidence admitted through the bar table and Rules 153 and 155; (ii) the length or complexity of individual witnesses; (iii) scheduled sitting hours; and (iv) the streamlining avenues available to and utilised by the SPO to reduce courtroom time going forward.<sup>70</sup> Furthermore, according to the SPO, the assertion that detention until the end of trial is disproportionate is premature and ignores the Panel's repeatedly expressed sensitivity to this issue.<sup>71</sup>

45. 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

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<sup>65</sup> SPO Submissions, para. 27.

<sup>66</sup> Response, paras 18-21.

<sup>67</sup> Response, paras 2, 19-20.

<sup>68</sup> Response, paras 18, 21.

<sup>69</sup> Reply, para. 7.

<sup>70</sup> Reply, para. 7.

<sup>71</sup> Reply, para. 8.

the time when such assessment is being made.<sup>72</sup> 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;<sup>73</sup> (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;<sup>74</sup> (iv) the case against Mr Krasniqi is complex;<sup>75</sup> (v) the climate of witness intimidation outlined above; and (vi) the fact that the trial is ongoing.

46. The Panel is of the view that, at this stage, these factors outweigh any interference with Mr Krasniqi's right to family life<sup>76</sup> resulting from him being unable to attend family events. It notes in this regard that the European Court of Human Rights ("ECtHR") has repeatedly held that: (i) the fact that detainees are separated from their families, and at some distance from them, is an inevitable consequence of their imprisonment;<sup>77</sup> and (ii) detention entails inherent limitations on a detainee's private and family life.<sup>78</sup> It is apparent from this jurisprudence that such limitations do not, without more, constitute a violation of a detainee's right to family and private life. The ECtHR emphasised in this context the importance of enabling a detainee to maintain contact with his family, in particular through family visits at the detention facilities.<sup>79</sup> The Panel recalls in this regard that family visits in the SC detention facilities are

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<sup>72</sup> Eleventh Detention Decision, para. 33; Tenth Detention Decision, para. 53; Ninth Detention Decision, para. 37; Eighth Detention Decision, para. 42; Seventh Detention Decision, para. 43.

<sup>73</sup> 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).

<sup>74</sup> See *above*, paras 38-41.

<sup>75</sup> See *e.g.* Sixth Detention Decision, para. 59; Fifth Detention Decision, para. 58; Fourth Detention Decision, para. 81.

<sup>76</sup> See Article 8 of the European Convention on Human Rights.

<sup>77</sup> See, among many others, ECtHR, *Rodzevillo v. Ukraine*, no. 38771/05, [Judgment](#), 14 January 2016, para. 83; *Vintman v. Ukraine*, no. 28403/05, [Judgment](#), 23 October 2014, para. 78 (both with further references).

<sup>78</sup> See *e.g.* ECtHR, *Khoroshenko v. Russia* [GC], no. 41418/04, [Judgment](#) ("*Khoroshenko v. Russia*"), 30 June 2015, para. 106 (with further references).

<sup>79</sup> See *e.g.* ECtHR, [Khoroshenko v. Russia](#), paras 106, 123 (with further references).

explicitly permitted by the SC legal framework.<sup>80</sup> In light of the above, the Panel rejects the Krasniqi Defence's submissions in this regard.

47. With respect to the Krasniqi Defence's submissions regarding the slow progress of the trial,<sup>81</sup> the Panel notes with concern the delays attributable to both the SPO and the Defence that have contributed to the loss of valuable courtroom time thus far.<sup>82</sup> The Panel has also indicated that it may have to take measures in this regard.<sup>83</sup> However, at the present time, it is premature to make any determination that the progress of the trial violates Mr Krasniqi's right to be tried within a reasonable time, as enshrined in Article 21(4)(d).

48. In light of the above, and in particular the factors noted in paragraph 45 above, the Panel finds that Mr Krasniqi's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

49. 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,<sup>84</sup> 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.

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<sup>80</sup> See, in particular, KSC-BD-09/Rev1/2020, *Registry Practice Direction on Detainees: Visits and Communications*, 23 September 2020, Articles 10-15, 24; KSC-BD-33, *Detention Management Unit Instruction on Visiting Procedures for Family Members and Other Personal Visitors*, 23 September 2020, Chapter IV and Annex A.

<sup>81</sup> Response, para. 21.

<sup>82</sup> Transcript of Hearing, 30 October 2023 ("30 October 2023 Transcript"), confidential, p. 9239, line 20 to p. 32940, line 23 (see, in particular, p. 9239, lines 20-23).

<sup>83</sup> 30 October 2023 Transcript, p. 9240, lines 18-23.

<sup>84</sup> See e.g. Eleventh Detention Decision, para. 35; Tenth Detention Decision, para. 56; Ninth Detention Decision, para. 39; Eighth Detention Decision, para. 44; Seventh Detention Decision, para. 46.

## V. CLASSIFICATION

50. Noting that the Response was filed confidentially, the Panel orders the Krasniqi Defence to file a public redacted version of the Response by **Wednesday, 22 November 2023**.

51. Noting that the SPO does not object to the reclassification of the Reply as public and considering that the Reply contains no confidential information, the Panel directs the Registry to reclassify the Reply as public.

## VI. NEXT DETENTION REVIEW

52. In light of the upcoming winter judicial recess, the Panel finds it appropriate to abridge the usual briefing schedule under Rule 76 in order to meet the deadline for the next review of Mr Krasniqi's detention. The Panel orders the SPO, pursuant to Rule 9(5)(a), to file submissions by no later than 16:00 on Friday, 22 December 2023, and the Krasniqi Defence to file any response by no later than 16:00 on Thursday, 4 January 2024. The SPO must file a reply, if any, by 16:00 on Tuesday, 9 January 2024.

## VII. DISPOSITION

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

- a) **ORDERS** Mr Krasniqi's continued detention;
- b) **ORDERS** the Krasniqi Defence to file a public redacted version of the Response by **Wednesday, 22 November 2023**;
- c) **DIRECTS** the Registry to reclassify the Reply (F01923) as public; and
- d) **ORDERS** the SPO to file submissions on the next review of Mr Krasniqi's detention no later than **Friday, 22 December 2023 (at 16:00 hours)**, any response by **Thursday, 4 January 2024 (at 16:00 hours)** and any reply by

**Tuesday, 9 January 2024 (at 16:00 hours).**

A handwritten signature in black ink that reads "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line at the end.

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**Charles L. Smith, III**  
**Presiding Judge**

Dated this Wednesday, 15 November 2023  
At The Hague, the Netherlands.