

**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 Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

**Filing Participant:** Defence Counsel for Jakup Krasniqi

**Date:** 6 November 2023

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**Public Redacted Version of Krasniqi Defence Response**  
**to Prosecution Submissions on Detention Review (F01886)**

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## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s Office (“Prosecution”) submissions on Mr. Krasniqi’s continued detention,<sup>1</sup> pursuant to Article 41 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 57 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”).

2. At the time of writing, Mr. Krasniqi has been detained by this institution for three years.<sup>2</sup> In the time that he has spent away from his family, [REDACTED]. This trial has been ongoing for six months. At the time of writing, 31 witnesses have provided evidence *viva voce* and pursuant to Rule 154.<sup>3</sup> An additional six witnesses have had prior testimony accepted pursuant to Rules 153,<sup>4</sup> and 23 witnesses pursuant to Rule 155.<sup>5</sup> None has given credible evidence that is overtly critical of Mr. Krasniqi’s personal conduct. Several witnesses have provided evidence suggesting that Mr. Krasniqi is respected and an honourable man, which contradicts any allegation that he is likely to obstruct proceedings or commit further crimes.

3. On the third anniversary of his arrest, the time has come to find that any remaining risks identified by the Panel are insufficient to justify prolonging Mr. Krasniqi’s detention any further. The Defence therefore respectfully requests his immediate release, subject to such conditions as the Panel deems appropriate.

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<sup>1</sup> KSC-BC-2020-06, F01886, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi* (“Prosecution Submission”), 25 October, 2023, public.

<sup>2</sup> Mr. Krasniqi was arrested on 4 November, 2020.

<sup>3</sup> Note that this number excludes W04577, who has yet to provide substantive testimony and whose presence in court has been suspended until further notice. See KSC-BC-2020-06, F01896, Trial Panel II, *Decision on Duty Counsel’s Request for Adjournment of W04577’s Testimony*, 31 October 2023, confidential.

<sup>4</sup> KSC-BC-2020-06, F01904, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153*, 3 November 2023, confidential.

<sup>5</sup> KSC-BC-2020-06, F01603, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential; F01864, Trial Panel II, *Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155*, 17 October 2023, confidential.

4. Pursuant to Rule 82(3) of the Rules, this filing is submitted confidentially because it refers to the content of evidentiary material currently classified as confidential.

## II. APPLICABLE LAW

5. Article 41(10) of the Law and Rule 57(2) of the Rules, provide that, until a judgement is final or until release, upon the expiry of two months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

6. Article 41(6) defines the criteria to be met to justify detentions.

## III. SUBMISSIONS

7. The Defence submits that after three years of ongoing detention, any risks previously identified by the Panel are no longer sufficient to justify Mr. Krasniqi's ongoing imprisonment.

### A. NO SUFFICIENTLY REAL POSSIBILITY THAT MR. KRASNIQI WILL FLEE

8. Mr. Krasniqi does not pose a flight risk. Recent decisions by the Trial Panel show that Mr. Krasniqi is, in fact, not considered to be a flight risk, and has not been for some time.<sup>6</sup> Nor does the enhanced knowledge of the case against him alleged by the SPO carry anything other than, according to the Trial Panel, a "limited weight" in

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<sup>6</sup> KSC-BC-2020-06, F01530, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("17 May Decision"), 17 May 2023, confidential, paras 14-17; F01382, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 March 2023, confidential, paras 14-19.

assessing these risks.<sup>7</sup> The Prosecution's submissions related to Mr. Krasniqi's perceived state of mind are not articulable grounds at all, but are instead an inchoate projection of his supposedly "fuller knowledge of the case against him"<sup>8</sup> which is insufficient to demonstrate any risk.

## B. NO SUFFICIENTLY REAL POSSIBILITY THAT MR. KRASNIQI WILL OBSTRUCT PROCEEDINGS

9. The SPO's repeated mantra that there is a "persistent climate of intimidation of witnesses"<sup>9</sup> must reasonably be balanced against the absence of evidence linking such climate to Mr. Krasniqi and the limited actual evidence of any intimidation connected to these proceedings.

10. The Defence has observed the disclosure of official notes by the Prosecution alleging the attempted interference of at least two witnesses thus far.<sup>10</sup> Two factors merit additional nuance and attention. Firstly, it must be emphasised that these allegations are unsubstantiated, with witnesses unable to identify the alleged perpetrators of acts *they have construed as* connected with their role as Prosecution witnesses.<sup>11</sup> Secondly and more pertinently to the Prosecution submission, not one allegation of interference has mentioned Mr. Krasniqi. In the three years in which Mr. Krasniqi has been detained, there is no evidence that he has ever attempted to pass on confidential information or that anyone connected with him has engaged in obstruction. The identification of a general climate of intimidation – which in the

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<sup>7</sup> KSC-BC-2020-06, F01212, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 January 2023, confidential, para. 18.

<sup>8</sup> Prosecution Submission, para. 9.

<sup>9</sup> *Idem*, para. 12.

<sup>10</sup> See documents related to W04769: 104336-104338 RED; 113307-113309 RED; 113359-113360 RED; 114116-114117 RED; 114661-114661 RED; 114345-114345 RED; 092842-092843. See also documents related to W03879: 113181-113182 RED; 113310-113320 RED; 113354-113355 RED; 113434-113436 RED; 112768-112768 RED; 113356-113356 RED; 112755-112761 RED.

<sup>11</sup> [REDACTED]

Prosecution's view persists unabated<sup>12</sup> – is not sufficient to justify the continued detention of Mr. Krasniqi.

11. The Trial Panel has now heard 31 Prosecution witnesses in full and has had the opportunity to conduct a preliminary assessment of Mr. Krasniqi's character from this evidence. These witnesses, belonged to different categories of the witnesses in this case. Some of them were former KLA members, some others victims or relatives of victims, and some others were also international witnesses. None of the Prosecution's witnesses thus far have substantiated any direct allegation against Mr. Krasniqi. In instances where witnesses have made direct allegations against Mr. Krasniqi, they have later admitted that allegations against him result from an incorrect identification of Mr. Krasniqi,<sup>13</sup> or even from rumours and gossip.<sup>14</sup> In one particularly prominent instance, a witness admitted after cross-examination that he "did not think Mr. Krasniqi was involved in any of this."<sup>15</sup>

12. To the contrary, a striking and unusual feature of this case is the number of prosecution witnesses who provided character references for Mr. Krasniqi, speaking of him with respect and praise.<sup>16</sup> For example, [REDACTED].<sup>17</sup> W04746 described Mr. Krasniqi as "one of the most respected figures in the Republic of Kosovo"<sup>18</sup> and as a "significant figure who I respected and continue to respect".<sup>19</sup> W02153 referred to Mr. Krasniqi as a "very learned and impressive individual".<sup>20</sup> [REDACTED].<sup>21</sup> This

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<sup>12</sup> KSC-BC-2020-06, F01479, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi*, 26 April 2023, confidential, with Annex 1, public, para. 17.

<sup>13</sup> KSC-BC-2020-06, Transcript of Hearing, 19 July 2023, confidential, p. 6190, line 7 to p. 6193, line 7.

<sup>14</sup> KSC-BC-2020-06, Transcript of Hearing, 29 August 2023, confidential, p. 6868, line 23 to p. 6869, line 2; 1D00039, p. 114543.

<sup>15</sup> 114335-114335, para. 2.

<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> KSC-BC-2020-06, Transcript of Hearing, 17 July 2023, confidential, p. 5814, lines 8-9.

<sup>19</sup> Transcript of 13 July, p. 5629, lines 22-23.

<sup>20</sup> Transcript of 19 July, p. 6164, lines 19-20.

<sup>21</sup> [REDACTED].

evidence also directly conflicts with the Prosecution's allegation that there is a risk of Mr. Krasniqi obstructing the process of the KSC. As Prosecution witnesses have told the Prosecution, he is not the kind of person likely to intimidate witnesses or obstruct the process of the KSC.

13. Central to the Prosecution's reasoning for the necessity of Mr. Krasniqi's ongoing detention, is his alleged "influence" in Kosovo, which is stated without any supporting evidence suggesting that this influence really exists today. The respect Mr. Krasniqi has earned over a long career of teaching, intellectual pursuits, and political service, must not be misinterpreted as a capacity to wield influence. Again, the Prosecution fails to demonstrate that Mr. Krasniqi can exercise influence over certain people in Kosovo, yet alone over any organization of people. Mr. Krasniqi, as known, has retired from being active in politics, specifically since January 2015,<sup>22</sup> therefore nine years later, he cannot have influence over the people, as the Prosecution claims.

14. The Prosecution submission classifies the purported climate of witness intimidation in Kosovo as being at a high level.<sup>23</sup> However, the Prosecution has stated in open court that there is no evidence of any witness being intimidated after their testimony.<sup>24</sup> The situation on the ground paints a very different picture to that provided by the Prosecution. In fact, it is Prosecution witnesses themselves who have contacted the media, despite receiving instructions to the contrary.<sup>25</sup> Prosecution witnesses themselves, including those with protective measures, are the ones who are disclosing the information that they are going to testify to third parties. The willingness and ability of witnesses to talk about their evidence in public, including

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<sup>22</sup> <https://www.evropaelire.org/a/26804282.html>

<sup>23</sup> Prosecution Submission, para. 12.

<sup>24</sup> KSC-BC-2020-06, Transcript of Hearing, 20 June 2023, confidential, p. 5233, line 25 to p. 5234, line 16.

<sup>25</sup> Note that at the end of the majority of court sessions attended by witnesses, the Presiding Judge urges witnesses to refrain from speaking with anyone about their testimony and to not identify themselves as a Prosecution witness. *See, inter alia*, [REDACTED].

on television talk shows, undermines any contention that there is a severe climate of intimidation.

15. Specifically, W04735, who has been granted protective measures,<sup>26</sup> has publicly admitted that he is a witness before the KSC.<sup>27</sup> W03825 has also publicly spoken about being a Prosecution witness in this case<sup>28</sup> and has nonetheless requested protective measures.<sup>29</sup> [REDACTED].<sup>30</sup> Other Prosecution witnesses, who have been granted protective measures and expressed security concerns<sup>31</sup> have also felt free to contact one another and disclose confidential information, stating that they are going to testify.<sup>32</sup> All these facts show that the Prosecution claims of widespread intimidation are either erroneous or significantly overstated. If witnesses were truly intimidated to the extent that the Prosecution claims, they would not dare to disclose their status as Prosecution witnesses in this case on national television.

16. The Prosecution's submissions supporting Mr. Krasniqi's risk of obstructing proceedings and committing further crime rests on a combination of evidence that has been found to lack weight and probative value,<sup>33</sup> and materials that are, at this stage, almost three years old. It is telling that the Prosecution's most recent submissions to substantiate Mr. Krasniqi's risk of obstruction are an almost facsimile of not only its previous submissions related to Mr. Krasniqi, but also of those related to the other

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<sup>26</sup> KSC-BC-2020-06, F00338/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Fifth Decision on Specialist Prosecutor's Request for Protective Measures*, 4 June 2021, confidential, para. 76(g).

<sup>27</sup> <https://gazetablic.com/imer-imeri-pranon-qe-eshte-deshmitar-i-hapur-ne-speciale/>

<sup>28</sup> <https://kosovanews.net/gjergj-dedaj-ftohet-si-deshmitar-nga-gjykata-speciale-e-hages/>

<sup>29</sup> See 116595-116596 RED, para. 2; 116603-116604 RED, p. 2; 116616-116617 RED, p. 2; 116768-116787, paras 4-6.

<sup>30</sup> 116530-116531 RED, para. 4.

<sup>31</sup> 115864-115864 RED.

<sup>32</sup> See e.g., 115866-115866 RED.

<sup>33</sup> The Prosecution has submitted two pieces of independent evidence in its February and April 2023 submissions. The former, a publication in the *Skenderaj Press* which bore no relation to Mr. Krasniqi, and a Kosovo TV show, which the Trial Panel was not satisfied, absent further information, actually added to the climate of witness interference. See 17 May Decision, para. 23.

Accused in this case. In relation to these factors, the Defence maintains its previous submissions that: the oft-referenced Facebook posts written by Mr. Krasniqi in 2020, are not sufficient evidence to suggest that Mr. Krasniqi will, at this stage, obstruct proceedings;<sup>34</sup> Mr. Krasniqi's public statements are an exercise of free speech and not sufficient on their own to indicate a propensity towards witness interference;<sup>35</sup> and the Prosecution's strategic use of the testimony of Robert Reid,<sup>36</sup> mischaracterises and misrepresents past instances of so-called witness interference.<sup>37</sup>

#### C. NO SUFFICIENTLY REAL POSSIBILITY THAT MR. KRASNIQI WILL COMMIT FURTHER CRIMES

17. The Prosecution's evidence used to allege that there is a sufficiently real risk that Mr. Krasniqi will commit further crimes, is the same as the evidence addressed above in relation to the alleged risk of interference with witnesses. The Defence continues to submit that there is insufficient evidence establishing that there is a sufficiently real risk that Mr. Krasniqi will commit further crimes.

#### D. ONGOING DETENTION IS DISPROPORTIONATE

18. Three years is a substantial period of time to spend in prison. The Court should take into the consideration the proportionality of the long detention that Mr. Krasniqi has been subject of, and the damages that this detention is causing to Mr. Krasniqi.

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<sup>34</sup> KSC-BC-2020-06, F01181, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review*, 22 December 2022, confidential, paras 24-32.

<sup>35</sup> KSC-BC-2020-06, IA002/F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Jakup Krasniqi's Application for Interim Release*, 3 February 2021, confidential, paras 21-25.

<sup>36</sup> Prosecution Submission, para. 12.

<sup>37</sup> KSC-BC-2020-06, F01649, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review (F01626)*, 6 July 2023, confidential, para. 7.



19. It is not contestable that during the three years that Mr. Krasniqi spent in detention, the impact of his family life and on his family has been enormous. [REDACTED]. As his confinement continues, Mr. Krasniqi will continue to miss key moments in the lives of his family; as an example, [REDACTED]. Each order maintaining his detention deprives Mr. Krasniqi – a man entitled to the presumption of innocence<sup>38</sup> - of key moments with his loved ones.

20. It is no answer to say that Mr. Krasniqi could seek conditional release to attend family events. The Defence notes that humanitarian release has been granted in extremely restrictive circumstances, and the conditions under which compassionate release have been granted by the Kosovo Specialist Chamber would have been intolerable for all concerned. [REDACTED]. His absence from these major life events cannot be repaired or compensated.

21. As to the proportionality of ongoing detention, the Defence notes that the target date for completion of the Prosecution case in April 2025 – by which time Mr. Krasniqi will have been detained for four and a half years. However, the Defence notes that in the first six months of trial, 31 witnesses have been heard. The Prosecution intends to call approximately 200 witnesses. This suggests that this case is proceeding much more slowly than has been promised by the Prosecution in the past,<sup>39</sup> or anticipated by the Trial Panel.<sup>40</sup> The amount of time that Mr. Krasniqi has already spent in detention is highly relevant to this detention review. The more months an Accused person spends in detention, the greater the burden on the Prosecution to establish that the risks identified under Article 41(6)(b) do in fact continue to exist, and are sufficient

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<sup>38</sup> Article 21(3) of the Law.

<sup>39</sup> See KSC-BC-2020-06, F00097, Specialist Prosecutor, *Prosecution Submissions Further to the Status Conference of 18 November 2020*, 23 November 2020, public, para. 14, in which the Prosecution submitted that this trial could begin in summer “or no later than September 2021”.

<sup>40</sup> KSC-BC-2020-06, Transcript of Hearing, 15 July 2023, confidential, p. 4982, lines 5-17.

to warrant the ongoing confinement of a man entitled to the presumption of innocence and to be tried within a reasonable time.<sup>41</sup>

#### IV. CONCLUSION

22. Accordingly, for the above reasons, the Defence submits that at this point in time – three years after his initial detention – any risks identified in relation to Mr. Krasniqi are no longer sufficiently likely to justify ongoing detention. Mr. Krasniqi's individual circumstances, his full compliance with proceedings thus far, and any risks related to Mr. Krasniqi's conditional release, should be considered on an individual basis. Taking these factors into consideration, Mr. Krasniqi should be released subject to such conditions as the Panel deems appropriate.

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<sup>41</sup> Article 21(4)(d).

Word count: 3,056



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Monday, 6 November 2023

Kuala Lumpur, Malaysia.



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Monday, 6 November 2023

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