

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

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Krasniqi Defence Response
to Prosecution Submission Pertaining to Periodic Detention Review of Jakup
Krasniqi (F02145)

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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,¹ 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. Forty (40) months have now passed since Mr. Krasniqi was first detained by the Kosovo Specialist Chambers.² No evidence has been produced connecting Mr. Krasniqi to any witness interference or risk of committing crimes prior to, during, or after the disclosure of evidence in this case. As the Defence have previously submitted, no trial witness has provided credible evidence that is overtly critical of Mr. Krasniqi’s personal conduct,³ instead witnesses have spoken of Mr. Krasniqi as an honourable man.

3. Ongoing detention must be justified by the SPO, which is required to present evidence supporting the belief of a ‘sufficiently real possibility’ that one or more of the risks under the Law exist.⁴ As forty months have elapsed, and consistent with the Defence’s previously articulated position,⁵ the Defence submits that the SPO’s unsubstantiated allegations do not justify prolonging Mr. Krasniqi’s detention any further. The Defence therefore respectfully requests Mr. Krasniqi’s immediate release, subject to such conditions as the Trial Panel deems appropriate.

¹ KSC-BC-2020-06, F02026, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi* (“Prosecution Submission”), 23 February, 2024, public.

² Mr. Krasniqi was arrested on 4 November 2020.

³ KSC-BC-2020-06, F02041, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review* (“January 2024 Response”), 4 January 2024, confidential.

⁴ KSC-BC-2020-06, IA002/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release* (“First Appeals Decision”), 30 April 2021, confidential.

⁵ See e.g., January 2024 Response.

4. Pursuant to Rule 82(1)(a) of the Rules, this filing is submitted as public.

II. SUBMISSIONS

5. The Defence submits that any risks previously identified by the Panel no longer suffice to justify Mr. Krasniqi's ongoing and disproportionate detention. The Prosecution asserts that since the most recent detention decision, there have been no developments that diminish the factors supporting the need and reasonableness of detention.⁶ This is not sufficient; taking into account the long period of forty months for which Mr. Krasniqi has been detained, the issue before the Panel is whether the factors which have been identified as supporting detention continue to justify detaining Mr. Krasniqi.⁷

6. Any assessment of the alleged risk posed by Mr. Krasniqi must take into account that the Prosecution's active investigations at the Detention Unit have revealed that Mr. Krasniqi has behaved appropriately at all times and has remained unconnected to allegations of witness interference.⁸ On 17 November 2023, the SPO submitted a request for the modification of detention conditions.⁹ Therein, the Prosecution alleged that their investigations had revealed attempts to obstruct these proceedings, including through issuing of instructions on how witnesses should testify.¹⁰ None of the Prosecution's submissions identified any connection between Mr. Krasniqi and the allegations of attempted obstruction.

⁶ Prosecution Submission, para. 6.

⁷ ECtHR, *Hasselbaink v. the Netherlands*, no. 73329/16, Judgment (Merits and Just Satisfaction), 9 May 2021, para. 46.

⁸ KSC-BC-2020-06, F02041, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review*, 4 January 2024, confidential, para 6.

⁹ KSC-BC-2020-06, F01933, Specialist Prosecutor, *Prosecution Urgent Request for Modification of Detention Conditions*, 17 November 2023, confidential, with Annexes 1 to 5, confidential.

¹⁰ *Idem*, para. 1.

7. On 1 December 2023, the Trial Panel issued a decision on the Prosecution's request.¹¹ The Panel found, correctly, that no evidence had been produced to suggest that Mr Krasniqi had improperly shared any confidential information with visitors, sought to interfere with any witness, or otherwise behaved inappropriately in the Detention Facilities.¹² The importance of this conclusion bears emphasis. Mr. Krasniqi has not attempted to share confidential information, interfere with any witness or otherwise behaved inappropriately. His good conduct is clear evidence that there is no sufficiently substantiated risk that Mr. Krasniqi would obstruct proceedings or commit further crime if released, subject to such conditions as the Panel deems appropriate.

8. The Prosecution continues to submit over the years that there is a "persistent climate of intimidation of witnesses."¹³ However, it has also failed to provide evidence concretely linking Mr. Krasniqi to such a climate. The Defence submits that upon careful examination of the evidence that have been heard so far, it is evident that there is no sufficiently real risk possibility that Mr. Krasniqi will obstruct proceedings. His consistent cooperation, lack of prior instances of interference, and commitment to abiding by legal processes¹⁴ strongly indicate that any concerns about obstruction are unfounded.

9. During the period of Mr. Krasniqi's detention, substantial disclosures have been made by the Prosecution, including of the identity of Prosecution witnesses. There is no evidence that Mr. Krasniqi has sought to use that information inappropriately. There is therefore no reason to believe that there is a risk that he would use this

¹¹ KSC-BC-2020-06, F01977, Trial Panel II, *Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi*, 1 December 2023, public.

¹² *Idem*, para. 29.

¹³ Prosecution Submission, para. 12.

¹⁴ January 2024 Response, para. 11.

information inappropriately in the future. The Defence therefore requests that the Panel carry out a meaningful review of Mr. Krasniqi's detention and find that the factors relied on by the Prosecution are no longer sufficient to justify ongoing detention.

10. The passage of time has a further relevance to this detention review. The Prosecution has had ample time to organise protection for its witnesses and carry out relocations if necessary. The Prosecution has also had the benefit of choosing the order of its witnesses during the approximately eleven months of trial proceedings. The Prosecution has stated that it took the opportunity to call the most vulnerable witnesses early in the proceedings, to facilitate witness protection.¹⁵ The risk of interference necessarily reduces as trial continues because, firstly, forty-eight witnesses have already testified and are no longer vulnerable to interference and, secondly, those witnesses should include those assessed by the Prosecution to be the most vulnerable.

11. The evidence used by the Prosecution 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.¹⁶ The Defence maintains that there is no evidence establishing that there is a sufficiently real risk that Mr. Krasniqi will commit further crimes.

12. As previously articulated by the Defence,¹⁷ continuing detention on the basis of a risk of committing further crimes, requires consideration of the previous behaviour of the defendant, the previous trials (if any), the number of criminal offenses at issue,

¹⁵ KSC-BC-2020-06, Transcript of Hearing, 16 December 2022, confidential, p.1709, lines 4-7.

¹⁶ Prosecution Submission, para. 13.

¹⁷ January 2024 Response, para. 19.

and any motive for committing the criminal offense.¹⁸ Mr. Krasniqi's previous behaviour is strongly in his favour; he has comported himself appropriately at all times and adhered to every condition imposed on him thus far, is a strong indication that he would continue to do so if granted interim release.¹⁹

13. Further, the Panel should take into the consideration the increasing disproportionality of the detention period to which Mr. Krasniqi has been subjected. The more time an accused person spends in detention, the greater the burden on the Prosecution to establish that the risks identified under Article 41(6)(b) continue to exist, and are sufficient to warrant the ongoing confinement of a man entitled to the presumption of innocence and to be tried within a reasonable time.²⁰ Forty months is a substantial period of time for a person who has not been convicted of any crime to spend in detention, far away from his family and friends. Again, the Defence maintains its previous position that detention is not proportionate.²¹ Any risks identified by the Prosecution do not justify a deprivation of liberty of this length.

14. In assessing proportionality, the Panel should also take into account that the recent modification of conditions at the Detention Unit have had a significant impact on Mr. Krasniqi's rights and family visits. Complaints have been logged with the management at the Detention Unit and the Registrar regarding the delays in processing family visits and new restrictions on the days available for visits, and the conditions and duration of visits.²² These factors are relevant to proportionality, as they increase the intensity of the impact of detention on Mr. Krasniqi, his well-being and his right to family life.

¹⁸ Commentary on the Kosovo Criminal Code of Procedure, page 491. http://jus.igjk.rks-gov.net/486/1/Komentari_Kodi%20i%20Procedures%20Penal.pdf.

¹⁹ *Contra* Prosecution Submission para. 16.

²⁰ Article 21(4)(d) of the Law.

²¹ January 2024 Response, para 21.

²² Counsel's Letter to the Registrar, 20 February 2024.

III. CONCLUSION

15. In light of the foregoing, the Defence requests that the Trial Panel release Mr. Krasniqi, subject to any conditions that the Panel deems appropriate. The consistent demonstration of Mr. Krasniqi's cooperation and the absence of any countervailing evidence that he has tried to obstruct proceedings or behave inappropriately in any way, underscores the lack of necessity for continued detention. Forty months have passed. The period of detention has become unreasonable. Mr. Krasniqi should be released.

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Monday, 4 March 2024

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