



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: 11 March 2024

Language: English

Classification: Public

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

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Response¹ should be rejected, and Jakup Krasniqi ('Krasniqi') should remain detained. The Response mixes previously rejected arguments with patently incorrect factual assertions in an effort to improperly seek reconsideration of previously litigated and adjudicated issues.

II. SUBMISSIONS

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

2. The Response relies heavily upon the same mischaracterisation advanced in the January Response² that 'active investigations at the Detention Unit' have revealed that Krasniqi 'has behaved appropriately at all times and has remained unconnected to allegations of witness interference',³ without acknowledging its previous correction by the Specialist Prosecutor's Office ('SPO'), and rejection by this Panel. Investigations at the Detention Unit were not conducted in relation to Krasniqi, and therefore it is simply the case that evidence regarding Krasniqi's conduct was not available and not produced, rather than such investigations having positively shown anything about Krasniqi.⁴

3. The Panel has previously adjudicated this exact issue, even in conjunction with the next issue again resurrected in unvaried form by Krasniqi: the persistent climate of intimidation of witnesses.⁵ The Panel correctly reiterated that the standard utilised

¹ Krasniqi Defence Response to Prosecution Submission Pertaining to Periodic Detention Review of Jakup Krasniqi (F02145), KSC-BC-2020-06/F02161, 4 March 2024 ('Response').

² Krasniqi Defence Response to Prosecution Submissions on Detention Review (F02026), KSC-BC-2020-06/F02041, 4 January 2024 ('January Response'), para.6.

³ Response, KSC-BC-2020-06/F02161, para.6; Krasniqi Defence Response to Prosecution Submissions on Detention Review (F02026), KSC-BC-2020-06/F02041, 4 January 2024, para.6.

⁴ See Prosecution reply to 'Krasniqi Defence Response to Prosecution Submissions on Detention Review (F02026)', KSC-BC-2020-06/F02059, 9 January 2024, para.2 fn.2.

⁵ Response, KSC-BC-2020-06/F02161, para.8.

in assessing the risks under Article 41(6)(b), does not require a 'concrete example', and, therefore, the simple fact that the SPO has not produced any evidence which suggests that Krasniqi shared confidential information with visitors at the Detention Unit, or otherwise behaved inappropriately in the Detention Unit, does not mean that a risk under Article 41(6)(b) cannot exist.⁶ Indeed, as another Panel of the KSC has stressed, refraining from prohibited conduct in detention 'should be the norm' and, if anything, an absence of prohibited conduct 'highlights the effectiveness of detention'.⁷ This also 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 others before the KSC.⁸

4. Krasniqi's related assertion concerning lack of evidence that he would improperly use the information that he has received from 'substantial disclosures'⁹ fails on the same legal basis and is, in any case, belied by the actually relevant available facts in this regard.¹⁰

5. Krasniqi's remaining contentions related to risk of obstruction in the context of the continuation of trial rely on misstatements of fact and demonstrably incorrect conjecture. Krasniqi incorrectly asserts that the SPO 'took the opportunity to call the most vulnerable witnesses early in the proceedings, to facilitate witness protection'.¹¹ The SPO has consistently maintained that its early witness order was primarily

⁶ Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F02059, 15 January 2023 ('January Decision'), para.23.

⁷ *Specialist Prosecutor v Shala*, Public redacted version of Decision on the Fifteenth Review of Detention of Pjeter Shala, KSC-BC-2020-04/F00776RED, para.26.

⁸ January Decision, KSC-BC-2020-06/F02059, para.23.

⁹ Response, KSC-BC-2020-06/F02161, para.9.

¹⁰ See Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01382, 17 March 2023, Confidential, para.24 *citing* Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005, 30 April 2021, Confidential, para.62; Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA006/F00005, 1 October 2021, Confidential, para.30.

¹¹ Response, KSC-BC-2020-06/F02161, para.10.

motivated by a combination of the importance of a witness's evidence to the case and a witness's vulnerability to interference, and that not all witnesses at risk of interference could be called early.¹² It is not true that the risk of interference necessarily reduces as trial continues, nor is it true that witnesses that have already testified are no longer vulnerable to interference.¹³

6. Regarding the risk of committing further crimes, Krasniqi's arguments similarly miss the mark. Specifically, Krasniqi attempts to invoke the number of criminal offenses at issue in his favour,¹⁴ while at the same time standing accused of ten counts of crimes against humanity and war crimes. More generally, Krasniqi's reliance on his lack of further crimes since the decision to detain him¹⁵ fundamentally misunderstands the calculus of that decision: specifically, that there is a risk that Krasniqi will commit further crimes that can 'only' be mitigated by detention.¹⁶ That detention mitigates this risk is the purpose of detention – an absence of further evidence underpinning the Article 41(6) risks does not negate the sufficiency of the evidence establishing them in previous detention rulings.

B. DETENTION REMAINS PROPORTIONAL

7. Regarding the recent modification of conditions of detention,¹⁷ as a preliminary matter, the Panel has correctly differentiated the instant issue as one concerning interim detention or release and not the conditions of detention, the former falling

¹² See Annex 2 to Prosecution response to defence requests for adjournments and witness rearrangement, KSC-BC-2020-06/F01290/A02, 14 February 2023, Confidential ('Annex F01290/A02'), paras 15-16; Transcript (Trial Proceedings), 21 February 2023, pp.12772-12773.

¹³ *Contra* Response, KSC-BC-2020-06/F02161, para.10. In general, interference post-testimony can still be motivated by a variety of factors including, *inter alia*, securing a recantation and/or indirectly dissuading future witnesses in fear of similar treatment from testifying. Specific to the KSC, KSC-BC-2023-09 Accused, Dritan Goxhaj, has made public statements purporting to reveal the names of witnesses that have already testified at the KSC.

¹⁴ See Response, KSC-BC-2020-06/F02161, para.12.

¹⁵ See Response, KSC-BC-2020-06/F02161, para.12.

¹⁶ See January Decision, KSC-BC-2020-06/F02059, paras 33,39.

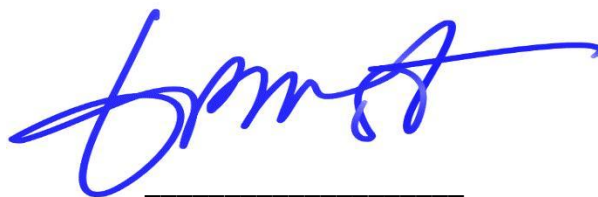
¹⁷ See Response, KSC-BC-2020-06/F02041, para.14.

under Rule 57 and the latter under Rule 56(6).¹⁸ In any case, the Panel has already concluded that none of the circumstances identified by Krasniqi in respect of restrictions imposed on other Accused would materially affect considerations pertaining to his own detention.¹⁹ The Panel has further concluded that those measures are necessary and proportionate and compatible with the rights of Krasniqi and that they do not render his continued detention unreasonable.²⁰

III. CONCLUSION

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

Word count: 1037



Kimberly P. West
Specialist Prosecutor

Monday, 11 March 2024

At The Hague, the Netherlands.

¹⁸ January Decision, KSC-BC-2020-06/F02059, para.46.

¹⁹ January Decision, KSC-BC-2020-06/F02059, para.46.

²⁰ January Decision, KSC-BC-2020-06/F02059, para.46.