

**In:** KSC-BC-2020-06  
**The 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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

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

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**Public Redacted Version of**

**Krasniqi Defence Submissions on Detention Review,**

**KSC-BC-2020-06/F01181, dated 22 December 2022**

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## I. INTRODUCTION

1. The Defence for Mr. Jakup Krasniqi (“Defence”) requests that he be released, subject to such conditions as the Trial Panel deems appropriate, in order that he can spend the short time remaining before the start of trial (currently proposed as 1<sup>st</sup> March 2023)<sup>1</sup> with his family.

2. Despite offering to abide by conditions as extensive as any previously imposed by any international court or tribunal, Mr. Jakup Krasniqi, who will be 72 years of age on 1<sup>st</sup> January 2023, has already been in pre-trial detention for more than two years. The Specialist Prosecutor’s Office (“SPO”) presently intends to call oral evidence from more than 200 witnesses and it is abundantly clear that the trial itself will last a period of years. The substantial period of time that Mr. Krasniqi has already spent in pre-trial detention and will spend in detention during trial underscore the critical importance of this request for a short period of interim release before the start of trial.

3. The Defence respectfully requests the Trial Panel to conclude that it is not necessary to continue the detention of Jakup Krasniqi until the start of trial, because the risks defined in Article 41(6)(b) of the Law<sup>2</sup> have not been established by the SPO on the basis of any or any sufficiently concrete evidence, or in any event because such risks can be adequately mitigated, at least for the short period before trial, by the imposition of conditions. Further, the Defence submits that continuing Mr. Krasniqi’s detention would result in him being detained for an unreasonable period prior to trial.

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<sup>1</sup> KSC-BC-2020-06, Transcript of Hearing (“16<sup>th</sup> Status Conference”), 16 December 2022, public, p. 1699, line 24 – p. 1700, line 2.

<sup>2</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”).

4. Pursuant to Rule 82(3) of the Rules,<sup>3</sup> this filing is submitted confidentially because it refers to confidential filings in the case and personal information about Mr. Krasniqi.

## II. PROCEDURAL HISTORY

5. On 4 November 2020, Mr. Krasniqi was arrested and transferred to the Kosovo Specialist Chambers (“KSC”) Detention Unit.

6. On 7 December 2020, the Defence applied for interim release.<sup>4</sup> On 22 January 2021, the Pre-Trial Judge issued the Decision on Jakup Krasniqi’s Application for Interim Release and rejected the application.<sup>5</sup>

7. On 3 February 2021, the Defence filed its Appeal against the Decision on Jakup Krasniqi’s Application for Interim Release.<sup>6</sup> On 30 April 2021, the Appeals Chamber issued its Decision on Jakup Krasniqi’s Appeal against Decision on Interim Release and denied the Appeal.<sup>7</sup>

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<sup>3</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

<sup>4</sup> KSC-BC-2020-06, F00122, Krasniqi Defence, *Application for Interim Release* (“Application for Interim Release”), 7 December 2020, confidential, with Annexes 1-2, confidential, and Annex 3, public.

<sup>5</sup> KSC-BC-2020-06, F00180, Pre-Trial Judge, *Decision on Jakup Krasniqi’s Application for Interim Release* (“Decision on Interim Release”), 22 January 2021, confidential.

<sup>6</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.

<sup>7</sup> KSC-BC-2020-06, IA002/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release* (“Appeal Decision”), 30 April 2021, confidential, para. 84.

8. Following these Decisions, the Defence has continued to seek interim release on regular occasions<sup>8</sup> and the Pre-Trial Judge,<sup>9</sup> upheld by the Appeals Chamber,<sup>10</sup> has consistently rejected those applications. Importantly, on 27 October 2021, the Kosovo Police responded to a request for information from the Pre-Trial Judge, setting out in detail the steps which the Kosovo Police could reasonably take in order to monitor Mr. Krasniqi's conditional release.<sup>11</sup> These included taking the following measures to mitigate the risk of flight:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED];

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<sup>8</sup> KSC-BC-2020-06, F00329, Krasniqi Defence, *Krasniqi Defence Submissions on Detention Review* ("Detention Review Submissions"), 31 May 2021, confidential; IA006/F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Review of Detention of Jakup Krasniqi* ("Appeal Against First Detention Review Decision"), 7 July 2021, confidential, with Annex 1, public; F00524, Krasniqi Defence, *Krasniqi Defence Observations on Detention Review Timeline and Submissions on Second Detention Review*, 13 October 2021, confidential; IA016/F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi*, 9 December 2021, confidential, with Annex 1, public; F00761, Krasniqi Defence, *Krasniqi Defence Submissions on Third Detention Review*, 6 April 2022, confidential and *ex parte*; IA020/F00001, Krasniqi Defence, *Krasniqi Defence Appeal Against Decision on Periodic Review of Detention of Jakup Krasniqi* ("Appeal Against Third Detention Review Decision"), 25 May 2022, confidential, with Annex 1, public.

<sup>9</sup> KSC-BC-2020-06, F00371, Pre-Trial Judge, *Decision on Review of Detention of Jakup Krasniqi*, 25 June 2021, confidential; F00582, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi*, 26 November 2021, confidential; F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi* ("Third Detention Review Decision"), 13 May 2022, confidential and *ex parte*; F00978, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 19 September 2022, confidential; F01110, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 18 November 2022, confidential.

<sup>10</sup> KSC-BC-2020-06, IA006/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential; IA016/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, confidential; IA020/F00005, Court of Appeals Chamber, *Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention*, 2 August 2022, confidential.

<sup>11</sup> KSC-BC-2020-06, F00548/eng, Court Management Unit, *Answer to the Request Number KSC-BC-2020-06, dated 13 October 2021* ("Kosovo Police Submissions"), 3 November 2021, confidential.

d. [REDACTED]; and

e. [REDACTED].<sup>12</sup>

9. The following measures were also proposed by the Kosovo Police, to mitigate the risk of obstruction of proceedings:

a. [REDACTED];

b. [REDACTED];

c. [REDACTED];

d. [REDACTED];

e. [REDACTED]; and

f. [REDACTED].<sup>13</sup>

10. Considered cumulatively, these measures were and are, by any metric, extensive and meaningful. They included formal undertakings to enforce the most stringent conditions thought necessary or otherwise imposed by the KSC. A fair reading of the response from the Kosovo Police would suggest that it considered itself willing and able to effectively ensure Mr. Krasniqi complies with conditions during the period of conditional release, including by deploying material resources sufficient to comply

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<sup>12</sup> Kosovo Police Submissions. *See also* KSC-BC-2020-06, F00568, Krasniqi Defence, *Krasniqi Defence Observations on Kosovo Police Submissions* (“Krasniqi Defence Observations”), 12 November 2021, confidential.

<sup>13</sup> Kosovo Police Submissions.

with any order made by the KSC. In spite of these facts, the Pre-Trial Judge rejected the Defence's request to convene a hearing attended by the Kosovo Police, to further discuss the implementation of the conditions for the interim release of the four Accused.<sup>14</sup>

### III. APPLICABLE LAW

11. The Trial Panel is called upon to conduct a detention review as mandated by the Article 41(10) of the Law and Rule 57(2) of the Rules.

12. In a previous case, the Trial Panel recalled that:

[A]ny analysis of continued detention must take the presumption of innocence as its starting point. Detention cannot be maintained lightly and the burden to demonstrate that the detention of [the accused] is necessary is on the SPO. The Panel also recalls that it is not incumbent upon [the accused] to demonstrate the existence of reasons warranting his release (footnotes omitted).<sup>15</sup>

13. In the same decision, the Trial Panel articulated the legal threshold as follows: -

Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be necessary. These grounds must be "articulable" in the sense that they must be specified in detail by reference to the relevant information or evidence. The SPO must accordingly demonstrate the existence of either of these risks against the threshold of articulable grounds to believe. Furthermore, a Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention. That being said, in determining whether any of the grounds under Article 41(6)(b) of the Law 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 (footnotes omitted).<sup>16</sup>

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<sup>14</sup> KSC-BC-2020-06, F00801, Pre-Trial Judge, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 13 May 2022, confidential and *ex parte*, paras 27-28.

<sup>15</sup> KSC-BC-2020-07, F00280, Trial Panel II, *Decision on Review of Detention of Nasim Haradinaj* ("*Haradinaj Detention Decision*"), 23 August 2021, public, para. 14.

<sup>16</sup> *Haradinaj Detention Decision*, para. 19.

14. The Defence underlines that the Appeals Chamber has held that the SPO bears the burden of presenting evidence supporting the belief of a “sufficiently real possibility” that one or more of the risks under the Law exist.<sup>17</sup> The Constitutional Court of Kosovo has also held that “reasoning for extension of detention pending trial must contain detailed reasoning and an individualized assessment according to the circumstances and facts of the case, explaining and proving why the detention pending trial is necessary and why other alternative measures are not appropriate [...]”.<sup>18</sup> Although that case was specifically related to an initial decision to remand in custody, the same principles apply to any decision to extend detention pending trial. The provisions of Kosovan law applied in that case are relevant to the interpretation of the Law.<sup>19</sup> These decisions emphasise that, as correctly identified by the Trial Panel, more than the *mere possibility of risk* is the test required to justify ongoing detention.

15. Rule 56(2) of the Rules imposes a separate obligation on the Trial Panel to ensure that Mr. Krasniqi is not detained for an unreasonable period prior to the opening of the case, providing that:

The Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case. In case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

#### **IV. NO SUFFICIENTLY REAL POSSIBILITY THAT MR. KRASNIQI WILL FLEE**

16. The Defence maintains that the SPO has not demonstrated specific evidence establishing a sufficiently real possibility that Mr. Krasniqi presents a risk of flight.

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<sup>17</sup> Appeal Decision, para. 28.

<sup>18</sup> Kosovo Constitutional Court, *Constitutional Review of Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo of 22 December 2017*, KI10/18, Judgment, 21 October 2019, para. 118.

<sup>19</sup> Appeal Decision, paras 14-16.

The SPO must establish articulable and sufficient reasons to demonstrate a risk of flight based on the relevant evidence. It is important to underline the obvious: the Defence is not required to establish that Mr. Krasniqi is *not* a flight risk, but rather the SPO must prove that material factors would indicate that Mr. Krasniqi poses such a risk.

17. The Pre-Trial Judge previously held that there was a ‘moderate risk of flight’ on the basis that “Mr. Krasniqi is now aware of the gravity of the confirmed charges against him and the possible lengthy prison sentence that may result therefrom. Additionally, Mr. Krasniqi’s influence as a former political leader and a Kosovo Liberation Army (“KLA”) deputy commander cannot be ignored”.<sup>20</sup>

18. These factors are manifestly insufficient to demonstrate that, two years into the pre-trial proceedings, detention remains necessary. The Defence highlights that awareness of the gravity of the confirmed charges is a factor which would apply to any defendant in any international criminal case. It is not a specific factor providing evidence for the necessity of detaining Mr. Krasniqi as an individual.<sup>21</sup> Furthermore, despite referring to Mr. Krasniqi’s alleged “support network” and “influence”, the SPO has never adduced concrete evidence that any such network ever existed or still exists today.<sup>22</sup> As the Defence has indicated previously, instead of adducing such evidence, the SPO continues to provide the same, under-supported reasoning as a justification for extending the period of incarceration.<sup>23</sup>

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<sup>20</sup> Decision on Interim Release, para. 29.

<sup>21</sup> ECtHR, *Clooth v. Belgium*, no. 12718/87, *Judgment (Merits)* (“*Clooth v. Belgium*”), 12 December 1991, para. 44.

<sup>22</sup> See, for example, KSC-BC-2020-06, F01053, Specialist Prosecutor, *Prosecution Submissions on Detention Review of Mr Krasniqi*, 24 October 2022, confidential, para. 8; F00345, Specialist Prosecutor, *Prosecution Response to Krasniqi Defence Submissions on Detention Review*, 10 June 2021, confidential, with Annex 1, confidential.

<sup>23</sup> See, for example, KSC-BC-2020-06, F0953, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review of Mr. Krasniqi (F00935)*, 5 September 2022, confidential, para. 2.



19. Furthermore, other factors clearly indicate that Mr. Krasniqi poses no risk of flight. There are no indications that he considered or made preparations to evade his arrest, despite being aware since his interview by the SPO on 24 July 2019 that he was considered a suspect.<sup>24</sup> Mr. Krasniqi expressed his views as a democratically elected Member of Parliament but never sought to flee Kosovo and live in another jurisdiction. He was at all times cooperative with the relevant authorities during his detention and transfer. He has continued to cooperate during the intervening period of his incarceration including during his attendance at hearings before the KSC. These facts, which are based on the direct conduct of Mr. Krasniqi, establish that he does not present a risk of flight.

20. In addition, strong personal factors, as the Pre-Trial Judge partially acknowledged, further diminish the risk of flight.<sup>25</sup> By the time that this application is determined, Mr. Krasniqi will be 72 years old. His age is consistently overlooked in the SPO's submissions and militates against any risk of flight. [REDACTED]. He has a strong personal connection to Kosovo<sup>26</sup> and, aside from his present circumstances, has not been outside of Kosovo for a prolonged period, save during February – June 1999 when he attended international peace negotiations and was subsequently unable to return to the country.<sup>27</sup> His ties are to Kosovo and his immediate family remains in the country. These factors, taken both individually and cumulatively, suggest that Mr. Krasniqi is unlikely to flee and would instead be highly motivated to comply with additional requirements imposed to secure his short-term release.

21. Any risk of flight identified in January 2021 no longer exists today. As previously emphasised by the Defence, the risk of flight decreases in proportion with the

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<sup>24</sup> 061402-TR-ET Part 2, p. 3, line 10 – p. 4, line 9.

<sup>25</sup> Decision on Interim Release, para. 30.

<sup>26</sup> Detention Review Submissions, para. 19.

<sup>27</sup> KSC-BC-2020-06, F01051, Krasniqi Defence, *Pre-Trial Brief of Jakup Krasniqi*, 21 October 2022, confidential, para. 105.

increased time spent in pre-trial custody, because the length of time spent on remand will likely be deducted from the overall sentence in the event of a conviction, thus reducing the incentive to flee.<sup>28</sup>

22. Whilst the SPO has made a number of arguments in favour of Mr. Krasniqi's continued detention,<sup>29</sup> any cursory reading of the SPO's submissions would suggest that the *same* factors have been used on multiple occasions over the last two years to suggest why Mr. Krasniqi must continue to be detained. The ritualistic repetition of these submissions fails to take into account the personal circumstances and conduct of Mr. Krasniqi. At no point have the SPO's arguments evolved to reflect *new* reasons to justify ongoing detention, because there has been nothing in Mr. Krasniqi's conduct over the last two years to justify or support the SPO's submissions. Instead, his good conduct undermines the existence of the alleged risks.

23. The Defence emphasises that it presently proposes interim release for an extremely limited period of time before the start of trial, at which time Mr. Krasniqi's presence would be required in The Hague. The Trial Panel has indicated 1 March 2023 as a tentative start date for the trial.<sup>30</sup> Any interim release at this stage would therefore be for a period of less than two months. Any risk of flight is further diminished by the relatively short duration of any such release which would limit any opportunity to flee.

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<sup>28</sup> ECtHR, *Neumeister v. Austria*, no. 1936/63, *Judgment (Merits)*, 27 June 1968, para. 16.

<sup>29</sup> See, for example, KSC-BC-2020-06, F00772, Specialist Prosecutor, *Prosecution Response to Krasniqi Defence Submissions on Third Detention Review*, 19 April 2022, confidential, paras 20-25; F00935, Specialist Prosecutor, *Prosecution Submissions on Detention Review of Mr Krasniqi*, 24 August 2022, confidential, paras 7-13.

<sup>30</sup> 16<sup>th</sup> Status Conference, p. 1699, line 24 – p. 1700, line 2.

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

24. There is no sufficiently real possibility that Mr. Krasniqi will obstruct proceedings.

25. The Defence emphasises that there is no evidence that Mr. Krasniqi has ever interfered with any witness or obstructed a judicial proceeding. Indeed, there is no evidence of *any* prior misconduct by Mr. Krasniqi and he has no prior criminal record (save for political convictions entered by the former Yugoslav regime of President Milošević). Whilst the SPO indulges in hyperbolic submissions about Mr. Krasniqi's alleged influence and support network, it has also never deigned to produce any specific evidence about this alleged influence or support network or any evidence suggesting that Mr. Krasniqi has interfered with the proceedings at the KSC. Any perceived risk posed by Mr. Krasniqi could also be effectively mitigated by imposing conditions to an order of interim release laid down by the Trial Panel. Incarcerating Mr. Krasniqi, who is presumed innocent – based upon assertions such as these and without evidence is incompatible with his fair trial rights and the guarantees contained in the Rules and the Law.

26. The Pre-Trial Judge founded his conclusions justifying pre-trial detention on the risk that Mr. Krasniqi would obstruct proceedings, on [REDACTED] which the SPO contends [REDACTED].<sup>31</sup> [REDACTED] do not establish a sufficiently real possibility of obstruction. First, the Defence does not accept (and has never accepted) that the SPO has established that [REDACTED]. The Defence further emphasises that

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<sup>31</sup> Third Detention Review Decision, paras 48, 54-55.

[REDACTED]<sup>32</sup> [REDACTED]. [REDACTED] “[REDACTED]” [REDACTED].<sup>33</sup>  
[REDACTED].

27. Second, even if – *arguendo* – [REDACTED], that would not establish his involvement in witness interference. [REDACTED]. [REDACTED]. [REDACTED]. Most importantly, there is no evidence at all that Mr. Krasniqi was involved in any witness interference in those proceedings, or indeed any other proceedings. As a result, [REDACTED] do not establish a risk of interference to the required standard.

28. The SPO has also relied upon a Facebook post made by Mr. Krasniqi on 24 April 2020, to support the assertion that he would obstruct proceedings.<sup>34</sup> The Defence maintains that this is insufficient to imply a real risk of obstruction to proceedings, especially at the current stage of proceedings more than two years after the Facebook post in question.<sup>35</sup> In any event, any such risk could readily be mitigated by requiring Mr. Krasniqi to abstain from making public statements including on social media as a condition of any interim release.

29. Finally, the passage of more than two years in pre-trial custody is also relevant and diminishes the risk of any obstruction. The European Court of Human Rights (“ECtHR”) has established that the risks posed to obstruction of proceedings actually decrease over time, as investigations are put into place and statements taken from witnesses.<sup>36</sup> In this case, the SPO has completed the bulk of its investigations and has had more than two years to put in place any measures it deems necessary to protect witnesses, including relocation. An extensive and restrictive protocol has been put in

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<sup>32</sup> [REDACTED].

<sup>33</sup> See Appeal against First Detention Review Decision, para. 18.

<sup>34</sup> Appeal against Third Detention Review Decision, para. 20.

<sup>35</sup> See KSC-BC-2020-06, F00953, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Detention Review of Mr Krasniqi (F00935)*, 5 September 2022, confidential, paras 14-15.

<sup>36</sup> *Clooth v. Belgium*, para. 43.

place which regulates the Defence contact with all SPO witnesses (even the most senior international witnesses). As a result of these factors, any risk of obstruction must necessarily be lower at this stage of proceedings than it was at the time of Mr. Krasniqi's arrest.

30. Following *Hasselbaink v. the Netherlands*,<sup>37</sup> suspicions in relation to the Accused must increase over time and be indicated with sufficient clarity by the Prosecution, to justify an ongoing detention. As was found to be the case in *Hasselbaink*, there have in fact been *diminishing* reasons to suspect that Mr. Krasniqi might interfere with proceedings or with the administration of justice – in fact he is incentivised to do the opposite as the trial date draws closer. This would suggest that there have not been sufficient grounds or relevant individual circumstances to justify the continuation of Mr. Krasniqi's pre-trial detention.

31. Finally, the Defence notes that the decisions issued thus far in relation to all four Accused, contain a number of the same arguments and justifications for continued detention. Though the four Accused have been charged with the same crimes, Mr. Krasniqi's individual circumstances, his compliance with proceedings thus far, and any risks related to him should be considered on their own merits and on an individual basis.

32. The Defence is aware of no allegation of witness interference during the two years of this case. [REDACTED].<sup>38</sup> There is no evidence that any interference resulted from [REDACTED]. The Defence respectfully submits that the absence of any evidence of interference by or connected with Mr. Krasniqi should be given weight by the Court in assessing whether there is a real risk of interference with witnesses that,

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<sup>37</sup> ECtHR, *Hasselbaink v. the Netherlands*, no. 73329/16, *Judgment (Merits and Just Satisfaction)*, 9 May 2021, para. 46.

<sup>38</sup> [REDACTED].

at this stage of proceedings, remains valid and cannot be overcome by any conditions imposed to an order of short-term interim release. Mr. Krasniqi's ongoing detention is not justified by the forthcoming lifting of redactions or the disclosure of the identity of witnesses, because no interference or obstruction occurred after the earliest provision of the identity of certain protected witnesses to the Defence, or at any point since.<sup>39</sup> Moreover, whilst it is correct that upon protective measures being lifted the names of witnesses will inevitably become known to a broader range of people, that is not a reason to maintain the detention of Mr. Krasniqi as an individual; continuing his detention would only be justified if there was evidence that revealing the names of witnesses would give rise to a risk of obstruction or interference emanating from Mr. Krasniqi himself.<sup>40</sup> No such evidence exists.

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

33. The specific evidence relied upon to demonstrate 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. Accordingly, the Defence repeats the submission above that there is insufficient specific evidence to demonstrate a sufficiently real risk that Mr. Krasniqi will commit further crimes.

34. The Defence further incorporates by reference its earlier submissions, including that repetition of the criminal offences is impossible given the changed political circumstances in Kosovo<sup>41</sup> (which was not ruled upon by the Appeals Chamber).<sup>42</sup>

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<sup>39</sup> KSC-BC-2020-06, F00885, Specialist Prosecutor, *Prosecution Submission of Corrected and Lesser Redacted Witness List*, 18 July 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

<sup>40</sup> KSC-BC-2020-06, F01171, Trial Panel II, *Decision on Periodic Review of Detention of Kadri Veseli* ("Veseli Detention Decision"), 19 December 2022, confidential, para. 29.

<sup>41</sup> Application for Interim Release, paras 50-51.

<sup>42</sup> Appeal Decision, para. 66.

## VII. CONDITIONS CAN MITIGATE ANY RISKS IDENTIFIED BY THE TRIAL PANEL

35. The Defence repeats that Mr. Krasniqi is willing to abide by any conditions laid down by the Trial Panel, including those set out in prior submissions, which the Kosovo Police are able to monitor. These proposed conditions are more extensive than any previously imposed by the International Criminal Tribunal for the former Yugoslavia, including in cases concerning Kosovo, or indeed EULEX. The Defence respectfully disagrees that *only* the communication monitoring facilities at the Detention Unit could adequately mitigate any risk of obstruction related to Mr. Krasniqi at this stage of proceedings. The Defence has proposed extensive and strict monitoring conditions that would replicate or at least be comparable to that of the Detention Unit, but without requiring Mr. Krasniqi's ongoing incarceration.<sup>43</sup> These conditions would substantially mitigate any risk and reduce them to a level at which continued detention is not justified.

36. It also bears emphasis that the KSC is in a considerably stronger position to enforce its orders than prior international tribunals, due to its status of a hybrid institution. Kosovo – and the Kosovo Police – are required to comply with any order of the Trial Panel.<sup>44</sup> The orders of the Trial Panel are directly effective in Kosovo and require no further implementing legislation.

37. Furthermore, the limited duration of release sought by the Defence (until the start of trial), is also likely to increase the efficacy of conditions. A short and defined period of release is more easily monitored than an indefinite period of release. For instance, it is inherent in the nature of a short period of release that the number of visitors that Mr. Krasniqi could receive would be limited and hence any opportunities

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<sup>43</sup> See Krasniqi Defence Observations, paras 22-32.

<sup>44</sup> *Idem*, para. 10.

for communications would also be limited and more amenable to monitoring. Moreover, it is likely to be more feasible to focus resources on monitoring compliance with conditions over a shorter period of time than over a longer period.

38. The complete elimination of risk is not a pre-requisite to granting release. For all of the reasons set out above, any risk of Mr. Krasniqi fleeing, obstructing proceedings or committing further crimes is minimal and the imposition of conditions would adequately mitigate any such risk.

### VIII. ONGOING DETENTION IS DISPROPORTIONATE

39. Mr. Krasniqi has been in detention for more than two years. The impact of two years of detention is a considerable matter which should not be underestimated by the Panel.

40. The Defence fully accepts that issues regarding the streamlining of the trial are pending before the Trial Panel, which has the discretion to manage the proceedings including to limit the number of witnesses that the SPO may call.<sup>45</sup> Nonetheless, as matters stand, the SPO proposes to call more than 200 witnesses and estimates the number of hours of hearing direct evidence at 713 (assuming all Rule 154 and 153 applications are accepted). The proposed sitting schedule would allow 620 hours per year.<sup>46</sup> Once allowances are made for cross-examination by four Defence teams (which is likely to exceed the time for direct examination given the extensive proposed use of Rule 154), questions from the Victims' representatives, the Trial Panel, re-examination, and the inevitable procedural issues which arise during trial, it is plain that the SPO case alone could take longer than two years.

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<sup>45</sup> Rule 118(1)(a) of the Rules.

<sup>46</sup> 16<sup>th</sup> Status Conference, p. 1699, lines 22-24.



41. After the SPO case is concluded, there may be Defence cases by four defence teams, evidence from the Victims' representatives, rebuttal evidence and then time for the Trial Panel to consider and draft the Judgment. There is no doubt that the ongoing proceedings are likely to be lengthy.<sup>47</sup>

42. The Defence therefore respectfully requests the Trial Panel to confront the reality that if interim release continues to be denied, Mr. Krasniqi – who is presumed innocent – faces the prospect of being continuously detained for at least five years prior to any Judgment being entered (to say nothing of the three potential layers of subsequent appeal proceedings). That would be a remarkable (and unacceptable) period of detention on remand on the facts of the present case relating to Mr. Krasniqi himself. Such a period of detention before and during trial would be disproportionate to any risks identified in relation to Mr. Krasniqi himself.

## IX. CONCLUSION

43. The Defence maintains that there is no real risk that Mr. Krasniqi will flee, interfere with witnesses or proceedings, or commit further crimes. Such risks as have previously been identified are, in any event, reduced by the passage of time and capable of being minimised by the imposition of appropriate conditions. Mr. Krasniqi's ongoing detention before the start of a lengthy trial is disproportionate and unreasonable. The Defence underscores that pre-trial detention must not be conflated with pre-trial punishment. The effects of detention on Mr. Krasniqi are profound given his age and [REDACTED], and the Defence maintains it is not justified. This is especially so given the comprehensive conditions the Defence has advanced in previous submissions, which would be more than sufficient to overcome any legitimate objections to conditional release. The Defence respectfully submits that Mr.

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<sup>47</sup> *Veseli* Detention Decision, para. 49.

Krasniqi should be released for the limited period remaining before the commencement of trial, subject to such conditions as the Trial Panel deems appropriate.

44. Interim release at this stage would strike the appropriate balance between the concerns of the SPO and the fundamental rights of Mr. Krasniqi. A short period of interim release, subject to conditions, would allow Mr. Krasniqi precious weeks with his family, before he returns to The Hague for a lengthy trial, without giving rise to any risk to the proceedings.

**Word count: 4,786**



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**Venkateswari Alagenda**

Wednesday, 25 January 2023

Kuala Lumpur, Malaysia.



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**Aidan Ellis**

Wednesday, 25 January 2023

London, United Kingdom.



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**Victor Băieșu**

Wednesday, 25 January 2023

The Hague, the Netherlands.