



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**File number:** KSC-BC-2020-06/PL003

**Before:** A Panel of the Supreme Court Chamber

Judge Ekaterina Trendafilova, Presiding  
Judge Christine van den Wyngaert  
Judge Daniel Fransen

**Registrar:** Fidelma Donlon

**Date:** 29 December 2025

**Original language:** English

**Classification:** Public

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**Decision on Krasniqi Defence Request for Protection of Legality Against  
'Decision on Jakup Krasniqi's Appeal Against Consolidated Decision on Request  
for Provisional Release and on Review of Detention (IA035/F00005)'**

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**Specialist Prosecutor:**

Kimberly P. West

**Counsel for Hashim Thaçi:**

Luka Mišetić

**Counsel for Victims:**

Simon Laws

**Counsel for Kadri Veseli:**

Rodney Dixon

**Counsel for Rexhep Selimi:**

Geoffrey Roberts

**Counsel for Jakup Krasniqi:**

Venkateswari Alagendra

**THE PANEL OF THE SUPREME COURT CHAMBER** of the Kosovo Specialist Chambers (“Supreme Court Panel” or “Panel”) noting Articles 29(1), (4) and 162(2) of the Constitution,<sup>1</sup> Articles 41(6), (10), 48(6), (7), (8) of the Law on Specialist Chambers and Specialist Prosecutor’s Office<sup>2</sup> (“Law”) and Rules 193 and 194 of the Rules of Procedure and Evidence (“Rules”)<sup>3</sup> is seised of the “Krasniqi Defence Request for Protection of Legality Against ‘Decision on Jakup Krasniqi’s Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention (IA035/F00005)’ (“Request”).<sup>4</sup>

## I. PROCEDURAL BACKGROUND

1. On 4 November 2020, Mr Krasniqi was arrested and transferred to the Detention Facilities of the Specialist Chambers (“Detention Facilities”) pursuant to an arrest warrant issued by the Pre-Trial Judge,<sup>5</sup> further to the confirmation of an indictment against him.<sup>6</sup>

2. The trial proceedings against Mr Krasniqi and three co-accused were opened on 3 April 2023.<sup>7</sup>

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<sup>1</sup> Constitution of Kosovo (with amendments I-XXIV), 5 August 2015.

<sup>2</sup> Law on the Specialist Chambers and Specialist Prosecutor’s Office, No. 05/L-053.

<sup>3</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, (adopted on 17 March 2017, revised on 29 May 2017, amended on 29 and 30 April 2020).

<sup>4</sup> F00001, Krasniqi Defence Request for Protection of Legality Against ‘Decision on Jakup Krasniqi’s Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention (IA035/F00005)’, 12 November 2025.

<sup>5</sup> KSC-BC-2020-06/F00027/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, 26 November 2020. Strictly confidential and *ex parte* version filed on 26 October 2020, reclassified as confidential on 25 November 2020. KSC-BC-2020-06/F00027/A07/COR/RED, Public Redacted Version of Corrected Version of Arrest Warrant for Jakup Krasniqi, 5 November 2020. Strictly confidential and *ex parte* version filed on 26 October 2020, corrected version filed on 28 October 2020. KSC-BC-2020-06/F00044, Notification of Arrest of Jakup Krasniqi Pursuant to Rule 55(4), 4 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020), para. 4.

<sup>6</sup> KSC-BC-2020-06/F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020. Strictly confidential and *ex parte* version filed on 26 October 2020; confidential redacted version filed on 19 November 2020; confidential lesser redacted version filed on 21 September 2023; confidential further lesser redacted version filed on 5 June 2025.

<sup>7</sup> KSC-BC-2020-06, Opening Statements Transcript, 3 April 2023.

3. Mr Krasniqi has remained in detention since his initial arrest; his detention was reviewed on a regular basis in accordance with Article 41(10) of the Law.<sup>8</sup>
4. On 27 March 2025, the last Prosecution witness against Mr Krasniqi completed his testimony; on 4 April 2025, Mr Krasniqi filed a request for provisional release.<sup>9</sup>
5. On 15 April 2025, the Prosecution officially closed its case.<sup>10</sup>
6. On 13 May 2025, the Trial Panel issued the “Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi” (“Provisional Release Decision”), wherein, *inter alia*, it denied Mr Krasniqi’s request for provisional release.<sup>11</sup> The Trial Panel also ordered his continued detention on the basis that, *inter alia*, there is a grounded suspicion that he has committed crimes within the jurisdiction of the Specialist Chambers, and that the risks that he will obstruct the progress of the Specialist Chambers proceedings or commit further crimes against those perceived as being opposed to the Kosovo Liberation Army, including witnesses who have provide or could provide evidence in the case, continue to exist.<sup>12</sup> The Trial Panel further found that neither the conditional interim release proposed by Mr Krasniqi as an alternative to unconditional release, nor any additional reasonable conditions to be imposed by the Trial Panel, could sufficiently mitigate the risk of obstructing the progress of the proceedings or the risk of committing further crimes.<sup>13</sup>
7. On 23 May 2025, Mr Krasniqi appealed the Trial Panel’s Decision denying his

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<sup>8</sup> See only the last decision on such periodic review for Mr Krasniqi, KSC-BC-2020-06/F03587, Decision on Periodic Review of Detention of Jakup Krasniqi, 18 November 2025.

<sup>9</sup> KSC-BC-2020-06/F03086, Krasniqi Defense Request for Provisional Release, 4 April 2025 (confidential and *ex parte*). A confidential redacted version was filed on the same day.

<sup>10</sup> KSC-BC-2020-06/F03121, Prosecution Notice Pursuant to Rule 129, 15 April 2025.

<sup>11</sup> KSC-BC-2020-06/F03176, Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi, 13 May 2025 (confidential). A corrected version was issued on 14 May 2025, F03176/COR.

<sup>12</sup> Provisional Release Decision, paras 23, 44, 49-50, 75.

<sup>13</sup> Provisional Release Decision, paras 62-64.

request for provisional release.<sup>14</sup> On 10 June 2025, Mr Krasniqi indicated through separate filing to the Trial Panel that he waived his right to the next bi-monthly detention review until the Appeals Panel issued a decision on his appeal.<sup>15</sup>

8. On 16 July 2025, the Trial Panel rejected the joint defence motion for dismissal of the charges pursuant to Rule 130 of the Rules.<sup>16</sup> On the same day, Mr Krasniqi indicated his intention to present a defence case pursuant to Rule 119(1) of the Rules.<sup>17</sup>

9. On 13 August 2025, the Appeals Panel issued the “Decision on Jakup Krasniqi’s Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention” (“Impugned Decision”), wherein it rejected the Defence’s appeal and upheld the Trial Panel’s findings.<sup>18</sup>

10. On 15 September 2025, the Defence for Mr Krasniqi started presenting evidence in his case.<sup>19</sup>

11. On 12 November 2025, Mr Krasniqi filed the Request against the Impugned Decision.

12. On 14 November 2025, the President assigned a Supreme Court Panel.<sup>20</sup>

13. On 18 November 2025, the Trial Panel filed the “Decision on Periodic Review of Detention of Jakup Krasniqi”, its latest periodic review of Mr Krasniqi’s detention,

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<sup>14</sup> KSC-BC-2020-06/IA035/F00001, Krasniqi Defence Appeal Against the ‘Corrected Version of Consolidated Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi (F03176COR)’, 23 May 2025.

<sup>15</sup> KSC-BC-2020-06/F03248, Krasniqi Defence Notification of Waiver of Detention Review, 10 June 2025.

<sup>16</sup> See KSC-BC-2020-06, Transcript, 16 July 2025, pp. 26190-26196.

<sup>17</sup> KSC-BC-2020-06/F03336, Krasniqi Defence Notification Pursuant to Rule 119(1), 16 July 2025, para. 1.

<sup>18</sup> KSC-BC-2020-06/IA035/F00005, Decision on Jakup Krasniqi’s Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention (“Impugned Decision”), 13 August 2025, para. 68.

<sup>19</sup> KSC-BC-2020-06, Transcript, 15 September 2025.

<sup>20</sup> F00002, Decision Assigning a Supreme Court Panel, 14 November 2025 (confidential).

reaffirming the necessity of his continued detention.<sup>21</sup>

14. On 24 November 2025, the Special Prosecutor's Office ("SPO") filed its Response to the Request.<sup>22</sup> Mr Krasniqi did not file any reply.

15. On 2 December 2025, Mr Krasniqi and one of his Co-Accused announced the closure of their defence cases,<sup>23</sup> and on 19 December 2025, the Trial Panel announced the evidentiary proceedings closed.<sup>24</sup>

## II. ADMISSABILITY

16. The Panel notes that the Impugned Decision is final and that Mr Krasniqi filed the Request within three-months following its issuance. The Request is accordingly admissible as prescribed in Article 48(6) of the Law and the Panel will therefore proceed with its assessment.

17. Should any alleged violations not comply with any of the admissibility criteria of the standard of review as established by the Panel and referred to below, the Panel shall dismiss the alleged violations without addressing the merits.

## III. STANDARD OF REVIEW

18. The Panel recalls that protection of legality cannot be characterized as a third instance appeal, as set forth in Article 47 of the Law, nor does it raise matters under Article 48(1) to (5) of the Law. It is an extraordinary legal remedy provided for in Article 48(6) and (7) of the Law and Rules 193 and 194 of the Rules. It is not meant to

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<sup>21</sup> KSC-BC-2020-06/F03587, Decision on Periodic Review of Detention of Jakup Krasniqi, 18 November 2025.

<sup>22</sup> KSC-BC-2020-06/PL003/F00003, Prosecution Response to Jakup Krasniqi's Request for Protection of Legality ("SPO Response"), 24 November 2025 (confidential),

<sup>23</sup> KSC-BC-2020-06/F03611, Krasniqi Defence Notice of the Closure of Its Case Pursuant to Rule 131, 2 December 2025; See KSC-BC-2020-06/F03609, Thaçi Defence Notice Pursuant to Rule 131, 2 December 2025.

<sup>24</sup> KSC-BC-2020-06/F03639, Notice Regarding the Close of Evidentiary Proceedings, 19 December 2025.

create another general avenue of appeal.<sup>25</sup> Rather, and similar to the Kosovo Criminal Procedure Code,<sup>26</sup> protection of legality is limited to the specific instances defined in the Law and the Rules. As the Kosovo Supreme Court stated:

[T]he request for protection of legality, as one of the extraordinary legal remedies, is the exceptional legal remedy aiming to correct possibly wrong application of the material and procedural law. Strict requirements of the admissibility are designed to ensure that this legal remedy would not be used as a general third instance against all decisions in the criminal proceedings.<sup>27</sup>

19. Accordingly, strict admissibility requirements apply to the grounds underlying a request for protection of legality.

20. In the assessment of each ground, the Panel shall determine whether a violation of the criminal law contained within the Law or a substantial violation of the procedures set out in the Law and in the Rules has been identified.

21. Arguments that reasonably could have been advanced before the first and second instance panels, cannot be raised *de novo* before the Supreme Court Panel.<sup>28</sup>

22. Furthermore, grounds underlying a request for protection of legality alleging erroneous or incomplete determinations of the facts are beyond the competence of this Panel and are thus inadmissible.<sup>29</sup>

23. Mere disagreement with the factual assessment of the first and second instance courts or verbatim repetitions of submissions of the previous appeal without engaging substantively with the impugned decision or final judgment identifying the specific

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<sup>25</sup> KSC-SC-2024-02/F00018, Decision on Salih Mustafa's Request for Protection of Legality, 29 July 2024 ("Mustafa Decision"), para. 11; KSC-SC-2023-01/F00021, Decision on Requests for Protection of Legality, 18 September 2023 ("Gucati and Haradinaj Decision"), para. 9; KSC-BC-2020-06, PL001/F00008, Decision on Kadri Veseli's Request for Protection of Legality, 15 August 2022 ("Veseli Decision"), para. 21.

<sup>26</sup> See Article 432 of the Kosovo Criminal Procedure Code No. 08/L-032, Official Gazette No. 24, 17 August 2022.

<sup>27</sup> Kosovo, Supreme Court, S.S., Pml.Kzz 42/2017, Judgment, 10 May 2017, para. 23.

<sup>28</sup> Mustafa Decision, para. 14; Gucati and Haradinaj Decision, para. 10.

<sup>29</sup> Rule 193(3) of the Rules. See also Mustafa Decision, para. 15; Gucati and Haradinaj Decision, para. 10; Veseli Decision, para. 25.

alleged error or violation are equally insufficient to meet the admissibility threshold for such grounds.<sup>30</sup>

24. With respect to violations pursuant to Article 48(7) of the Law invoking protection of legality proceedings, the Supreme Court Chamber recalls that it has previously set forth the standard of review applicable to requests for protection of legality based on *substantial violations of the procedures* regarding final judgments.<sup>31</sup> The Panel recalls the high threshold established by Article 48(7)(b) of the Law in relation to substantial procedural violations.<sup>32</sup> More specifically, the Panel ruled that “substantial violation” of the procedures occurs when it “materially affects the judicial finding”.<sup>33</sup> An alleged substantial violation of the procedures set out in the Law and the Rules should be assessed on a *case-by-case* basis in view of the circumstances underlying each particular request.<sup>34</sup>

25. The Supreme Court Panel further recalls that it may find a substantial violation of the procedures if the Court of Appeals Panel, for example: (i) omitted to apply a provision of the Law or the Rules; (ii) incorrectly applied the Law and/or the Rules; or (iii) violated the rights of the Defence in a manner which has influenced the rendering of a lawful and fair decision.<sup>35</sup>

26. The Panel notes that a request for protection of legality could also be premised on Article 48(8) of the Law, which stipulates that an extraordinary legal remedy may also be filed on the basis of rights available under the Law, which are also protected under the European Convention on Human Rights (“ECHR”). The Panel considers that any alleged violation of the rights available under the Law, which are also

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<sup>30</sup> Mustafa Decision, para. 16; Gucati and Haradinaj Decision, para. 10; Veseli Decision, para. 25.

<sup>31</sup> Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 13.

<sup>32</sup> Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 14; Veseli Decision, para. 23.

<sup>33</sup> Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 14; Veseli Decision, para. 23.

<sup>34</sup> See also Kosovo Supreme Court, NV, Pml.Kzz 91/2015, Judgment, 14 May 2015, paras 4, 10-12; AM, Pml.Kzz 84/2015, Judgment, 12 May 2015, pp 3-4; M.I., Pml.Kzz 26/2015, Judgment, 18 March 2015, pp 5-7.

<sup>35</sup> Mustafa Decision, para. 18; Gucati and Haradinaj Decision, para. 14; Veseli Decision, para. 24.

protected under the ECHR, must meet the same standard of review as set out above.<sup>36</sup>

27. The Panel has further held that a party requesting protection of legality must clearly identify the alleged legal violation, substantiate it, and, in case of a procedural violation, demonstrate how it materially affected the impugned decision or judgment.<sup>37</sup>

28. Lastly, the Panel recalls Rule 194(1) of the Rules, which stipulates that where the Supreme Court Panel grants a request for protection of legality, depending on the nature of the violation, it may either:

- (a) modify the impugned decision or judgment;
- (b) annul in whole or in part the impugned decision or judgment and return the case for a new decision or retrial to the competent Panel; or
- (c) confine itself only to establishing the existence of a violation of law.

29. The Panel now turns to the grounds set forth in the Requests.

#### IV. PRELIMINARY MATTERS

30. The Panel notes that, subsequent to the Impugned Decision and in accordance with the statutory requirement of periodic review in accordance with Article 41(10) of the Law, the Trial Panel has issued a subsequent decision ordering Mr Krasniqi's continued detention<sup>38</sup>

31. The Panel recalls its recent finding in the "Decision on Mr Veseli's Request for Protection of Legality" issued on 19 December 2025 ("Veseli 2025 Protection of Legality Decision").<sup>39</sup> As held by the Panel in this decision, the right to protection of legality entails a determination of the lawfulness of the impugned detention decision itself, irrespective of subsequent decisions ordering the continuation of the

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<sup>36</sup> Mustafa Decision, para. 21; Gucati and Haradinaj Decision, para. 18; Veseli Decision, para. 33.

<sup>37</sup> Mustafa Decision, para. 22; Gucati and Haradinaj Decision, para. 19; Veseli Decision, para. 23.

<sup>38</sup> See para. 13 above.

<sup>39</sup> KSC-BC-2020-06/PL002/F00005, Decision on Mr Veseli's Request for Protection of Legality ("Veseli 2025 Protection of Legality Decision"), 19 December 2025.

detention.<sup>40</sup> The Panel held that the existence of a new detention decision does not dispense the Panel from a judicial determination, as a person deprived of liberty must be able to obtain such a determination of the lawfulness of each detention decision affecting him or her.<sup>41</sup> The Panel further held that its assessment of such requests is strictly confined to the circumstances as they existed at the time an impugned decision was rendered.<sup>42</sup> Developments occurring after that point may be relevant for future detention reviews by any competent panels, but cannot affect the assessment of the legality of the earlier decision.<sup>43</sup>

32. The Panel further observes that Mr Krasniqi has not structured his Request by reference to discrete grounds alleging violations of the Law or the Rules. While there is no strict obligation to do so, the Panel considers that the articulation of individual grounds, each identifying a specific violation, is a standard practice and would have been conducive to a more focused, efficient and expeditious determination of the Request, having particular regard to the exceptional nature of this procedural remedy and the applicable standard of review for protection of legality requests set out above, which presupposes unambiguous articulations of specific violations.

33. Notwithstanding the foregoing, the Panel notes the submission of Mr Krasniqi, wherein he explains the structure of his Request setting out (1) the correct legal test which the Appeals Panel should have applied; (2) the reasoning of the Appeals Panel; and (3) that he will demonstrate how the Appeals Panel incorrectly applied the law in finding that the factors identified were sufficient to meet the legal test.<sup>44</sup>

34. With respect to Mr Krasniqi's articulation of the "correct legal test", the Panel observes that Mr Krasniqi does not point to any specific violation of the Law or to any

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<sup>40</sup> Veseli 2025 Protection of Legality Decision, para. 30.

<sup>41</sup> Veseli 2025 Protection of Legality Decision, para. 30.

<sup>42</sup> Veseli 2025 Protection of Legality Decision, para. 31.

<sup>43</sup> Veseli 2025 Protection of Legality Decision, para. 32.

<sup>44</sup> Krasniqi Request, para. 25.

violation of the standard stipulated in Article 41(6) of the Law. Rather the Krasniqi Defence refers to the established standard of the Court of Appeal with respect to this provision of the Law and further complements this legal test with references to Article 29 of the Constitution and jurisprudence of the European Court of Human Rights (“ECtHR”).<sup>45</sup> Amongst other, the Krasniqi Defence submits that the ground of any risk of interfering with witnesses must be “duly substantiated” and that the reasoning must “not be abstract, general or stereotyped”, must be linked to specific facts and that any prolongation of the detention may not be “quasi-automatic”.<sup>46</sup>

35. The Panel therefore notes that Mr Krasniqi does not allege a violation of Article 41(6) of the Law and the articulated standard by the Appeals Panel with respect to “articulable grounds to believe”. Rather, Mr Krasniqi only challenges the correct application of this test under Article 41(6) of the Law, as articulated by the Appeals Panel to the specific information or evidence that there is a sufficiently real possibility that Mr Krasniqi will obstruct the proceedings if released and that this risk must be duly substantiated, not abstract, general stereotype and linked to specific facts.<sup>47</sup>

36. In this respect Mr Krasniqi challenges three alleged incorrect applications of the Law, specifically Article 41(6)(b)(ii) of the Law, to the risks of obstructing the criminal proceedings:

- i. The Appeals Panel’s incorrect application of the Law to the risk of interference in parallel proceedings;
- ii. The Appeals Panel’s incorrect application of the Law to the Risk of Retaliation or Recantation;
- iii. The Appeals Panel’s incorrect application of the Law by continuing to

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<sup>45</sup> Krasniqi Request, paras 28-34.

<sup>46</sup> Krasniqi Request, paras 32, 33.

<sup>47</sup> Krasniqi Request, para. 38.

rely on outdated material.

37. The Panel will address each of these alleged violations in turn.

## V. DISCUSSION

### A. THE APPEALS PANEL'S INCORRECT APPLICATION OF THE LAW TO THE RISK OF INTERFERENCE IN PARALLEL PROCEEDINGS

#### 1. Submissions

38. Mr Krasniqi submits that the Impugned Decision incorrectly applied the Law in finding that a sufficient risk existed that Mr Krasniqi will interfere with parallel proceedings. Mr Krasniqi argues that neither the Impugned Decision nor the underlying Trial Panel's decision identified or duly substantiated any specific facts or reasoning demonstrating a sufficiently real possibility that Mr Krasniqi would obstruct witnesses in parallel proceedings.<sup>48</sup> He submits that neither the Appeals Panel nor the Trial Panel engaged in a proper analysis identifying what specific facts and evidence could lead to the conclusion that Mr Krasniqi is sufficiently likely to interfere to such parallel proceedings and that the Impugned Decision only identified a "theoretical risk", which does not satisfy the applicable standard.<sup>49</sup> Mr Krasniqi submits that had a proper analysis been undertaken, the only conclusion would have been that no specific facts or evidence existed to substantiate a sufficient risk.<sup>50</sup> Therefore, Mr Krasniqi submits that articulable grounds were not shown and that the Impugned Decision did not adjudicate and function in accordance with the applicable ECHR principles, since it only provided for general or abstract reasons.<sup>51</sup>

39. The SPO argues that Mr Krasniqi continues to pose a risk to the parallel proceedings. It argues that, as an accused of Case 6, Mr Krasniqi is aware of the

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<sup>48</sup> Krasniqi Request, para. 40.

<sup>49</sup> Krasniqi Request, paras 41, 42.

<sup>50</sup> Krasniqi Request, para. 43.

<sup>51</sup> Krasniqi Request, para. 44.

identities of witnesses and has previously engaged in conduct indicating a predisposition to witness interference, specifically his possession of a confidential document and authoring a Facebook post criticising so called “collaborators”.<sup>52</sup> On that basis, the SPO maintains that it is both logical and obvious that the risk of witness interference extends to both Case 6 and Case 12, given that Case 12 concerns allegations of witness intimidation arising from Case 6.<sup>53</sup> The SPO further contends that Mr Krasniqi has mischaracterised the Court of Appeals’ reasoning and has selectively isolated parts of the decision while disregarding it’s broader context.<sup>54</sup>

## 2. The Panel’s assessment

40. The Panel observes that Mr Krasniqi’s arguments in this respect relate to the Trial Panel’s evidentiary findings, which were addressed by the Appeals Panel. More specifically, Mr Krasniqi refers to the absence of evidence and that no specific facts and evidence existed to substantiate a sufficient risk.<sup>55</sup>

41. The Panel however notes in this respect that the Appeals Panel’s confirmed the use of facts and evidence by the Trial Panel regarding allegation of interference in the proceedings against Mr Krasniqi, which the Trial Panel found to be ongoing and accordingly relied on allegation of interference which culminated on parallel criminal proceedings against five defendants.<sup>56</sup> Moreover, the Supreme Court Panel notes that the Appeals Panel specifically considered the fact that Mr Krasniqi was not personally implicated in these proceedings, but considered that it was within the Trial Panel’s discretion to rely on the fact that these parallel proceedings regarding allegations of interference into Case 6 was a factor amongst others to reach the conclusion that a risk of obstruction existed, given Mr Krasniqi’s predisposition to witness intimidation.<sup>57</sup>

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<sup>52</sup> SPO Response, para. 10.

<sup>53</sup> SPO Response, para. 11.

<sup>54</sup> SPO Response, para. 12.

<sup>55</sup> Krasniqi Request, para. 43.

<sup>56</sup> Impugned Decision, para. 31.

<sup>57</sup> Impugned Decision, para. 31.

Importantly, the Appeal Panel considered that this was only one factor among others to reach the conclusion of a risk of obstruction.<sup>58</sup>

42. Therefore, the Panel finds that these arguments of Mr Krasniqi are factual in nature and go to evidentiary findings. The Panel recalls that it cannot consider arguments of a factual nature, which goes beyond its judicial competence as provided in Rule 193(3) of the Rules and developed under the standard of review. Moreover, the Panel notes that Mr Krasniqi repeats his previous arguments made before the Appeal Panel that there are no specific facts to substantiate a sufficient risk.

43. Mr Krasniqi's ground in relation to the Appeals Panel's incorrect application of the Law to the risk of interference in parallel proceedings is therefore summarily dismissed.

## B. THE APPEALS PANEL INCORRECTLY APPLIED THE LAW TO THE RISK OF RETALIATION OR RECANTATION

### 1. Submissions

44. Mr Krasniqi argues that the Appeals Panel's conclusion that he poses a risk of retaliating against witnesses who have testified or of securing recantations is superfluous because the Appeals Panel failed to identify specific evidence demonstrating that a risk at this stage of the proceedings exists, as required by Article 41(6)(b)(ii) of the Law.<sup>59</sup> Mr Krasniqi highlights that the Appeals Panel itself acknowledged that the Trial Panel's reasoning on this point was "relatively brief" and did not explain how it arrived at its conclusion,<sup>60</sup> thereby failing to provide specific, relevant and sufficient reasons that would satisfy the applicable legal standard.<sup>61</sup>

45. Mr Krasniqi further argues that the Appeals Panel's reliance on references to

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<sup>58</sup> Impugned Decision, para. 31.

<sup>59</sup> Krasniqi Request, para. 45.

<sup>60</sup> Krasniqi Request, para. 46.

<sup>61</sup> Krasniqi Request, paras 46-47.

the SPO submissions does not remedy this deficiency because those submissions did not set out the factual basis for the existence of a prospective risk of retaliation by Mr Krasniqi.<sup>62</sup> He further notes that the Appeals Panel did not identify any risk attributed to Mr Krasniqi that substantiated a risk of retaliation and failed to demonstrate articulable grounds of obstruction under Article 41(6)(b)(iii) of the Law.<sup>63</sup> Mr Krasniqi also argues that since the closure of the SPO case and the testimonies of many witnesses, no interference has ever been attributed to Mr Krasniqi, which disproves a risk of retaliation.<sup>64</sup> Moreover, the Mr Krasniqi states that the Appeals Panel did not engage with this fundamental change of circumstance and thereby incorrectly applied the test.<sup>65</sup>

46. The SPO responds that Mr Krasniqi's release continues to pose a risk of retaliation and/or recantation. The SPO aligns itself with the Trial and Appeals Panel findings that a risk of obstruction persists even after the closure of the SPO case, as there is a risk of future recantation and retaliation.<sup>66</sup> The SPO argues that such a risk is self-evident and can persist irrespective of the stage of proceedings.<sup>67</sup> It further rejects Mr Krasniqi's submission that the Court of Appeals shifted the burden of proof, contending that the Appeals Panel did not purport to reverse the burden in its assessment.<sup>68</sup> Finally, the SPO submits that the list of arguments advanced in Mr Krasniqi's filings do not engage with or undermine the Appeals Panel's finding, and in any event do not displace the existence of articulable grounds demonstrating a risk of witness intimidation given his predisposition to interfere.<sup>69</sup>

## 2. The Panel's assessment

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<sup>62</sup> Krasniqi Request, para. 47.

<sup>63</sup> Krasniqi Request, para. 48.

<sup>64</sup> Krasniqi Request, para. 48.

<sup>65</sup> Krasniqi Request, para. 48.

<sup>66</sup> SPO Response, paras 13-14.

<sup>67</sup> SPO Response, para. 15.

<sup>68</sup> SPO Response, para. 18.

<sup>69</sup> SPO Response, para. 19.

47. Again, the Panel observes that Mr Krasniqi's arguments relate to evidentiary findings, which were addressed by the Appeals Panel. For example, Mr Krasniqi argues that the Appeals Panel failed to identify specific facts or evidence to show that Mr Krasniqi will retaliate against witnesses or secure recantation against them.<sup>70</sup> Further, the Panel observes that Mr Krasniqi's arguments relate to the insufficiency of the Appeals Panel findings.<sup>71</sup> For example, Mr Krasniqi argues that the Appeals Panel did not clearly attribute the risk of obstruction and recantation to him, and that the Appeals Panel did not engage with any change of circumstances.<sup>72</sup>

48. However, the Panel notes that the Appeals Panel attributed the risk of obstruction and recantation to Mr Krasniqi by relying on various factors, namely, his position of influence, his prior public statements criticising the Specialist Chambers, and previous findings concerning the risk of witness interference and intimidation.<sup>73</sup> The Panel further observes that the Appeals Panel noted that the closure of the Prosecution case does not eliminate the risk of obstruction as there are still risks of retaliation and recantation toward witnesses.<sup>74</sup> The Panel also notes that the assessment by the Appeals Panel did indeed set aside certain findings of the Trial Panel due to insufficient reasoning, even though it accepted the overall reasoning to support Mr Krasniqi's continued detention.<sup>75</sup>

49. The Panel considers that these arguments of Mr Krasniqi are not only factual in nature and engage with evidentiary findings, but that they also amount to a disagreement with the Appeals Panel discretionary assessment of the facts which cannot be entertained within the procedure for the protection of legality.<sup>76</sup>

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<sup>70</sup> Krasniqi Request, para. 45.

<sup>71</sup> Krasniqi Request, para. 48.

<sup>72</sup> Krasniqi Request, para. 48.

<sup>73</sup> Impugned Decision, paras 24-27.

<sup>74</sup> Impugned Decision, paras 32-34.

<sup>75</sup> Impugned Decision, para. 47.

<sup>76</sup> See paras 22, 23 above.

50. Mr Krasniqi's ground in relation to the Appeals Panel's incorrect application of the Law to the risk of retaliation or recantation is therefore inadmissible and must be summarily dismissed.

C. THE APPEALS PANEL INCORRECTLY APPLIED THE LAW BY CONTINUING TO RELY ON OUT-DATED MATERIAL

1. **Submissions**

51. Mr Krasniqi submits that the Appeals Panel incorrectly applied Article 41(6)(b)(ii) of the Law by continuing to rely on historical material that is "now years out of date" as the only identified evidence.<sup>77</sup> This included a Facebook post from April 2020 and the alleged possession of a single confidential document during the search of Mr Krasniqi's home.<sup>78</sup> Mr Krasniqi further argues that the ECtHR jurisprudence states that while the risk of obstruction is likely to diminish over time, and this was acknowledged by the Appeals Panel, it failed to substantiate through specific evidence why such outdated evidence still demonstrates a present-day risk.<sup>79</sup>

52. Finally, Mr Krasniqi states that he does not understand how a single Facebook post continues to justify ongoing detention after the SPO closed their case.<sup>80</sup> According to Mr Krasniqi, the Facebook post did not relate to any witness in the proceedings and that the Impugned Decision does not substantiate how the post poses any risks that Mr Krasniqi will retaliate against a witness.<sup>81</sup> As per the confidential document, Mr Krasniqi stresses that there is no evidence indicating when it arrived at Mr Krasniqi's home or that he ever used it to interfere or retaliate against witnesses.<sup>82</sup> Mr Krasniqi concludes that the Appeals Panel failed to identify any "specific information or evidence" establishing a sufficiently likely present-tense risk based on these outdated

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<sup>77</sup> Krasniqi Request, para. 51.

<sup>78</sup> Krasniqi Request, para. 51.

<sup>79</sup> Krasniqi Request, para. 52.

<sup>80</sup> Krasniqi Request, para. 53.

<sup>81</sup> Krasniqi Request, para. 53.

<sup>82</sup> Krasniqi Request, para. 54.

items, such that continued reliance on them constitutes an incorrect application of the law.<sup>83</sup>

53. The SPO submits that the Appeals Panel was entitled to rely on past evidence to establish a prospective risk. It rejects Mr Krasniqi position that reliance on the 2020 Facebook post and the confidential document is outdated or incapable of demonstrating a present-day risk.<sup>84</sup> Instead, the SPO agrees with the Appeals Panel's conclusion that prior material remains probative where, at the time of the decision, it continues to support the inference of obstruction.<sup>85</sup> The SPO further argues that Mr Krasniqi's assertion that there is no evidence of predisposition to interfere with witnesses impermissibly challenges an earlier finding of the Court of Appeals, which, according to the SPO, remains both valid and binding.<sup>86</sup> Finally, the SPO supports the Appeals Panel's conclusion that there was no legal error in the Trial Panel's reliance on that historical conduct.<sup>87</sup>

## **2. The Panel's assessment**

54. The Panel notes that Mr Krasniqi's arguments again relate to the evidentiary findings, which were addressed by the Appeals Panel. The Panel observes Mr Krasniqi's submission that the Impugned Decision continued to rely on out-dated evidence to support a pre-disposition to witness interference.<sup>88</sup> In this respect the Panel notes Mr Krasniqi arguments that the Appeals Panel failed to properly reassess the risks under Article 41(6)(b) of the Law and instead relied on previous findings without examining whether they remain sufficient at this stage of the proceedings.<sup>89</sup>

55. In this respect the Panel recalls the finding of the Specialist Chamber of the

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<sup>83</sup> Krasniqi Request, para. 55.

<sup>84</sup> SPO Response, para. 21.

<sup>85</sup> SPO Response, para. 22.

<sup>86</sup> SPO Response, para. 23.

<sup>87</sup> SPO Response, para. 23.

<sup>88</sup> Krasniqi Request, para. 51.

<sup>89</sup> Krasniqi Request, para. 52.

Constitutional Court that “[q]uasi-automatic prolongation of detention or a decision that is lacking in reasoning would fail to provide the required standard of protection.”<sup>90</sup> Moreover, the ECtHR has held that under Article 5(3) “ it is incumbent on the authorities, rather than the detainee, to establish the persistence of reasons justifying continued pre-trial detention”.<sup>91</sup> The Panel further notes that the risks must be concretely substantiated on the facts of the case; mere abstract or stereotyped concerns are insufficient.<sup>92</sup>

56. While the Panel has previously held that certain grounds, such as the risk of obstruction, may diminish over time, this is not automatic and remains case-specific.<sup>93</sup> Accordingly, a panel may continue to rely on a factor previously invoked, irrespective of when the underlying evidence was first adduced, provided it is satisfied that, at the time of its decision, the evidence remains sufficient to support the relevant finding of a continued risk of obstruction.<sup>94</sup> What is necessary is that persistent reasons justify the continued detention.<sup>95</sup>

57. The Supreme Court Panel observes that the Appeals Panel reassessed the necessity of detention in light of the history of the case.<sup>96</sup> Specifically it considered the following: Mr Krasniqi’s position of influence and his ability to obtain confidential information; his public statements criticising the Specialist Chambers and the content of his 2020 Facebook post which targeted collaborators; the climate of witness and victim intimidation; the risk of interfering with witnesses that were to be heard; and the risk of interference including retaliation attempts against witnesses.<sup>97</sup> The Appeals Panel holistically assessed and confirmed that these circumstances remain sufficient

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<sup>90</sup> KSC-CC-PR-2017-01/F00004, Judgment on the Referral of the Rules of Procedure and Evidence to the Specialist Chambers of the Constitutional Court, 26 April 2017, para. 115.

<sup>91</sup> ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 234.

<sup>92</sup> ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 222.

<sup>93</sup> Veseli 2025 Protection of Legality Decision, para. 61.

<sup>94</sup> Veseli 2025 Protection of Legality Decision, para. 61.

<sup>95</sup> See ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 234.

<sup>96</sup> Impugned Decision, paras 24-25.

<sup>97</sup> Impugned Decision, para. 24.

to justify detention at this time.

58. Furthermore, the Panel notes that the Appeals Panel referred to conduct previously relied upon as indicative of the continued existence of a risk of obstruction.<sup>98</sup> In doing so, the Appeals Panel considered that the Trial Panel did not err in relying on the 2020 Facebook post and the climate of witness interference in Kosovo.<sup>99</sup> The Appeals Panel considered this relevant to the continued assessment of the risk of obstruction and recalled that the applicable standard for assessing risks under Article 41(6)(b) of the Law “does not require a demonstration that Mr Krasniqi *has* intimidated or interfered with witnesses or that he *will* do so.”<sup>100</sup> The Appeals Panel considered this relevant, as the risk of obstruction may continue until the end of trial.<sup>101</sup>

59. In light of the foregoing, the Panel finds that the Appeals Panel did not misapply the relevant standard to the circumstances of the case pursuant to Article 41(6)(b) of the Law. Nothing in the detention review suggests that the process was undertaken in a “quasi-automatic” manner, general or abstract. It thoroughly assessed the continued existence of the relevant risks at the time of review and provided a holistic assessment with sufficient reasons to justify the continued detention of Mr Krasniqi. Its analysis was neither hypothetical nor generic, but rather grounded in the specific circumstances before it.

60. Accordingly, the Panel considers Mr Krasniqi’s ground in relation to the Appeals Panel’s incorrect application of the Law by continuing to rely on outdated material inadmissible, and dismisses it in its entirety.

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<sup>98</sup> Impugned Decision, para. 24.

<sup>99</sup> Impugned Decision, paras 29-30.

<sup>100</sup> Impugned Decision, para. 31.

<sup>101</sup> Impugned Decision, para. 32.

## VI. PUBLIC FILINGS

61. The Panel notes that the Request and all submissions related to it were filed confidentially, given that they contained confidential information. The Panel has however ensured that such information is not revealed and therefore issues the decision as public. Therefore, and as all submissions shall be public unless there are exceptional reasons for keeping them confidential, the Panel orders Mr Krasniqi and the SPO to file public redacted versions of the Request and the Response, or to indicate whether they can be reclassified as public by 30 January 2026.

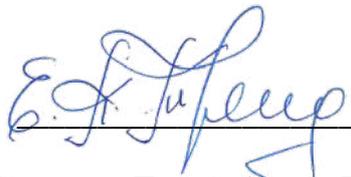
## VII. DISPOSITION

62. For these reasons, the Supreme Court Panel hereby

**DISMISSES** the Request in its entirety;

**ORDERS** the Defence and the SPO to submit public redacted versions of the Request and Response or to indicate, through a filing, whether they can be reclassified as public, by 30 January 2026; and

**INSTRUCTS** the Registry to execute the reclassification as public of the Request and Response upon indication by the Defence and SPO, if any, that they can be reclassified.



**Judge Ekaterina Trendafilova, Presiding**

Dated this Monday, 29 December 2025

At The Hague, the Netherlands