

**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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

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

**Date:** 2 May 2025

**Language:** English

**Classification:** Public

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**Public Redacted Version of Krasniqi Defence Response to ‘Prosecution Motion for Admission of Obstruction Related Materials’ (F03120)**

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## I. INTRODUCTION

1. The Defence for Jakup Krasniqi ("Defence") opposes the Specialist Prosecutor's Office ("SPO") Motion which seeks to admit what the SPO alleges are "obstruction related materials".<sup>1</sup> None of the tendered materials relate to Mr. Krasniqi and their probative value in relation to the case against Mr. Krasniqi is outweighed by their prejudicial effect, namely that Mr. Krasniqi cannot fairly confront the allegations against him, on the basis of these documents.

2. Pursuant to Rule 82(4) of the Rules, this filing is classified as confidential because it responds to confidential annexes to the Motion.

## II. PROCEDURAL HISTORY

3. On 1 May 2024, the SPO filed a request to amend the Prosecution exhibit list to add materials produced as a result of special investigative measures against Mr. Thaçi, Mr. Veseli and Mr. Krasniqi.<sup>2</sup>

4. On 15 May 2024, the Defence opposed the request to amend the Prosecution exhibit list and highlighted the prejudice which would uniquely be caused to Mr. Krasniqi by the materials in circumstances where they are not relevant to Mr. Krasniqi and he would likely have no fair opportunity to challenge them.<sup>3</sup>

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<sup>1</sup> KSC-BC-2020-06, F03120, Specialist Prosecutor, *Prosecution Motion for Admission of Obstruction Related Materials* ("Motion"), public, 15 April 2025.

<sup>2</sup> KSC-BC-2020-06, F02501, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List*, confidential, 1 May 2024.

<sup>3</sup> KSC-BC-2020-06, F02316, Specialist Counsel, *Krasniqi Defence Response to Prosecution Request to Amend the Exhibit List* (F02279), confidential, 15 May 2024, paras 32-35.

5. On 22 August 2024, the Trial Panel authorised the Prosecution to add these materials to its exhibit list.<sup>4</sup>

6. On 15 April 2025 at or around 13.36, the Prosecution filed the Motion. At 14.03, less than 30 minutes after filing the Motion, the Prosecution gave notice of the close of its case.<sup>5</sup>

### III. SUBMISSIONS

7. The Prosecution's belated application to admit the tendered documents causes exactly the prejudice anticipated by the Defence in May 2024; the documents are not relevant to Mr. Krasniqi and their admission, after the close of the Prosecution case, causes irreparable prejudice to him.

8. The Defence has always maintained that Mr. Krasniqi has behaved correctly and has not interfered or attempted to interfere with any witness, or revealed confidential information. The Panel has previously found that "no evidence has been produced which suggests that Mr. Krasniqi improperly shared any confidential information with visitors, sought to interfere with any witness, or otherwise behaved inappropriately in the Detention Facilities."<sup>6</sup> Whilst the Motion attempts to argue that the tendered materials are relevant as aggravating circumstances or evidence of state of mind for the other three Accused,<sup>7</sup> no such argument or link can even be stated against Mr. Krasniqi, and thus they should not be admitted in a case against him.

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<sup>4</sup> KSC-BC-2020-06, F02501, Trial Panel, *Decision on Prosecution Request to Amend the Exhibit List (F02279) and on Thaci Defence Motion for Exclusion of Materials in limine*, confidential, 22 August 2024.

<sup>5</sup> KSC-BC-2020-06, F03121, Specialist Prosecutor, *Prosecution Notice pursuant to Rule 129*, public, 15 April 2025.

<sup>6</sup> 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* ("Detention Conditions Decision"), 1 December 2023, public, para. 29.

<sup>7</sup> Motion, paras 4 and 6.

9. The Motion also contends that the tendered materials are relevant to “understanding the evidence of witnesses affected by the climate of intimidation”<sup>8</sup> and to inform the credibility assessment of SPO witnesses.<sup>9</sup> It is telling, however, that the Motion does not allege that the tendered material shows that any witness in these proceedings was actually the subject of interference. Relevance requires more than a tenuous or remote connection to the facts and circumstances of a case.<sup>10</sup> In the absence of any submission by the SPO that the tendered materials are relevant to interference with any identified witness, the connection of the tendered materials to the alleged climate of intimidation is speculative, tenuous and remote. Accordingly, the Motion fails to pass the relevance threshold.

10. If the Panel is satisfied that the materials are relevant, any probative value they possess is far outweighed by their prejudicial effect. First, the Defence is prejudiced because it has no fair opportunity to confront the tendered material. The material consists of detention centre transcripts and items seized during the SPO’s investigation into alleged obstruction. The Defence cannot confront this material since the SPO chose not to put the tendered materials or allegations of interference to its own witnesses. For instance, five<sup>11</sup> of the nineteen tendered transcripts and documents in Annex 1 to the Motion are alleged to relate to the evidence of [REDACTED]. Although this witness testified for [REDACTED],<sup>12</sup> the SPO did not ask him about any allegations of interference. Similarly, at no point did the SPO ask [REDACTED] about allegations of interference. The SPO did not seek to recall any of these witnesses to put allegations of interference to them. Having elected not to put its own case to its witnesses, despite having had ample opportunity to do so, it is highly prejudicial to

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<sup>8</sup> Motion, para. 5.

<sup>9</sup> *Ibid.*

<sup>10</sup> KSC-BC-2020-06, F01409, Trial Panel, *Decision on Specialist Prosecutor’s Bar Table Motion*, confidential, 31 March 2023, para. 10.

<sup>11</sup> [REDACTED]

<sup>12</sup> [REDACTED]

tender this material through the bar table, when the information therein cannot be tested by the Defence.

11. Second, the Defence cannot compel the other Accused in Case 06, or the Accused in Case 12, to testify. The Accused in both cases are entitled to the right to silence and to privilege against self-incrimination. Accordingly, the Defence will not be able to question any witness about the tendered material. That is prejudicial because it prevents the Defence from contextualising or challenging the contents of the tendered material.

12. Third, the SPO has timed the Motion in such a way that it further diminishes the potential for the Defence to challenge the tendered material. Although most of the materials were added to the exhibit list in August 2024,<sup>13</sup> the SPO waited eight months before submitting the Motion only half an hour before the SPO closed its case. The effect of the SPO's strategic decision to file at the very close of its case is that there are no more SPO witnesses who the Defence could confront about the tendered materials.

13. Fourth, the majority of the tendered materials are the subject of separate proceedings in Case 2023-12. The Defence is not a party to those proceedings. The Panel seized of Case 2023-12 will have to make findings of fact, which the Defence have no opportunity to confront or address, about the provenance, content and meaning of the tendered materials and any other evidence submitted in that case. For material to seep from Case 2023-12 into this case, in circumstances where the Defence are denied any means to confront the evidence in these proceedings, is highly prejudicial.

#### IV. CONCLUSION

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<sup>13</sup> KSC-BC-2020-06, F02501, Trial Panel II, *Decision on Prosecution Request to Amend the Exhibit List (F02279) and on Thaçi Defence Motion for Exclusion of Materials in Limine*, 22 August 2024, confidential.

14. Taking into account that, once again, no evidence is produced connecting Mr. Krasniqi to any alleged impropriety, the Motion should be denied as the tendered materials are not relevant and any probative value is outweighed by the prejudice which their admission would cause him.

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