

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: Specialist Counsel for Jakup Krasniqi
Specialist Counsel for Kadri Veseli

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Public Redacted Version of ‘Krasniqi and Veseli Defence Response to ‘Prosecution request to present and for admission of rebuttal evidence (F03616)’

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I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby responds to the Prosecution request to present and for admission of rebuttal evidence.¹ The Defence submits that the Request patently fails to satisfy the strict legal test governing rebuttal under Rule 133 of the Rules.² In particular, the Prosecution has failed to demonstrate: (i) exceptional circumstances to justify the admission of the Proposed Evidence at this late stage; (ii) that the Proposed Evidence constitutes genuine rebuttal evidence in that it directly refutes Defence evidence; and (iii) that the admission of the Proposed Evidence is required in the interests of justice.

2. The Defence does not oppose the admission of the limited part of the Proposed Evidence that merely records information concerning the seven already admitted items listed in Item 124.³ The Defence maintains its objection to the admission of the remainder of the Proposed Evidence.

3. The Defence for Kadri Veseli joins in paragraph 14 of this response.

II. SUBMISSIONS

4. The Prosecution argues that the requested admission of the Proposed Evidence is made pursuant to Rules 127(2)(d) and 133 of the Rules, in the interests of justice and on an exceptional basis, and is necessary to complete the evidentiary record amid the

¹ F03616, Specialist Prosecutor, *Prosecution request to present and for admission of rebuttal evidence* (“Request”), 5 December 2025, public, with Annex 1, confidential.

² Rules of Procedure and Evidence before the Kosovo Specialist Chambers.

³ See F03556/A01, Krasniqi Defence, *Annex 1 to Krasniqi Defence Second Application for Admission of Material through the Bar Table* (“Defence BTM”), 3 November 2025, confidential, Item 124; Admitted as 4D00237.

admission of the admitted Defence evidence⁴ and to assist in making an assessment of submissions related to the relevance and weight of the admitted Defence exhibits.⁵

The Prosecution has not demonstrated exceptional circumstances

5. The very jurisprudence relied on by the Prosecution⁶ clearly requires the Prosecution to present all evidence during their case-in-chief and makes clear that rebuttal is a narrowly circumscribed exception to the ordinary sequence of evidence, which is permitted only in truly exceptional circumstances, and only where the interests of justice so demand. Rebuttal is narrowly confined to issues arising directly and specifically from Defence evidence and is not a vehicle to remedy gaps that were reasonably foreseeable during the Prosecution case.⁷

6. The Request entirely fails to meet this threshold. Far from being a fresh matter, the Proposed Evidence is internal work product generated by the Prosecution based on the details of the material extracted from the workstation found at Mr. Krasniqi's residence.⁸ It was created at the latest in July 2023, when it was shared with the Defence *inter partes*, long after the Prosecution had already been in possession of the underlying data. Accordingly, the Prosecution had the Proposed Evidence and could have relied on the information it contains, well before the close of their case. Its failure

⁴ 4D00229 (Item 115), 4D00236 (Item 123), 4D00237 (Item 124) – collectively “Admitted Items”.

⁵ Request, para. 2.

⁶ Request, fn 7; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-A, Appeals Chamber, *Judgement*, 20 February 2001, para. 273.

⁷ ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-T, *Decision on the Prosecution's Alternative Request to Reopen the Prosecution's Case* (“Delalić Decision”), 19 August 1998, paras 22-23, 26-27, 30, 32. See also ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Trial Chamber I, *Public Redacted Decision on the Prosecution's Application to Admit Rebuttal Evidence from Witness DRC-OTP-WWWW-0005*, 28 April 2011, para. 43; *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Trial Chamber VI, *Decision on Prosecution request for presentation of evidence in rebuttal (ICC-01/04-02/06-2197-Conf) and related filings*, 26 February 2018, para. 20; *The Prosecutor v. Bemba*, ICC-01/05-01/08, Trial Chamber III, *Decision on "Prosecution's Application to Submit Additional Evidence"*, 2 April 2014, fn 49.

⁸ See admitted Item 115 (4D00229).

to do so reflects a deliberate tactical choice, not an unforeseeable development.⁹ Rebuttal evidence cannot be invoked to cure such omission, and where, as here, the Prosecution has long held the material, reliance on rebuttal is improper.¹⁰

7. Throughout the trial, the Defence consistently challenged the reliability and provenance of the items extracted from the seized workstation.¹¹ The Prosecution was well aware that the Defence challenged the provenance and chain of custody of these items. If, as the Prosecution now asserts, the Proposed Evidence was necessary to “complete the evidentiary record”, the Prosecution could and should have disclosed and tendered it before the Prosecution closed their case.¹² The Prosecution provides no justification whatsoever for its years-long failure to use the Proposed Evidence during their case-in-chief. Despite having possessed the material for years, the Prosecution made a conscious decision neither to disclose the information contained in the Proposed Evidence to the Defence nor to upload it into the Legal Workflow

⁹ See e.g., ICC, *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06, Trial Chamber I, *Public Redacted Decision on the Prosecution’s Application to Admit Rebuttal Evidence from Witness DRC-OTP-WWWW-0005*, 28 April 2011, para. 43; *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Trial Chamber VI, *Decision on Prosecution request for presentation of evidence in rebuttal (ICC-01/04-02/06-2197-Conf) and related filings*, 26 February 2018, para. 20; *The Prosecutor v. Bemba*, ICC-01/05-01/08, Trial Chamber III, *Decision on “Prosecution’s Application to Submit Additional Evidence”*, 2 April 2014, fn 49.

¹⁰ ICTR, *Prosecutor v. Semanza*, ICTR-97-20-T, Trial Chamber III, *Decision On The Prosecutor’s Motion for Leave to call Rebuttal Evidence and the Prosecutor’s Supplementary Motion for Leave to call Rebuttal Evidence (“Semanza Decision”)*, 27 March 2002, para. 9, where the Trial Chamber permitted rebuttal only after the Defence raised an alibi that the Prosecution could not have reasonably foreseen.

¹¹ See e.g., Transcript of Hearing, 11 July 2024, pp 18052-10855; F01387, Specialist Counsel, *Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential, with Annexes 1-8, confidential, paras 31-50; IA029/F00002, Veseli and Krasniqi Defence, *Veseli and Krasniqi Defence Appeal against the Second Decision on Specialist Prosecutor’s Bar Table Motion*, 27 July 2023, public, with Annex 1, confidential and *ex parte* and Annex 2, public; IA029/F00004, Veseli and Krasniqi Defence, *Veseli and Krasniqi Defence Reply to “Prosecution response to ‘Veseli and Krasniqi Defence Appeal against the Second Decision on Specialist Prosecutor’s Bar Table Motion’”*, 14 August 2023, confidential; F02252, Specialist Counsel, *Joint Defence Response to ‘Prosecution Submission on Admissibility of Items Used with W04739 (F02228)’*, 18 April 2024, confidential, para. 17; F03145, Specialist Counsel, *Joint Defence Response to Prosecution motion for admission of General Staff and Provisional Government of Kosovo documents (F03065)*, 24 April 2025, confidential, with Annexes 1-3, confidential, para. 31.

¹² *Contra Request*, para. 2.

metadata of the relevant files. Such conduct cannot now be cured through a belated resort to rebuttal.

8. The Panel admitted a significant number of items listed in the Proposed Evidence through the Prosecution Bar Table motion, where their purported provenance had already been notified to the Panel and the Parties.¹³

9. Moreover, the Prosecution have long possessed the material, could have led or tested it in chief, and now seek merely to repair gaps revealed by the Defence. Except for the seven items related to Item 124, the Prosecution failed to meet the stringent three-limb test for rebuttal and this part of the Proposed Evidence must be dismissed.

The Proposed Evidence does not constitute genuine rebuttal

10. Rebuttal evidence must refute a specific piece of Defence evidence. As the ICTY explained in *Čelebići*, the purpose of rebuttal is to “call evidence to refute a particular piece of evidence which has been adduced by the Defence”.¹⁴ The Proposed Evidence does nothing of the kind. It does not undermine, contradict or impeach any Defence evidence; it merely compiles information about files that were purportedly extracted from a workstation seized at Mr. Krasniqi’s residence, through the process described in Items 123 and 124, and cross-references them with ERN numbers. Such collation may have been useful to the Prosecution during their case-in-chief, but it is not rebuttal.

¹³ See F03065/A02, Specialist Prosecution, *ANNEX 2 to Prosecution motion for admission of General Staff and Provisional Government of Kosovo documents*, 1 April 2025, confidential.

¹⁴ Delalić Decision, para. 23.

11. First, Item 115¹⁵ consists of an e-mail sent by the Prosecution to the Defence to which the Proposed Evidence was attached.¹⁶ The Defence tendered the e-mail to demonstrate that the Prosecution [REDACTED].¹⁷ The Prosecution did not oppose the tender of the e-mail and did not object to the Defence's submissions regarding its relevance.¹⁸ Now, after the close of the Defence case, the Prosecution seek to tender the Proposed Evidence not to rebut Defence evidence, but to belatedly introduce information it omitted to present during its case at trial. That is not rebuttal. Item 115 is merely supplemental, providing additional information rather than refuting the Admitted Item.¹⁹

12. Second, Item 123²⁰ is an external forensic report describing how a digital forensic copy of the workstation was created. The Prosecution did not object to its admission.²¹ Item 123 explains the methodology by which a mirror image was obtained; it does not speak to the contents of the files extracted.²² The Proposed Evidence merely draws information from the digital copy, but does not refute any aspect of the Defence evidence concerning how the forensic copy was created. The Proposed Evidence is therefore purely supplemental to it.

¹⁵ 4D00229.

¹⁶ Request, para. 3(a).

¹⁷ F03556/A01, Krasniqi Defence, *Annex 1 to Krasniqi Defence Second Application for Admission of Material through the Bar Table* ("Defence BTM"), 3 November 2025, confidential, Item 115.

¹⁸ F03573/A01, Specialist Prosecutor, *ANNEX 1 to Prosecution response to 'Krasniqi Defence Second Application for Admission of Material through the Bar Table* ("Annex 1 to Prosecution Response to F03556"), 10 November 2025, confidential, Item 115.

¹⁹ Delalić Decision, para. 23.

²⁰ 4D00236; Defence BTM, Item 123.

²¹ Annex 1 to Prosecution Response to F03556, Item 123.

²² Request, para. 3(b).

13. Third, Item 124²³ is a forensic report which the Prosecution say was prepared “for the purposes of the present proceedings”.²⁴ Whilst the Prosecution submitted that it would not object to admission of this Item, if the Defence adequately demonstrated a connection between the specific recovered documents concerned by the Item and evidence admitted in this case,²⁵ the Panel nevertheless admitted Item 124. Having failed to convince the Panel not to admit the Item, the Prosecution now try to supplement Item 124 with a spreadsheet adding information to its contents. Such a manoeuvre underscores that the Proposed Evidence is a late attempt to bolster the Prosecution’s case-in-chief rather than to rebut any Defence evidence.

The Proposed Evidence includes information related to items that have not been tendered and/or admitted in these proceedings

14. The Proposed Evidence also contains information about items that have never been tendered or admitted.²⁶ As noted above, the test governing rebuttal demands that proposed rebuttal be strictly confined to matters arising from Defence evidence. The Prosecution however does not even attempt to explain how these new items correlate with the Admitted Items. This portion of the Request must therefore be dismissed outright. The Veseli Defence joins in these submissions.

²³ 4D00237.

²⁴ F03573, Specialist Prosecutor, *Prosecution response to ‘Krasniqi Defence Second Application for Admission of Material through the Bar Table’ (F03556)* (“Prosecution Response to F03556”), 10 November 2025, public, with Annex 1, confidential, para. 15.

²⁵ Prosecution Response to F03556, para. 15.

²⁶ E.g., SPOE00232233-00232234, SPOE00232244-00232244, SPOE00232266-00232267, SPOE00232268-00232270, SPOE00232295-00232295, SPOE00232626-00232628, SPOE00232629-00232648, SPOE00232683-SPOE00232683, SPOE00232776-00232779, SPOE00232786-00232788, SPOE00232803-00232804, SPOE00232826-00232827, SPOE00232843-00232865, SPOE00232866-00232867, SPOE00231822-00231822, SPOE00231835-00231835, SPOE00231838-00231840, SPOE00231844-00231846, SPOE00231853-00231853, SPOE00231854-00231854, SPOE00231855-00231891, SPOE00231937-00231940, SPOE00231955-00231955, SPOE00231956-00231956, SPOE00231978-00231980, SPOE00231983-00231988, SPOE00232060-00232061, SPOE00232095-00232104, SPOE00232123-00232124, SPOE00232224-00232224.

Admitting the Proposed Evidence is not in the interests of justice

15. Even if the Prosecution had shown that the Proposed Evidence was truly rebuttal, the Panel must also be satisfied that admitting it is in the interests of justice, which entails balancing the probative value of the evidence against the prejudice to Mr. Krasniqi and the impact on the fairness and expeditiousness of the proceedings. This criterion does not relax the exceptional circumstances requirement; rather, both limbs must be met cumulatively.²⁷ Settled jurisprudence recognises that requests made at such an advanced stage of the proceedings are disfavoured - the later in the proceedings a request is made, the less likely it is that it should be granted.²⁸ With both sides having now closed their cases, the admission of the Proposed Evidence would inflict significant and unjustifiable prejudice.

16. The Prosecution contend that, without the Proposed Evidence, the Parties will be unable adequately to provide the clarifications invited by the Panel regarding the relevance, weight and interrelationship of the Admitted Items.²⁹ This argument misunderstands both the Panel's instructions and the governing law. The Panel clearly invited the Parties to explain, in their final submissions, how the admitted materials relate to one another.³⁰

17. The Panel thus explicitly invited clarifications in argument, not the introduction of additional Prosecution evidence. Nothing in the Decision suggests that the Panel considered the existing evidentiary record inadequate or that the Panel envisaged a

²⁷ *Semanza* Decision, para. 8; *Tolimir* Decision, paras 38, 47.

²⁸ ICTY, *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, Appeals Chamber, *Judgement*, 20 February 2001, para. 286; *Prosecutor v. Zdravko Tolimir*, IT-05-88/2-T, Trial Chamber II, *Consolidated Decision On Prosecution's Bar Table Motions And The Accused's Motion For Extension Of Time ("Tolimir Decision")*, 14 May 2012, paras 38-39, 44, 47.

²⁹ Request, para. 5.

³⁰ F03602, Trial Panel II, *Decision on Krasniqi Defence Second Application for Admission of Material through the Bar Table*, 1 December 2025, public ("Decision"), para. 75.

further evidentiary phase. The Prosecution is perfectly capable of addressing, in their final submissions, whatever inferences it invites the Panel to draw from the already admitted items and their alleged connections to other evidence. The Prosecution do not need, and Rule 133 of the Rules does not permit, further evidence to perform that argumentative function.

18. Moreover, introducing the Proposed Evidence at this juncture would be materially prejudicial to Mr Krasniqi. It would require the Defence, at the final stage of the trial, to confront untested Prosecution material that has been in the Prosecution's possession for years but which it deliberately chose not to adduce in their case-in-chief. It would also compel the Defence to divert its limited word count and preparation time – already strained by the scale and complexity of the case – away from issues properly arising from the existing record in order to address evidence that may ultimately add nothing of relevance.

19. In any event, for the reasons set out above, the Defence opposes the admission of the Proposed Evidence in its current form. Nevertheless, the Defence does not object to the admission of the specific portion of the Proposed Evidence that lists the seven items listed in already admitted Item 124.³¹ Those entries partly duplicate information already on the record and their admission would not cause prejudice. The remainder of the Proposed Evidence, however, fails to meet the stringent criteria for rebuttal and should be dismissed.

³¹ Proposed Evidence, p. SPOE00408890.

III. CLASSIFICATION

20. Pursuant to Rule 82(3) of the Rules, this filing is submitted confidentially because it refers to the content of evidentiary material currently classified as confidential.

IV. CONCLUSION

21. The Request is an impermissible attempt to admit additional evidence after the closure of trial proceedings. The Prosecution have not shown exceptional circumstances justifying the introduction of evidence at this late stage; they have not demonstrated that the Proposed Evidence genuinely rebuts any Defence evidence; and they have not established that admission of the Proposed Evidence would serve the interests of justice. On the contrary, the Proposed Evidence is an internal compilation of data that the Prosecution have possessed for years and could have presented during their case-in-chief. To admit the Proposed Evidence now would reward the Prosecution's failure to deploy this evidence during its case and compromise the fairness of the proceedings.

22. Accordingly, the Defence respectfully requests the Trial Panel to:

23. (a) **admit** into evidence only the limited portion of the Proposed Evidence that records information concerning the seven items already admitted in Item 124; and

(b) **dismiss** the remainder of the Prosecution's Request.

Word count: 2672

Respectfully submitted on 11 December 2025,



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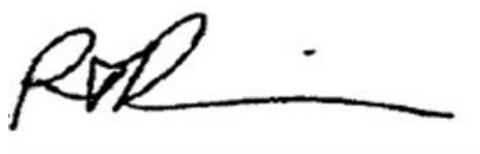
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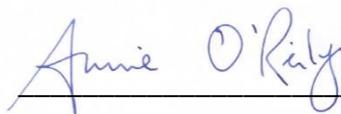
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