



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06
The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filed by: Dr Fidelma Donlon

Date: 3 December 2020

Language: English

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Notification of Approval of Co-Counsel for Jakup Krasniqi

with confidential Annexes 1-2

Specialist Prosecutor's Office

Jack Smith

Counsel for Jakup Krasniqi

Venkateswari Alagendra

1. Pursuant to Rule 26(1) of the Rules,¹ the Registrar hereby informs the Pre-Trial Judge of the approval of additional Co-Counsel for Mr Jakup Krasniqi ('Mr Krasniqi'), namely Mr Valon Hasani ('Mr Hasani').

I. PRODECURAL BACKGROUND

2. In the past year, Mr Hasani represented six individuals in connection with interviews conducted by the Specialist Prosecutor's Office ('SPO').²

3. In addition, from 28 September until 30 October 2020, Mr Hasani served as Co-Counsel for Mr Hysni Gucati in case number KSC-BC-2005-07, currently pending before the Specialist Chambers.³ On 30 October 2020, the Registrar approved the Mr Hasani's withdrawal as Co-Counsel for Mr Gucati, who is represented by Counsel Mr Jonathan Elystan Rees.⁴

4. On 6 November 2020, the Registrar appointed Ms Venkateswari Alagendra as Counsel for Mr Krasniqi in accordance with Sections 12 and 13 of the Directive on Counsel.⁵

5. On 13 November 2020, upon request of Counsel, the Registrar approved Mr Aidan Ellis as Co-Counsel for Mr Krasniqi in accordance with Section 18 of the Directive on Counsel.⁶

6. On 13 November 2020, Counsel further requested the appointment of Mr Hasani as Co-Counsel for Mr Krasniqi.

¹ Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'); *see also* Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015, arts 21(4), 21(5), 34(7) and 41(4)(b).

² *See* Annex 1.

³ Notification of the Appointment of Counsel, KSC-BC-2020-07/F00024, 28 September 2020, public.

⁴ Notification of the Conditional Assignment of Counsel to Hysni Gucati, KSC-BC-2020-07/F00064, 4 November 2020, public.

⁵ Notification of the Appointment of Counsel to Jakup Krasniqi, KSC-BC-2020-06/F00058, 6 November 2020, public; Directive on Counsel, KSC-BD-04, 6 November 2017.

⁶ Notification of Approval of Co-Counsel for Jakup Krasniqi, KSC-BC-2020-06/F00077, 16 November 2020, public.

II. APPLICABLE LAW

7. Article 28(3) of the Code of Professional Conduct⁷ provides that “Counsel shall not advise, represent or act on behalf of a Client in a matter before the Specialist Chambers if: [...] b. Counsel or his or her firm had advised, represented or acted on behalf of a former Client and the interests of the prospective or new Client are materially adverse to the interests of the former Client”.

8. Furthermore, Article 28(4)(b)(1) of the Code of Professional Conduct provides, in relevant part, that where a *potential* conflict of interest arises under Article 28(3)(b), at any stage of proceedings, Counsel shall:

obtain the consent of potentially affected Clients to represent the prospective or new Client and assess whether such consent is likely to irreversibly prejudice the fair and proper administration of justice, including the Client’s right to a fair trial. Counsel shall make a written record of the consent as well as his or her assessment. When in doubt as to the assessment, Counsel shall seek advice from the Independent Representative Body of Specialist Counsel. If this advice contradicts Counsel’s assessment, Counsel shall notify the Panel or a Judge assigned for that purpose, who shall determine, after consultation with the parties, whether or not there is a real possibility shown that a conflict between the former, present or prospective assignment, as applicable, exists.

9. Pursuant to Article 28(5) of the Code of Professional Conduct, Counsel shall apply Article 28(3) *mutatis mutandis* when choosing members of his or her team, including Co-Counsel.

III. ASSESSMENT OF CONFLICT OF INTEREST

10. On 13 and 17 November 2020, Counsel provided signed consent forms from the seven potentially affected Clients, including Mr Gucati, stating their agreement to Mr Hasani’s representation of Mr Krasniqi, as well as a consent form from Mr Krasniqi

⁷ Code of Professional Conduct – for Counsel and Prosecutors Before the Kosovo Specialist Chambers, KSC-BD-07, 1 March 2019 (‘Code of Professional Conduct’).

indicating that he was informed of the prior representations and consented to Mr Hasani representing him as Co-Counsel.⁸

11. Additionally, Counsel provided the Defence Office with Mr Hasani's assessment under Article 28(4)(b)(1) of the Code of Professional Conduct that the consent of the potentially affected Clients "is not likely to irreversibly prejudice the fair trial and proper administration of justice, including the Client's right to a fair trial".⁹

12. On 30 November 2020, pursuant to Article 28(5) of the Code of Professional Conduct, Counsel further informed the Defence Office as follows: "Upon reviewing the declarations provided to me I am satisfied that at present there is no potential conflict in the appointment of Mr. Hasani as Co-Counsel. Should there be any new information which comes to my notice in this regard, I will duly consider the same and reassess the situation and will take appropriate action."

13. On 30 November 2020, following receipt of Counsel's assessment, the Registrar approved Mr Hasani as additional Co-Counsel for Mr Krasniqi in accordance with Section 18 of the Directive on Counsel.¹⁰

14. Mr Hasani is admitted to the List of Counsel in accordance with Sections 7(3) and 18(1) of the Directive on Counsel.¹¹

⁸ See Annex 1.

⁹ See Annex 1.

¹⁰ See Annex 2.

¹¹ Decision on Admission to the List of Specialist Counsel, KSC/REG/DEF/0102, 20 September 2019.

IV. CLASSIFICATION

15. This submission is filed as public, whereas Annexes 1 and 2 are filed confidentially pursuant to Rule 82(1)(b) and (3) of the Rules, as they contain personal information concerning Counsel and Co-Counsel, as well as personal information concerning past and/or present Client(s).

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Dr Fidelma Donlon

Registrar

Thursday, 3 December 2020

At The Hague, the Netherlands