

**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

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

**Date:** 14 February 2022

**Language:** English

**Classification:** Confidential

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**Krasniqi Defence Response**

**to Registrar's Submissions on Proposed Protocol for Interviews with Witnesses**

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**Specialist Prosecutor**

Jack Smith

**Counsel for Victims**

Simon Laws QC

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson QC

**Counsel for Rexhep Selimi**

David Young

**Counsels for Jakup Krasniqi**

Venkateswari Alagenda, Aidan Ellis

## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby responds to the Registrar’s Submissions<sup>1</sup> filed pursuant to Rule 23(2) of the Rules<sup>2</sup> following the Pre-Trial Judge’s Order of 21 January 2022,<sup>3</sup> on matters arising from the submissions of the Specialist Prosecutor’s Office (“SPO”) on the handling of confidential information during investigations and on contacts with witnesses,<sup>4</sup> as well as the responses of the Defence and Victims’ Counsel,<sup>5</sup> in relation to the Registry’s role.

## II. PROCEDURAL HISTORY

2. On 3 December 2021, the SPO proposed a framework for (i) handling of confidential information during investigations and for (ii) contacts with witnesses.<sup>6</sup>

3. On 10 December 2021, the Victims’ Counsel filed its response to the SPO Submissions.<sup>7</sup>

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<sup>1</sup> KSC-BC-2020-06, F00679, Registrar, *Registrar’s Submissions on Proposed Protocol for Interviews with Witnesses* (“Registrar’s Submissions”), 3 February 2022, confidential.

<sup>2</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

<sup>3</sup> KSC-BC-2020-06, F00650, Pre-Trial Judge, *Order to the Registrar for Submissions* (“Order”), 21 January 2022, public.

<sup>4</sup> KSC-BC-2020-06, F00594, Specialist Prosecutor, *Prosecution Submissions on Confidential Information and Contacts with Witnesses* (“SPO Submissions”), 3 December 2021, public.

<sup>5</sup> KSC-BC-2020-06, F00605, Victims’ Counsel, *Victims’ Counsel Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses* (“Victims’ Counsel Response”), 10 December 2021, public; F00625, Thaçi Defence, *Thaçi Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses* (“Thaçi Defence Response”), 15 December 2021, public; F00626, Selimi Defence, *Selimi Defence Response to “Prosecution Submissions on Confidential Information and Contacts with Witnesses”* (“Selimi Defence Response”), 15 December 2021, public; F00627, Krasniqi Defence, *Krasniqi Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses* (“Defence Response”), 15 December 2021, confidential. A public redacted version was filed on 17 December 2021, F00627/RED. KSC-BC-2020-06, F00628, Veseli Defence, *Veseli Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses* (“Veseli Defence Response”), 15 December 2021, public.

<sup>6</sup> SPO Submissions, para. 1.

<sup>7</sup> Victims’ Counsel Response.

4. The Defence for Messrs Thaçi, Selimi, Krasniqi and Veseli responded on 15 December 2021.<sup>8</sup> In its submissions, the Defence has requested the Pre-Trial Judge to reject the SPO's proposed framework because (i) it is premature; (ii) it has no legal or practical justification or benefit; (iii) it is excessively burdensome; (iv) prejudices the rights of the Defence; (v) creates potential for considerable delays; (vi) does not factor in the unique circumstances of the case; and (vii) would burden both the Defence and the Pre-Trial Judge with inefficient, unnecessary and impracticable measures to protect witnesses and confidential information.<sup>9</sup>

5. On 21 January 2022, the Pre-Trial Judge ordered the Registrar "to provide submissions on any matter arising from the SPO Submissions, Victims' Counsel Response and/or Defence Responses, including, if applicable, proposals as to the practical implementation and/or modalities of the Registry's role, by no later than Friday, 4 February 2022".<sup>10</sup>

6. On 3 February 2022, the Registrar filed submissions in which it was noted that, with the aim of providing effective and timely services and to be able to accurately inform the Pre-Trial Judge on the feasibility, impact, and ramifications of the proposals, further information is requested to determine the resources, implications of delivering the relevant services, including (i) the approximate number of witnesses to be interviewed; (ii) whether the individual witnesses would be interviewed once or whether multiple interviews with individual witnesses is a possibility; (iii) the country location of the interviews, to estimate the cost of travel and mission support; (iv) the estimated duration of the individual interviews, for an assessment of human resources and costs; and (v) should the proposals be

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<sup>8</sup> Thaçi Defence Response; Selimi Defence Response; Defence Response; Veseli Defence Response.

<sup>9</sup> Defence Response, para. 2.

<sup>10</sup> Order, paras 6, 7(a).

ordered, the approximate period of time during which Registry resources will be required to implement the proposals.<sup>11</sup>

### III. SUBMISSIONS

7. As the Defence has previously submitted, it has begun its investigations, but the bulk of it remains to be conducted, given the nature of the charges in the present case, the large scope and extended duration of the alleged crimes, the alleged involvement of other individuals in the commission of the alleged crimes, as well as the volume of disclosure, and the on-going litigation. The efficiency and effectiveness of the Defence investigations, which is only in its early stage, is significantly hampered by several factors, including the (i) extensive redactions applied by the SPO to the material already disclosed; (ii) delayed and partial disclosure by the SPO, particularly since approximately 104 witnesses remain anonymous to the Defence; and (iii) ongoing disclosure process and disclosure review, particularly in light of the voluminous disclosure received from the SPO in the last few months and the issues the Defence has faced with the disclosure process.

8. The Defence also considers it premature to ask for an estimate of the number of witnesses it intends to interview less than two months after the SPO filed its Pre-Trial Brief<sup>12</sup> on a case it has and continues to be investigating for years; the SPO has not confirmed to date that its investigations have been completed. The SPO's deadline to complete disclosure of Rule 102(1)(b) material was 31 January 2022, only two weeks ago, and on the same date, the Defence was provided with the

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<sup>11</sup> Registrar's Submissions, para. 11.

<sup>12</sup> KSC-BC-2020-06, F00631/RED, Specialist Prosecutor, *Public Redacted Version of 'Submission of Pre-Trial Brief, with Witness and Exhibit Lists'*, KSC-BC-2020-06/F00631, dated 17 December 2021, 21 December 2021, public, with redacted Annexes 1-3, confidential.

Rule 109(c) chart.<sup>13</sup> The Defence also notes that it still does not have the Pre-Trial Brief and Rule 109(c) chart in Mr. Krasniqi's native language.

9. Given the amount of material the SPO has disclosed and continues to disclose, the Defence is likely to require substantial time to review it, conduct investigations, prepare its Pre-Trial Brief and meaningfully determine the number of SPO witnesses it intends to interview at trial.

10. The Defence further stresses that the Pre-Trial Judge has authorised the SPO to withhold the identity of over one hundred witnesses, being noted that the identity of 69 witnesses will be disclosed only 30 days before trial. Further, the Indictment, the Rule 86(3)(b) Outline and the SPO Pre-Trial Brief remain extensively redacted. In such circumstances, the Defence cannot provide the precise number of witnesses it intends to interview.

11. However, in order to allow the Registrar to inform the Pre-Trial Judge on the feasibility, impact, and ramifications of the framework proposed by the SPO – which the Defence has vehemently opposed in its Response<sup>14</sup> – the Defence, at this time, provides only an approximate number of SPO witnesses it intends to interview. Considering the factors discussed above, the Defence is presently able to estimate that it may require to interview approximately 75 *viva voce* witnesses from the SPO's preliminary list of witnesses. As this figure remains only an estimate at this stage, the Defence reserves its right to adjust the number of witnesses it intends to interview and make further submissions on this matter.

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<sup>13</sup> KSC-BC-2020-06, F00663, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart*, 28 January 2022, public, with Annex 1, strictly confidential and *ex parte* and redacted Annex 2, confidential.

<sup>14</sup> Defence Response.

12. For the same reasons, the Defence considers it premature and at this time is not in a position to meaningfully assess and make submissions in relation to the matters on which the Registrar requested information under (ii)-(v) at paragraph 11 of the Registrar's Submissions. Before the Defence is able to do so, it must: (i) continue to review and analyse the SPO's case as set forth in the SPO's Pre-Trial Brief; (ii) conduct a preliminary investigation based on its understanding of the SPO's case, and (iii) use the facts gathered during its review and investigation to finalise its Defence strategy. Without finalising, at least conceptually, its case and strategy, the Defence cannot meaningfully respond to the issues set out by the Registrar.

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**Venkateswari Alagendra**

Monday, 14 February 2022  
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Monday, 14 February 2022  
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