

In: KSC-CC-2022-13
Before: Constitutional Court Panel
Judge Vidar Stensland
Judge Roumen Nenkov
Judge Romina Incutt
Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 10 March 2022
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**Thaçi's Joinder to the Krasniqi Defence Referral to the Constitutional Court Panel
on the Legality of Charging Joint Criminal Enterprise**

Specialist Prosecutor

Jack Smith

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson QC

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra, Aidan Ellis

I. SUBMISSIONS

1. On 28 February 2022, the Defence for Mr Jakup Krasniqi (“Krasniqi Defence”) filed its *Referral to the Constitutional Court Panel on the Legality of Charging Joint Criminal Enterprise with public Annex 1* (“Krasniqi Referral”).¹
2. The current Constitutional Panel was assigned on 1 March 2022.²
3. The Defence for Mr Hashim Thaçi (“Defence”) agrees with the submissions presented in the Krasniqi Referral; namely, that the Specialist Prosecutor’s Office has violated the individual rights of the accused in case KSC-BC-2020-06 by charging them with the basic and extended forms of joint criminal enterprise (“JCE”).
4. The Defence submits that the Krasniqi Referral convincingly substantiates its position that: (i) the extended form of joint criminal enterprise (“JCE III”) was not part of customary international law during the indictment period; (ii) JCE III was not accessible or foreseeable to the accused during the indictment period; and (iii) JCE is not a mode of responsibility prescribed by Article 16(1)(a) of the Law.³
5. On this basis, the Defence hereby joins the Krasniqi Referral, and supports the request for relief as set out therein.

¹ KSC-CC-2022-13/F00001, Krasniqi Defence Referral to the Constitutional Court Panel on the Legality of Charging Joint Criminal Enterprise, 28 February 2022 (notified on 1 March 2022).

² KSC-CC-2022-13/F00002, Decision to Assign Judges to a Constitutional Court Panel, 1 March 2022.

³ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office.

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Respectfully submitted,



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Thursday, 10 March 2022

At Tampa, United States of America