

**In:** KSC-CC-2022-13

**Before:** **The Specialist Chamber of the Constitutional Court**  
Judge Vidar Stensland, Presiding  
Judge Roumen Nenkov  
Judge Romina Incutti

**Registrar:** Dr Fidelma Donlon

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

**Date:** 31 March 2022

**Language:** English

**File name:** Referral by Jakup Krasniqi to the Constitutional Court Panel  
Concerning the Legality of Charging Joint Criminal Enterprise

**Classification:** Public

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**Krasniqi Defence Request**

**for a Variation of the Time to Submit Written Submissions**

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**Specialist Prosecutor**

Jack Smith

**Applicant**

Jakup Krasniqi

## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby requests a limited extension of the time limit until 8 April 2022 to file its further submissions, as directed by the Specialist Chamber of the Constitutional Court (“Constitutional Court” or “Chamber”) in its Decision on Further Submissions of 15 March 2022.<sup>1</sup>

## II. PROCEDURAL HISTORY

2. On 28 February 2022, the Defence filed Mr. Krasniqi’s Referral to the Constitutional Court Panel on the Legality of Charging Joint Criminal Enterprise.<sup>2</sup>

3. On 15 March 2022, the Constitutional Court assigned to consider the Referral issued its Decision, in which it invited the parties to file written submissions, if they so wish, in relation to the Referral, addressing the specific questions set out in the Decision. The Chamber also directed:

- (i) The Specialist Prosecutor’s Office (“SPO”), if it so wishes, to file written submissions on the questions by 29 March 2022; and
- (ii) The Applicant, if it so wishes, to file written submissions on the questions and/or comment on the SPO’s written submissions, if any, by 5 April 2022.<sup>3</sup>

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<sup>1</sup> KSC-CC-2022-13, F00005, Constitutional Court, *Decision on Further Submissions* (“Decision”), 15 March 2022, public.

<sup>2</sup> KSC-CC-2022-13, F00001, Krasniqi Defence, *Krasniqi Defence Referral to the Constitutional Court Panel on the Legality of Charging Joint Criminal Enterprise* (“Referral”), 28 February 2022, public, with Annex 1, public.

<sup>3</sup> Decision, p. 5.

4. On 30 March 2022, the Defence was notified of the SPO Response to Decision on Further Submissions in Relation to Krasniqi Referral.<sup>4</sup>

### III. SUBMISSIONS

5. Rule 6(4)(a) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court (“Rules”) provides that the Constitutional Court Panel may, *proprio motu* or on a showing of good cause by a participant in the proceedings, extend any time limit prescribed by the Rules or set by the Panel. The Defence requests a limited extension of the time limit to file its further submissions until 8 April 2022.

6. In her Decision Assigning a Court of Appeals Panel to Consider Requests Regarding Time Limits, the President of the Specialist Chambers (“SC”) noted that “ruling on a request for extension of time limits lies exclusively within the competence of an assigned Panel”.<sup>5</sup> The Chamber assigned to consider the Referral is therefore the appropriate Panel to consider the Defence’s request.

7. The Defence considers that good cause exists for the reasonable and proportionate extension of the time limit requested. First, while the questions posed by the Constitutional Court raise complex matters of admissibility, exhaustion of remedies and jurisdiction, due to the early stage of the SC’s operation, the scope of the Constitutional Court’s jurisprudence on these matters is limited and not fully developed. The questions posed by the Constitutional Court, and the annex to the Response which contains a lengthy list of jurisprudence of both the Constitutional

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<sup>4</sup> KSC-CC-2022-13, F00006, Specialist Prosecutor, *Prosecution Response to Decision on Further Submissions in Relation to Krasniqi Referral* (KSC-CC-2022-13/F00005) (“Response”), 30 March 2022, public, with Annex 1, public.

<sup>5</sup> KSC-BC-2020-06, IA009/F00004, President, *Decision Assigning a Court of Appeals Panel to Consider Requests Regarding Time Limits*, 27 July 2021, public, para. 9.

Court and the European Court of Human Rights, further demonstrate that matters raised in the Referral require extensive research and analysis.

8. Second, the timetable laid down by the Constitutional Court expressly provides the Defence with the opportunity to comment on the SPO's written submissions.<sup>6</sup> Whilst the Defence, of course, started work upon receipt of the Decision, the content, organisation and detail of the Defence further submissions is necessarily responsive to the content of the Response (as the Decision clearly anticipated). In light of the length, complexity and number of authorities cited in the SPO's Response, it is respectfully submitted that a timeframe of seven days (which, in practice, amounted to 4.5 working days taking into account that the Response was notified to the Defence by email on 30 March 2022 at 12.11) between the SPO Response and the further submissions of the Defence is inadequate to allow the Defence to comment on the issues and authorities raised by the SPO. Granting a short extension will not unfairly prejudice the SPO in any way. As such, good cause has been shown to grant the requested extension, within the terms of Rule 6(4)(a) of the Rules.

#### **IV. REQUESTED RELIEF**

9. For these reasons, the Defence respectfully requests the Constitutional Court to find that good cause exists pursuant to Rule 6(4)(a) of the Rules for a limited variation of the time limit and to order that the Applicant's written submissions be filed by 8 April 2022.

**Word count: 758 words**

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<sup>6</sup> Decision, p. 5.



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**Venkateswari Alagenda**

Thursday, 31 March 2022

Kuala Lumpur, Malaysia.



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**Aidan Ellis**

Thursday, 31 March 2022

London, United Kingdom.