

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: 26 July 2022

Language: English

Classification: Public

Public Redacted Version of

**Krasniqi Defence Application to Request Assistance and Cooperation of an
International Organisation, KSC-BC-2020-06/F00892, dated 21 July 2022**

Specialist Prosecutor

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Counsel for Victims

Simon Laws QC

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

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Counsel for Rexhep Selimi

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Counsels for Jakup Krasniqi

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I. INTRODUCTION

1. Pursuant to Rule 208(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), the Defence for Jakup Krasniqi (“Defence”) hereby moves the Pre-Trial Judge to request the assistance and cooperation of the [REDACTED] (“[REDACTED]”).

2. The present application (“Application”) is submitted following the refusal by the [REDACTED] to provide the Defence with information and documents material to the preparation of its case. The [REDACTED]’s refusal to cooperate significantly impedes the Defence’s ability to prepare for trial.

3. Pursuant to Rule 82(3) of the Rules, this filing is classified as confidential and *ex parte* as it contains information pertaining to Defence investigations. A public redacted version of the Application will be filed in due course.

II. PROCEDURAL HISTORY

4. On 2 June 2022, the Defence submitted a Request for Assistance (“Request for Assistance” or “RFA”) to [REDACTED], [REDACTED] at the [REDACTED], requesting him to (i) confirm that, as per information available to the Defence, [REDACTED] (“[REDACTED]”) [REDACTED]; and (ii) provide the Defence with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].¹

5. On 10 June 2022, [REDACTED], [REDACTED] within the [REDACTED], informed the Defence that the information sought could not be [REDACTED]

¹ Annex 1, [REDACTED], 2 June 2022, pp. 1-2.

provided because, in accordance with its Internal Regulations,² [REDACTED] (“[REDACTED]”), [REDACTED], or [REDACTED].³

6. On 24 June 2022, the Defence asked the [REDACTED] to clarify whether [REDACTED] “[REDACTED]” [REDACTED].⁴

7. On 30 June 2002, [REDACTED] reiterated that [REDACTED], [REDACTED], or [REDACTED].⁵

III. APPLICABLE LAW

8. Article 39(10) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) provides that “[t]he Pre-Trial Judge may, at the request of any person arrested or appearing pursuant to a summons, issue such orders as may be necessary to assist the person in preparation of his or her defence.”

9. Article 55(1) of the Law further provides that:

The Specialist Chambers, the Registry and the Specialist Prosecutor may request the assistance and co-operation from other states, international organisations and other entities as is necessary for the investigation and prosecution of persons accused of committing crimes within the subject matter jurisdiction of the Specialist Chambers, and the fulfilment of the Specialist Chambers’ other responsibilities. In accordance with Article 4, the Specialist Chambers, the Registry and the Specialist Prosecutor may enter into such arrangements as are necessary for this purpose.

10. Rule 208(2) of the Rules provides:

The Defence and Victims’ Counsel may apply to a Panel to request assistance and cooperation with a Third State, international organisation or any other entity, if they can show that:

² [REDACTED].

³ Annex 1, [REDACTED], 10 June 2022, p. 3.

⁴ Annex 1, [REDACTED], 24 June 2022, pp. 4-5.

⁵ Annex 1, [REDACTED] (“[REDACTED]”), 30 June 2022, p. 4.

- (a) a legal basis for such assistance or cooperation exists or where the entity concerned has expressed a willingness to assist despite the absence of a legal basis;
- (b) a request by Specialist Counsel or Victims' Counsel has been refused or ignored; and
- (c) the information, cooperation or assistance is material to their respective case.

11. The combined effect of Article 39(10) and Rule 208(2) is thus that the Pre-Trial Judge has discretion to grant this Application if the Defence can satisfy the three criteria listed in Rule 208(2).

IV. SUBMISSIONS

12. The Defence submits that the present application satisfies the three requirements set out in Rule 208(2) of the Rules. Considering the importance of the information sought for the Defence's preparation for trial, as well as the [REDACTED]'s reiterated refusal to cooperate with the Defence, it has no choice but to apply for the Pre-Trial Judge's intervention.

A. THE RFA'S LEGAL BASIS OR THE REQUESTED ENTITY'S WILLINGNESS TO COOPERATE

13. In accordance with Rule 208(2)(a) of the Rules, the Applicant must show that a legal basis for the requested assistance or cooperation exists, or, in the alternative, that the requested entity, despite the absence of a legal basis, has indicated its willingness to assist.

14. In its response to the Request for Assistance, the [REDACTED], *i.e.* [REDACTED], [REDACTED], or [REDACTED], but did not indicate its refusal to cooperate with the Request *per se*. To the contrary, it specified that it "[REDACTED]

(1) [REDACTED], or (2) [REDACTED]”.⁶ Thus, regardless of the existence of a legal basis underpinning the request, the [REDACTED] has indicated its willingness to assist [REDACTED].

15. In any case, the Defence submits that a legal basis for cooperation between the [REDACTED] and the Kosovo Specialist Chambers (“KSC”) and its organs must exist. The [REDACTED], in the exercise of its mandate, has continuously cooperated with the SPO. To give but one example, in April 2020, it “[REDACTED]” including from the SPO.⁷ Indeed, significant numbers of documents originating from [REDACTED] or otherwise provided by the [REDACTED] to the SPO have been disclosed to the Defence in the present case.⁸ Furthermore, the Defence is aware that on at least three occasions the SPO requested and obtained orders issued by the Pre-Trial Judge addressed to the [REDACTED] for the provision of documents.⁹ The existence of this cooperation between the SPO and the [REDACTED] and the orders previously made demonstrate that there must be a legal basis for cooperation between the [REDACTED] and the organs of the KSC, albeit that the Defence is not party to and does not know the content of the agreement(s) between them.

16. In this context, the statutory principle of equality of arms,¹⁰ as well as basic reason of fairness in the pursuit of truth and justice, require that the Defence is able to request cooperation from the [REDACTED] in the same way as the SPO has requested cooperation from [REDACTED]. Rejecting this Application due to the absence of a legal basis would not only be inconsistent with the mandate of the [REDACTED], but would also contravene the consistent *dicta* of both the ICTY Appeals Chamber and the United Nations Security Council, which have variously ordered and urged

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED]; [REDACTED].

international organisations to cooperate with international tribunals.¹¹ It follows that the first criteria is satisfied because the concerned organisation has expressed willingness to assist and because there is likely to be legal basis for the requested cooperation.

B. THE REQUESTED ENTITY'S REFUSAL TO COOPERATE

17. The wording of the response to the Request for Assistance, as well as the subsequent correspondence, makes it clear that the [REDACTED] has refused to cooperate with the Defence. Indeed, the Defence [REDACTED]. In response, the [REDACTED] reiterated that, [REDACTED], [REDACTED].¹² As of today, the Defence has not received any of the material sought. It is clear that it would be futile for the Defence to pursue further correspondence with [REDACTED] and the Defence therefore has no alternative but to apply to the Pre-Trial Judge to request assistance and cooperation with the [REDACTED].

C. THE MATERIALITY TO THE DEFENCE CASE OF THE INFORMATION AND DOCUMENTS SOUGHT

18. The third criteria set out in Rule 208(2)(c) requires the Applicant to show that the information and documents sought by the Defence are *material* to its preparation for trial and its case.¹³ In a similar context, the Pre-Trial Judge clarified that "[t]he formulation *material to the Defence preparation* shall be construed broadly and refers to

¹¹ United Nations, Security Council, 'Resolution 1593 (2005)', S/RES/1593, 31 March 2005, para. 2; ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-AR108bis.1, Appeals Chamber, *Decision on Request of the North Atlantic Treaty Organisation for Review*, 15 May 2006, paras 8-11; *Prosecutor v. Simić et al.*, IT-95-9-PT, Trial Chamber, *Decision on Motion for Judicial Assistance to be Provided by SFOR and Others*, 18 October 2000; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Trial Chamber, *Order for the Production of Documents by the European Community Monitoring Mission and its Member States*, 4 August 2000.

¹² [REDACTED].

¹³ [REDACTED].

all documents and objects of relevance to the preparation of the Defence case, in the exercise of the Accused's rights under the Law and the Rules".¹⁴

19. As specified in the Request for Assistance, information available to the Defence suggests that [REDACTED]. Specifically, the Defence is aware that [REDACTED], [REDACTED], [REDACTED]. Indeed, [REDACTED], [REDACTED], which is a matter [REDACTED],¹⁵ [REDACTED].¹⁶

20. The Defence is therefore currently seeking to obtain further information and documents pertaining to [REDACTED], [REDACTED], as well as [REDACTED], [REDACTED]. Accordingly, the Defence requested the [REDACTED] to (i) [REDACTED], [REDACTED]; and (ii) [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

21. The requested information and documents are thus material to the Defence case and relevant to the preparation of the defence, as they may (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; and (vi) [REDACTED], including the [REDACTED].

V. RELIEF SOUGHT

22. In light of the foregoing, the Defence respectfully requests the Pre-Trial Judge to:

- (i) Grant the present Application; and

¹⁴ KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, para. 45.

¹⁵ Rule 95(5) of the Rules.

¹⁶ KSC-BC-2020-06, In Court -- Oral Order, Order on Deadline for Filing Defence Pre-Trial Brief, 20 May 2022, public.

- (ii) Request the [REDACTED] to comply with the Defence Request for Assistance.

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