

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: 30 August 2022

Language: English

Classification: Public

Public Redacted Version of

Krasniqi Defence Application to Request Assistance and Cooperation of a Third

State, KSC-BC-2020-06/F00937, dated 26 August 2022

Specialist Prosecutor

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Counsel for Victims

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Counsel for Hashim Thaçi

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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 [REDACTED]’s refusal to provide the Defence with information and documents material to the preparation of its case. [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], requesting [REDACTED] to:

- (i) confirm that, as per information made available to the Defence, [REDACTED], [REDACTED], and [REDACTED], [REDACTED], [REDACTED]; and

- (ii) provide the Defence with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].¹

5. On 5 July 2022, [REDACTED] addressed a letter to the Registrar of the Kosovo Specialist Chambers (“KSC”), explaining that [REDACTED] did not intend to respond to the RFA submitted by the Defence because: (i) neither [REDACTED], nor [REDACTED], [REDACTED]; and (ii) [REDACTED]. However, the letter also [REDACTED].²

6. On 13 July 2022, the Registrar transmitted the above letter to the Defence, adding that the Office of the Registrar remained available to assist in any communication and interaction between the Defence and [REDACTED], in accordance with Rule 198 of the Rules.³

7. On 14 July 2022, the Defence thus requested the Registrar to transmit the RFA to [REDACTED] pursuant to Rule 198 of the Rules.⁴ The Registrar transmitted the RFA on 18 July 2022.⁵

8. On 18 August 2022, [REDACTED], [REDACTED], replied to the Registrar, reiterating that [REDACTED] does not intend to respond to the RFA for the reasons outlined in its letter dated 5 July 2022.⁶

III. APPLICABLE LAW

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

² Annex 1, [REDACTED], 5 July 2022, pp. 3-4.

³ Annex 1, [REDACTED], 12 July 2022 and [REDACTED], 13 July 2022, pp. 5-6.

⁴ Annex 1, [REDACTED], 14 July 2022, p. 7.

⁵ See Annex 1, [REDACTED], 18 August 2022, p. 9.

⁶ Annex 1, [REDACTED], 18 August 2022, p. 9.

9. 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."

10. 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.

11. According to Rule 208(1) of the Rules, the Specialist Chambers, through the Registrar, may invite a Third State, international organisation or any other entity to provide assistance: (a) on the basis of an arrangement reached under Articles 4(2) and 55(1) of the Law; or (b) on any other appropriate basis, including mutual legal assistance agreements entered into by Kosovo or requests for assistance based on the principle of reciprocity, as set out in Article 55(2) of the Law.

12. 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:

- (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.

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

IV. SUBMISSIONS

14. 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 [REDACTED]'s reiterated refusal to respond to the RFA, it is necessary for the Defence to apply for the Pre-Trial Judge's intervention.

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

15. 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.

16. The legal basis for [REDACTED]'s assistance and cooperation with the KSC is provided by the bilateral agreement between [REDACTED] and the Republic of Kosovo ("Kosovo") [REDACTED].⁷ According to Article 1 of this Treaty, the parties [REDACTED]. As further specified in Articles [REDACTED] and [REDACTED], such legal assistance includes "[REDACTED]".⁸

⁷ [REDACTED].

⁸ [REDACTED].

17. The requested assistance and cooperation thus fall squarely within the scope of the [REDACTED]. Firstly, the status of the Specialist Chambers as an integral part of the Kosovo justice system⁹ qualifies the Pre-Trial Judge as a “judicial authority” for the purpose of a request for assistance submitted on the basis of the Treaty. Secondly, the content of the requested assistance is limited to [REDACTED], thus falling within the scope of Articles [REDACTED] and [REDACTED] of the Treaty.

18. This interpretation is further confirmed by the language of [REDACTED]’s refusal letters, in which it declined to respond to the Defence RFA holding that applicable treaties do not “[REDACTED]”, but only [REDACTED].¹⁰ Thus, it is clear that the refusal does not relate to the merits of the request, but simply takes issue with the fact that the request [REDACTED].

19. Considering all the above, the Defence submits that a legal basis for [REDACTED]’s assistance and cooperation exists and thus the first requirement of Rule 208(2) is satisfied.

B. THE REQUESTED ENTITY’S REFUSAL TO COOPERATE

20. [REDACTED]’s repeated position that it “[REDACTED]” to the Defence RFA makes it clear that its refusal to provide assistance is final. Following the refusal, no material or information has been provided to the Defence. 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

⁹ Article 162(1) of the Constitution of the Republic of Kosovo; Articles 1(2) and 3(1) of the Law. *See also*, KSC-BC-2020-06, F00450, Pre-Trial Judge, *Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused*, 31 August 2021, public, para. 86.

¹⁰ Annex 1, [REDACTED], 18 August 2022, p. 9.

[REDACTED]'s assistance and cooperation. The second requirement of Rule 108(2) is thus satisfied.

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

21. 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.¹¹ 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 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”.¹²

22. As specified in the Request for Assistance, information available to the Defence suggests that [REDACTED]. Specifically, the Defence is aware that [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. Similarly, the Defence is also aware that [REDACTED], [REDACTED], [REDACTED]. These [REDACTED] are relevant to the preparation of the defence and material to the case, particularly in relation to [REDACTED], a matter which [REDACTED],¹³ [REDACTED].¹⁴

23. 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)

¹¹ It is of note that the standard of materiality set out by Rule 208(2)(c) is lower than the one provided in Rule 54*bis* of the ICTY RPE, which requires the requested documents to be “relevant to any matter in issue” and “necessary for a fair determination of that matter”.

¹² KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, public, para. 45.

¹³ Rule 95(5) of the Rules.

¹⁴ KSC-BC-2020-06, In Court -- Oral Order, Order on Deadline for Filing Defence Pre-Trial Brief, 20 May 2022, public.

[REDACTED]; and (ii) [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

24. 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].

V. RELIEF SOUGHT

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

- (i) Grant the present Application; and
- (ii) Request [REDACTED] to comply with the Defence Request for Assistance.

Word count: 1,578



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