



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** Trial Panel II  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 19 April 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution submissions for a procedure to regulate cases falling under Rule 151', KSC-BC-2020-06/F01421, dated 4 April 2023**

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**Specialist Prosecutor's Office**

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**Counsel for Victims**

Simon Laws

**Registry**

Dr Fidelma Donlon

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

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**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

1. Pursuant to Article 40 of the Law<sup>1</sup> and Rule 151 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') hereby proposes the adoption of the procedure outlined below for cases where issues of self-incrimination by a witness may arise pursuant to Rule 151.<sup>3</sup> As indicated in the submissions concerning [REDACTED],<sup>4</sup> issues of self-incrimination may arise in relation to [REDACTED].<sup>5</sup>
2. Pursuant to the Conduct of Proceedings Order,<sup>6</sup> the SPO will indicate during preparation sessions with these witnesses that they are entitled to seek the advice of counsel if they are concerned about self-incrimination and provide Rule 43 notifications. However, as these witnesses may require Rule 151(3) assurances when they appear before the Trial Panel, the SPO proposes the following procedure to promote the fairness and expeditiousness of the proceedings. This procedure is consistent with procedures adopted in other cases before the Kosovo Specialist Chambers,<sup>7</sup> as well as by the International Criminal Court,<sup>8</sup> and is without prejudice to the Trial Panel's assessment of whether assurances pursuant to Rule 151(3) will in fact be granted.
3. In cases where it is anticipated that a witness may make self-incriminating statements during his or her testimony, the calling Party shall inform the Registry of this fact in good time. The Registry shall make the necessary arrangements for the

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' are to the Law, unless otherwise specified.

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules of Procedure and Evidence.

<sup>3</sup> This notice is filed confidentially due to the nature of the filing, which discusses potential issues of self-incrimination for [REDACTED]. A public redacted version will be filed.

<sup>4</sup> [REDACTED].

<sup>5</sup> When interviewed during the SPO's investigations, [REDACTED] were informed in accordance with Rule 43.

<sup>6</sup> Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226, 25 January 2023, paras 97(v), 99.

<sup>7</sup> See *Prosecutor v. Mustafa*, Decision on the conduct of the proceedings, KSC-BC-2020-05/F00170, 26 August 2021, paras 46-48; *Prosecutor v. Shala*, Decision on the conduct of the proceedings, KSC-BC-2020-04/F00434, 24 February 2023, paras 56-58.

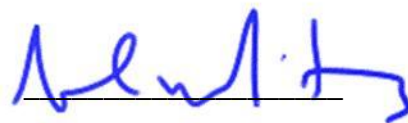
<sup>8</sup> See e.g. *Prosecutor v Ntaganda*, Decision on the conduct of proceedings, Trial Chamber VI, ICC-01/04-02/06, 2 June 2015, paras 44-46.

provision of independent legal advice<sup>9</sup> to witnesses who may be at risk of incriminating themselves during their testimony.

4. The calling Party shall provide the advising counsel with relevant prior statements and the Trial Panel's decision on this procedure, if adopted. The counsel advising the witness who may be at risk of self-incrimination shall inform the Panel, the Parties, and Victims' Counsel whether the witness anticipates making objections pursuant to Rule 151(1), and file any relevant application or request under Rule 151(3), at least two weeks before the anticipated date of testimony. If the witness anticipates making objections pursuant to Rule 151(1), the Parties and Victims' Counsel, as applicable, shall provide views *ex parte* pursuant to Rule 151(3) at least one week before the anticipated date of testimony so as to allow the Panel to rule on the matter before the commencement of the witness's testimony. The advising counsel shall also be responsible for informing the witness of the offences defined in Article 15(2) and the provisions of Rule 65.

5. The SPO request the Trial Panel to adopt the procedure outlined above for cases where issues of self-incrimination by a witness may arise pursuant to Rule 151.

**Word count: 588**



**Alex Whiting**

**Acting Specialist Prosecutor**

Wednesday, 19 April 2023

At The Hague, the Netherlands.

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<sup>9</sup> In appropriate circumstances, this may include Victims' Counsel for dual status witnesses.