

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

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

**Registrar:** Dr Fidelma Donlon

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

**Date:** 26 April 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**Krasniqi Defence Notice Pursuant to Rule 149(2), KSC-BC-2020-06/F00587,**

**dated 1 December 2021**

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**Acting Specialist Prosecutor**

Alex Whiting

**Counsel for Victims**

Simon Laws KC

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson KC

**Counsel for Rexhep Selimi**

David Young

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Venkateswari Alagendra

1. On 24 November 2021, the Specialist Prosecutor's Office ("SPO") released Disclosure Package 117 which included the expert reports of [REDACTED],<sup>1</sup> [REDACTED]<sup>2</sup> and [REDACTED].<sup>3</sup>

2. Rule 149(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules") provides that:

- (2) Within seven (7) days of disclosure of the report of an expert witness, or as directed by the Panel, the opposing Party shall file a notice indicating whether:
- (a) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the expert witness report and, if so, which parts;
  - (b) it accepts the expert witness report or parts thereof; or
  - (c) it wishes to cross-examine the expert witness.

3. The Defence for Jakup Krasniqi ("Defence") notes that Rule 149(1) applies only to "[t]he final report of any expert witness". It is not clear to the Defence whether the three expert reports are final reports; only one of the reports expressly states that it is final.<sup>4</sup> Moreover, the Prosecution did not give the Defence notice that it was disclosing final expert reports which would trigger Rule 149, merely sending a disclosure email on 30 November 2021 at 19:32 which indicated that Disclosure Package 117 was released pursuant to the Twelfth Decision on Specialist Prosecutor's Request for Protective Measures. In the circumstances, whilst the Defence acknowledges that this filing may be premature, out of an abundance of caution and to provide early clarification of its position, the Defence hereby provides its Rule 149(2) Notice.

4. The Defence hereby files notice that the Defence does not accept the entirety of the above reports and wishes to cross-examine [REDACTED].

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<sup>1</sup> 103108-103132 RED.

<sup>2</sup> 103373-103387 RED.

<sup>3</sup> 103427-103470 RED.

<sup>4</sup> *Ibid.*

5. With regard to Rule 149(2)(a) and the possibility of accepting parts of the above reports pursuant to Rule 149(2)(b), the Defence reserves its position until the filing of the Defence Pre-Trial Brief. Alternatively, to the extent that it is necessary to do so, the Defence seeks an extension of time pursuant to Rule 9(5)(a) in order to allow the Defence to confirm its position regarding Rule 149(2)(a) and (b) at the time of filing the Defence Pre-Trial Brief.

6. Good cause exists for the Defence to reserve its position on Rule 149(2)(a) and (b) and seek an extension of time. First, providing notice regarding the proposed expert evidence within the Defence Pre-Trial Brief would be consistent with the general framework of the Rules and the current timetable. The Prosecution's Pre-Trial Brief is due to be filed on 17 December 2021.<sup>5</sup> It is relevant to the Defence to analyse how the three expert reports fit into the case to be presented by the Prosecution before determining the Defence position with regard to Rule 149(2)(a) and (b). Further, it is at the filing of the Defence Pre-Trial Brief that Rule 95(5)(a) and (b) requires the Defence to indicate "in general terms, the nature of the Accused's defence" and "the charges and matters which the Accused disputes". It would preserve a consistent case preparation timetable for the Defence to address all the matters which are disputed at the time of the Pre-Trial Brief, rather than anomalously having to address disputes in relation to expert evidence at an earlier stage. Indeed, as set out above, it is not clear to the Defence at this stage that final reports have been disclosed so as to trigger the provisions of Rule 149(2). Moreover, given the importance of the Pre-Trial Brief in defining the issues for trial, it causes no prejudice to any party or delay<sup>6</sup> for the Defence to address the expert evidence in its Pre-Trial Brief.

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<sup>5</sup> KSC-BC-2020-06, In Court – Oral Order, Order on SPO's Pre-Trial Brief and Related Material According to Rule 95(4)(a), 29 October 2021, public.

<sup>6</sup> Particularly noting that the Prosecution [REDACTED]: 102430-102442 RED, 102443-102471 RED, 102472-102482 RED.

7. Second, the seven days provided for in Rule 149(2) are manifestly insufficient in the circumstances of this case.<sup>7</sup> The Prosecution disclosed the three expert reports at the same time. The three reports together comprise 85 pages of technical material and address a significant number of Indictment locations and alleged crimes. The reports need to be read together with the letters of instruction and the substantial volume of underlying documents presented to the experts.<sup>8</sup> The Defence is likely to consult other experts in order to respond to the content of the three expert reports. In these circumstances, seven days is not sufficient time to permit the Defence to respond fully to the matters set out in Rule 149(2)(a) and (b).

8. Third, sections of the three reports are redacted.<sup>9</sup> Those redactions will be lifted pursuant to the different disclosure timelines applicable to the relevant protected witnesses.<sup>10</sup> The Defence cannot currently assess whether it accepts or does not accept the redacted sections of the reports and the content of those sections may affect the report as a whole.

9. At this stage, the Defence therefore provides notice pursuant to Rule 149(2)(c) that it wishes to cross-examine [REDACTED]. The Defence reserves its position and seeks an extension of time to provide notice of its position in relation to Rule 149(2)(a) and (b) until the filing of the Defence Pre-Trial Brief.

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<sup>7</sup> Other international tribunals have set a longer time limit. For instance, the Rules of Procedure and Evidence applicable before the International Criminal Tribunal for the former Yugoslavia ("ICTY") allows 30 days; ICTY Rules of Procedure and Evidence, Rule 94bis(B).

<sup>8</sup> For instance, the Prosecution provided at least 35 documents to [REDACTED] in the letter of instruction (102430-102442 RED), some of which are themselves lengthy documents such as trial transcripts.

<sup>9</sup> 103108-103132 RED, at 103131; 103373-103387 RED, at 103382-103384; 103427-103470 RED, at 103428-103428a and 103454.

<sup>10</sup> KSC-BC-2020-06, F00571/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Twelfth Decision on Specialist Prosecutor's Request for Protective Measures*, 17 November 2021, confidential, paras 25, 28.

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Wednesday, 26 April 2023

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