



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**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  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 21 June 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Prosecution Motion  
to Limit Courtroom Attendance of One Defence Team Member**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21, 22, 23, 39(3), (11), and (13), and 40(2), (6)(a), (d), (f), and (g) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 61, 65, 80, 95, 116, 141 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 7 June 2023, the Specialist Prosecutor’s Office (“SPO”) filed a motion to limit the courtroom attendance of a member of one Defence team (“Motion”).<sup>1</sup>
2. On 12 June 2023, the Panel shortened the briefing schedule for this matter and invited the Registry and Victims’ Counsel to make submissions in respect of the issues raised in the Motion insofar as they might affect their roles and responsibilities.<sup>2</sup>
3. On 14 June 2023, Victims’ Counsel and the Registry filed their respective submissions (“Victims’ Counsel’s Submission” and “Registry Submissions”).<sup>3</sup>
4. On 15 June 2023, the Defence for Jakup Krasniqi (“Mr Krasniqi” and “Krasniqi Defence”) responded to the Motion (“Krasniqi Response”).<sup>4</sup>
5. On 16 June 2023, the SPO replied to the Krasniqi Response (“Reply”).<sup>5</sup>

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<sup>1</sup> F01581, Specialist Prosecutor, *Prosecution Motion to Limit Courtroom Attendance*, 7 June 2023, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F01581/CONF/RED.

<sup>2</sup> Transcript of Hearing, 12 June 2023, p. 4615, line 22 to p. 4616, line 10.

<sup>3</sup> F01602, Victims’ Counsel, *Victims’ Counsel’s Submission in Support of Prosecution Motion to Limit Courtroom Attendance*, 14 June 2023, confidential; F01604, Registrar, *Registry Submission Pursuant to Oral Order Related to Prosecution Motion to Limit Courtroom Attendance (F01581)*, 14 June 2023, strictly confidential and *ex parte*.

<sup>4</sup> F01608, Specialist Counsel, *Krasniqi Defence Response to Confidential Redacted Version of ‘Prosecution Motion to Limit Courtroom Attendance’*, 15 June 2023, confidential, with Annexes 1-11, confidential and *ex parte*.

<sup>5</sup> F01615, Specialist Prosecutor, *Prosecution Reply Relating to Filing F01581*, 16 June 2023, confidential.

## II. SUBMISSIONS

6. The SPO requests that the Panel place ‘reasonable limitations’ on the court attendance of [REDACTED], whose presence it says is unnecessary and may impact the psychological well-being and security of victims and witnesses, as well as the quality of their testimony.<sup>6</sup> The SPO points out that, in accordance with the Panel’s Order on the Conduct of Proceedings,<sup>7</sup> attendance in court is, in principle, limited to Counsel and case managers.<sup>8</sup> The SPO suggests that the constraints imposed by the Order on the Conduct of Proceedings make it clear that there are limitations to the choice of Parties to decide who attends court in person.<sup>9</sup> The SPO also notes that [REDACTED] is the [REDACTED] of an alleged joint criminal enterprise (“JCE”) member named in the Indictment,<sup>10</sup> is publicly known, a ‘support team member’, and that [REDACTED] has been present during trial hearings although the Krasniqi Defence failed to give notice of [REDACTED]’s attendance in violation of the Panel’s Order on the Conduct of Proceedings.<sup>11</sup> The SPO also notes that many of its witnesses will be providing evidence directly relating to [REDACTED].<sup>12</sup> The SPO suggests, furthermore, that in the climate of witness intimidation prevalent in proceedings before the Specialist Chambers (“SC”), [REDACTED]’s presence in court is likely to be perceived as intimidating by witnesses and victims, especially those testifying in private session and under protective measures. The SPO notes in that regard that two past SPO witnesses have raised the issue of [REDACTED]’s presence in the courtroom as a matter of concern (“Two Witnesses”).<sup>13</sup> In addition, the SPO submits that [REDACTED]

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<sup>6</sup> Motion, para. 1.

<sup>7</sup> F01226/A01, Trial Panel II, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023.

<sup>8</sup> Motion, para. 2, *referring to* Order on the Conduct of Proceedings, para. 129.

<sup>9</sup> *Ibid.*

<sup>10</sup> F00999/A01, Specialist Prosecutor, *Amended Indictment*, 30 September 2022, confidential (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

<sup>11</sup> Motion, para. 3.

<sup>12</sup> Motion, para. 4.

<sup>13</sup> Motion, para. 5.

presence in the courtroom could affect the quality and expeditiousness of witness testimonies.<sup>14</sup> The SPO adds that attempts to resolve the matter *inter partes* were unsuccessful and that the Krasniqi Defence failed to provide information regarding [REDACTED]'s role within the team.<sup>15</sup> It further submits that [REDACTED] can follow proceedings and perform [REDACTED] functions from outside the courtroom without negatively impacting the work of the Defence team.<sup>16</sup> On that basis, the SPO asks 'at the very least' that the Panel direct that: (i) [REDACTED] not be present in the courtroom during the testimony of witnesses with protective measures; and (ii) the Krasniqi Defence comply at all times with the notice requirement provided in paragraph 129 of the Order on the Conduct of Proceedings.

7. Victims' Counsel supports the SPO Motion.<sup>17</sup> Victims' Counsel refers to Article 23(1) and Rule 80, which he says provides the necessary legal basis to grant the relief sought.<sup>18</sup> Victims' Counsel notes the 'do no harm' principle<sup>19</sup> and the serious risk that the presence of [REDACTED] inside the courtroom will affect the victims participating in the proceedings ("VPPs") and their perception of the proceedings.<sup>20</sup> He submits that: (i) [REDACTED] is a publicly recognisable figure in Kosovo and that it is well-known that [REDACTED] is [REDACTED], who is a JCE member named in the Indictment; and (ii) these circumstances are incompatible with [REDACTED]'s unrestricted presence in the courtroom as a member of a Defence team, particularly as it is likely to have a chilling, if not intimidating, effect on VPPs and witnesses who have been granted protective measures.<sup>21</sup> Victims' Counsel argues that the psychological well-being of VPPs and

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<sup>14</sup> Motion, para. 6.

<sup>15</sup> Motion, para. 8.

<sup>16</sup> Ibid.

<sup>17</sup> Victims' Counsel's Submission, paras 1-2, 12.

<sup>18</sup> Victims' Counsel's Submissions, paras 2, 11.

<sup>19</sup> Victims' Counsel's Submission, paras 2, 10-11.

<sup>20</sup> Victims' Counsel's Submission, para. 2.

<sup>21</sup> Victims' Counsel's Submission, paras 2, 6-8.

witnesses and their sense of dignity requires the adoption of the measures requested in the Motion, and that this would have no bearing on the Krasniqi Defence, given that [REDACTED] has no rights of audience and has access to the live transcript.<sup>22</sup>

8. The Registry reports on the post-testimony contacts between the Witness Protection and Support Office and the Two Witnesses.<sup>23</sup> In particular, the Registry provided additional details regarding the nature of the complaints and concerns raised by the Two Witnesses regarding [REDACTED]'s presence in the courtroom during their testimony.

9. The Krasniqi Defence requests that the Motion be dismissed in full. First, it says that there is no adequate legal or factual basis that would justify the relief sought.<sup>24</sup> In particular, the Krasniqi Defence avers that there is no allegation of misconduct by [REDACTED], nor any conflict of interest or evidence that [REDACTED]'s presence in court has negatively affected any witness.<sup>25</sup> It also submits that attempts to limit the courtroom attendance of Defence team members erodes the independence of the Defence and violates the rights of the Accused.<sup>26</sup> It further submits that: (i) [REDACTED]'s presence in the courtroom is essential; and (ii) excluding [REDACTED] from the courtroom for the testimony of protected witnesses would amount to a substantial and disproportionate interference with the work of the Defence, and would likely result in the Krasniqi Defence having to seek a stay of proceedings or delaying the testimony of affected witnesses.<sup>27</sup> With respect to attendance notifications, the Krasniqi Defence essentially: (i) rejects the SPO's allegations that it has breached the notification requirements; (ii) indicates that it will continue to comply with the "expanded practice" of

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<sup>22</sup> Victims' Counsel's Submission, para. 9.

<sup>23</sup> Registry Submission, paras 3-7.

<sup>24</sup> Krasniqi Response, paras 2, 4, 13-27, 41-42.

<sup>25</sup> Krasniqi Response, paras 2, 14, 16-21, 23-27, 32, 41.

<sup>26</sup> Krasniqi Response, paras 3, 11-12, 22, 40-41.

<sup>27</sup> Krasniqi Response, paras 28-31.

sending its attendance notifications not only to the Court Management Unit (“CMU”) but also to all Parties; and (iii) argues that no further order is necessary in this respect.<sup>28</sup> Lastly, the Krasniqi Defence submits that: (i) the SPO mischaracterises the *inter partes* discussions that have taken place between the SPO and the Krasniqi Defence, and that, read in full, these exchanges offer no support to the Motion; and (ii) it would not be averse to continuing to discuss specific concerns in relation to particular witnesses with the SPO or Victims’ Counsel.<sup>29</sup>

10. The SPO argues that the Motion should be granted,<sup>30</sup> in particular as the Krasniqi Response mischaracterises the specific relief sought in the Motion, as well as its legal and factual basis.<sup>31</sup> The SPO submits that as it has not challenged [REDACTED]’s appointment nor requested that [REDACTED] cease [REDACTED] employment, the Krasniqi Defence’s submissions regarding its independence to choose team members are immaterial.<sup>32</sup> As for the legal basis, the SPO avers that the SC’s legal framework and particularly Article 40 and Rules 61(1) and 116 confer sufficiently broad discretionary powers upon the Panel with respect to the relief sought by the SPO.<sup>33</sup> As regards the factual basis, the SPO submits, in essence, that two out of the first four witnesses independently raised concerns about [REDACTED]’s presence in the courtroom without being prompted by the SPO, and that the Defence is privy to the relevant conversation record.<sup>34</sup>

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<sup>28</sup> Krasniqi Response, paras 33-37.

<sup>29</sup> Krasniqi Response, paras 38-39.

<sup>30</sup> Reply, para. 8.

<sup>31</sup> Reply, para. 1.

<sup>32</sup> Reply, para. 2.

<sup>33</sup> Reply, paras 3-4.

<sup>34</sup> Reply, paras 5-6.

### III. DISCUSSION

#### A. POWER OF THE PANEL TO REGULATE PRESENCE IN THE COURTROOM

11. The Panel and, on its behalf, the Presiding Judge, has the authority to protect and guarantee the good order and fairness of the proceedings.<sup>35</sup> This constitutes an inherent part of the performance by the Panel of its judicial functions and is consistent with the Panel's responsibility to ensure the good order and dignity of proceedings.<sup>36</sup> This responsibility would, for instance, authorise the Panel to take necessary measures to prevent disruptive or obstructive conduct in the courtroom.<sup>37</sup>

12. In the exercise of these responsibilities, the Panel can regulate presence inside the courtroom, both by excluding people<sup>38</sup> or by demanding their presence.<sup>39</sup> The

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<sup>35</sup> See, generally, Articles 19(6), 39(3) and (13), and 40(2). See also Rules 61(1) and 116(1) and (3).

<sup>36</sup> See also Rule 80 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia ("ICTY"); Rule 80 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda ("ICTR"); Rule 80 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone; Rule 64(9) of the Rome Statute of the International Criminal Court.

<sup>37</sup> See, e.g., ICTY, *Prosecutor v. Šešelj*, IT-03-67-PT, Trial Chamber, [Decision on Assignment of Council](#), 21 August 2006, in particular, para. 79; *Prosecutor v. Šešelj*, IT-03-67-AR73.4, Appeals Chamber, [Decision on Appeal Against the Trial Chamber's Decision \(No. 2\) on Assignment of Counsel](#), 8 December 2006, in particular, para. 19.

<sup>38</sup> See, e.g., ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Decision on Accused's Request for Authorisation for Legal Interns to be Present in the Courtroom](#), 5 May 2010 (regarding the presence of interns in the courtroom). See also *Prosecutor v. Milošević*, IT-98-29/1-T, Trial Chamber, [Decision on Prosecution's Application for Rule 70 Conditions for Testimony of Witness W-46](#), 12 March 2007, p. 4; *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, [Decision on Prosecution Second Renewed Motion for Leave to amend Its Rule 65 Ter List to Add Michael Phillips and Shaun Byrnes](#), 12 March 2007, para. 35; *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber, [Decision on Urgent Prosecution Motion for Protective Measures and Conditions for Witness RM-401 pursuant to Rule 70](#), 18 October 2013, para. 10 (regarding the presence of information-providers in the courtroom); *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Order on Funding of Defence Experts Authorised to be Present in the Courtroom](#), 11 June 2010; *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Order to the Registry in Relation to Accused's Request for Assistance of Defence Expert in the Courtroom](#), 2 July 2010; *Prosecutor v. Šljivančanin*, IT-95-13/1-R.1, Appeals Chamber, [Decision on Motion on Behalf of Veselin Šljivančanin Concerning the 12 October Review Hearing](#), 7 October 2010, p. 5 (regarding the presence of an expert); ICTR, *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Trial Chamber, [Decision on DW2's Urgent Request to Limit the Cross-Examination of DW2 before Trial Chamber II and to Permit DW2 to be Accompanied by Counsel](#), 8 May 2007, para. 4 (regarding the presence of counsel for a witness). See also Order on the Conduct of Proceedings, paras 129 ff.

<sup>39</sup> For an illustration, see, e.g., *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No 10*, Volume 15, Nuernberg, October 1946 – April 1949, paras 994 ff. (walk out of defence

Panel also has the authority to regulate the actions and composition of teams within the courtroom.<sup>40</sup> The Panel has accordingly set out the following provisions in its Order on the Conduct of Proceedings:<sup>41</sup>

129. Attendance in court shall in principle be limited to Counsel and case managers. Where a Party wishes to bring in the courtroom another team member, it shall give 24-hour advance notice to all Parties and participants, to the Registry and to the Trial Panel.

[...]

131. The Panel may order that attendance in court and/or access to the transcript of proceedings be limited to Counsel and identified members of the Parties and participants.

13. The Panel also carries the responsibility of ensuring that witnesses appearing before this jurisdiction are able to testify freely, safely and without fear of harm or retaliation.<sup>42</sup> The Panel notes, in this context, that Article 23(1) provides that protective measures, which the Panel has the authority to order, are intended to ensure not just the safety of victims and witnesses, but also their physical and psychological well-being, dignity and privacy. The responsibility to protect these interests falls clearly within the competencies of the Panel. This is apparent, *inter alia*, from Article 40(2) and (6)(f) and Rule 80(1).<sup>43</sup>

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counsel followed by contempt proceedings in respect of it). *See also* ECCC, E320, Trial Chamber, [Warning to Counsel for NUON Chea and KHIEU Samphan](#), 24 October 2014.

<sup>40</sup> *See, e.g., Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber, [Decision on the Oral Request of the Accused Jadranko Prlić for Authorisation to Use a Laptop Computer at Hearings or to be Seated Next to His Counsel](#), 29 June 2006 (regarding use of laptop and seating arrangement in the courtroom).

<sup>41</sup> Order on the Conduct of Proceedings, paras 129 ff., in particular paras 129 and 131.

<sup>42</sup> *See, generally*, Articles 19(3), 21(2), 22, 23, 39(11), 40(2) and (6)(f); Rules 80-81. *See also, generally*, KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment* (“*Gucati and Haradinaj Trial Judgment*”), 18 May 2022, in particular, paras 644 ff.

<sup>43</sup> *See also* Rule 39(11) and (13) in combination with Rule 40(6)(a).



B. REQUEST TO EXCLUDE [REDACTED] FROM THE COURTROOM DURING THE TESTIMONY OF WITNESSES WITH PROTECTIVE MEASURES

14. At paragraph 131 of its Order on the Conduct of Proceedings, the Panel made it clear that it could limit attendance in court by members of the Parties and participants where circumstances justify it.

15. The Panel notes that when the draft Order on the Conduct of Proceedings was circulated to the Parties and participants for comments, the Defence did not question the authority of the Panel to limit attendance in court by team members.<sup>44</sup> Furthermore, as noted above, that authority is well-established in precedents and may be said to be inherent to the Panel's general responsibility to ensure the good order of the proceedings and the proper administration of justice.<sup>45</sup>

16. In the circumstances of this case, the Panel finds that there are compelling reasons militating in favour of the exclusion of [REDACTED] from the courtroom during the testimony of witnesses who have been granted protective measures:

**1. Safety and well-being of witnesses**

17. As noted above, protective measures are intended to ensure the safety, physical and psychological well-being, dignity and privacy of witnesses. In the present proceedings, it has been found that, for each witness who has been granted such measures, there exists a sufficient basis to be concerned that one or more of those interests would be negatively affected without the benefit of those measures.<sup>46</sup> Witnesses who have been granted protective measures are therefore

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<sup>44</sup> F01203, Specialist Counsel, *Joint Defence Written Observations on the Draft Order on the Conduct of Proceedings (F01178/A01)*, 13 January 2023, paras 51-53.

<sup>45</sup> See, in particular, Article 40(6)(g).

<sup>46</sup> See, e.g., F01232, Trial Panel II, *Decision on Protective Measures for Select Delayed Disclosure Witnesses*, 27 January 2023, strictly confidential and *ex parte*, paras 16-17, 20-21 (a confidential [further] redacted version was issued on 30 January 2023, F01232/CONF/RED2); F01494, Trial Panel II, *Decision on the Prosecution Request for Protective Measures (F01365)*, 1 May 2023, confidential, paras 10-11; F01528, Trial Panel II, *Decision on the Prosecution Request for Protective Measures (F01523)*, 16 May 2023, strictly confidential and *ex parte*, paras 12-13 (a confidential redacted version was issued on the same day,

particularly sensitive and the effective protection of their identity and ability to testify without fear is a primary concern in these proceedings.

18. The power and authority as well as responsibility of the Panel to protect witnesses is not limited to conduct that intentionally seeks to inflict harm upon them. It extends to any situation that would raise a real and objective risk for their safety, physical and psychological well-being, dignity or privacy.

19. In the present case, such a risk is not only theoretical. Two SPO witnesses have already expressed their concern regarding the presence in the courtroom of [REDACTED]. This is not the result of any inappropriate action on the part of [REDACTED]. It results from the fact that [REDACTED] is a close relative of an individual who is alleged to have taken part in some of the crimes that form part of the charges in the present case.

20. The Panel also notes that this trial is taking place in the context of a general climate of witness intimidation.<sup>47</sup> This is relevant to assessing the reasonableness of the concerns already expressed by the Two Witnesses and any potential future concerns expressed by other witnesses and when deciding what measures are appropriate to ensure that witnesses can testify without fear of harm or retaliation.

21. Based on the above, the Panel is satisfied that [REDACTED]'s presence in the courtroom could reasonably be perceived by witnesses as prejudicial to their safety, well-being, dignity or privacy.

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F01528/CONF/RED). *See also*, F00133/COR, paras 34, 53, 79, 81, 92, 120-121; F00190, paras 45, 54, 67, 87, 96, 108, 121, 132; F00211, paras 15, 19; F00239, paras 14, 19; F00338, paras 20, 30, 38, 45, 53, 59, 70; F00373, paras 20, 31, 41, 52, 61, 70, 80, 95; F00407, paras 24, 44, 66, 83, 93, 104, 114, 139; F00438, paras 33, 44, 55, 83; F00466, paras 24-25, 32; F00467, paras 24, 30; F00559, para. 35; F00571, paras 25, 30, 35, 40, 45, 51; F01057, para. 47; F01058, para. 37.

<sup>47</sup> *See e.g.* F01530, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 May 2023, confidential, para. 23 with further references (a public redacted version was issued on 22 May 2023, F01530/RED). *See also* *Gucati and Haradinaj* Trial Judgment, in particular, paras 577, 581, 645-646.

## 2. Integrity and fairness of the proceedings

22. The Panel has noted above that [REDACTED] is the [REDACTED] of a named alleged JCE member, [REDACTED], who is an important figure in this case. [REDACTED] is mentioned [REDACTED] times in the Indictment<sup>48</sup> and more than [REDACTED] times in the SPO Pre-Trial Brief.<sup>49</sup> He has already been mentioned almost [REDACTED] times in the record of these proceedings. He has and will be named by a relatively important number of prospective SPO witnesses as an individual allegedly linked to crimes charged in the Indictment. His role, position and actions are all live issues in the case. Evidence pertaining to him is therefore important and will be scrutinised with particular caution by the Panel.

23. This raises the question of the compatibility of the physical presence of [REDACTED] with the Panel's responsibility to ensure the integrity and fairness of these proceedings. Conduct in the courtroom can be disruptive of the process in a variety of ways. Conduct that could make a witness hesitant to testify or to testify without candour must be prevented. Again, such conduct need not be intentional or calculated to call for action on the part of the Panel.

24. The Panel notes in this respect that [REDACTED]'s presence in the courtroom has already been assessed to be disruptive or a matter of concern by two SPO witnesses. Other witnesses will testify about [REDACTED]. They should be able to do so without fear or concern associated with the presence of [REDACTED] in the courtroom. Proceedings in which witnesses would be fearful to give full and candid evidence would be incompatible with the search for truth and justice and would not be fair within the meaning of the Rules.

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<sup>48</sup> Indictment, paras [REDACTED].

<sup>49</sup> F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request*, strictly confidential and *ex parte*, 24 February 2022, *see e.g.* paras [REDACTED]. A confidential lesser redacted version was filed on 9 June 2023, F01594/A03. A public redacted version was filed on 3 April 2023, F01415/A01.

25. For these reasons, the Panel finds that [REDACTED]'s presence in court during the testimony of protected witnesses is incompatible with the need to ensure the fairness and integrity of these proceedings.

#### C. NECESSITY AND PROPORTIONALITY OF THE MEASURES

26. The Panel now turns to the question of what measures would be justified in the circumstances to address the concerns outlined above.

27. The SPO's request to limit [REDACTED]'s court attendance impacts the manner in which a Defence team can organise itself and fulfil its responsibilities. In assessing the SPO's request, the Panel has therefore fully taken into account the interests of Mr Krasniqi, the Krasniqi Defence, and in particular, of [REDACTED]. In particular, the Panel has given due consideration to the question of the potential effect of the relief sought upon the fundamental rights of the Accused, Mr Krasniqi. It has also accounted for the fact that the work and responsibilities of Defence team members is already regulated, to some extent, by the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers ("Code of Conduct").<sup>50</sup> In particular, the Panel notes the existing obligations of supervision of Counsel over team members foreseen in the Code of Conduct.<sup>51</sup>

28. The Panel notes that there is no concrete indication that [REDACTED]'s presence in the courtroom is necessary or essential to the work of the Defence. The Krasniqi Defence is represented in the courtroom by several Counsel as well as several support staff. The Panel further observes that [REDACTED] can perform [REDACTED] functions as 'support team member' from outside the courtroom without demonstrable hindrance. The Defence suggests, however, that

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<sup>50</sup> KSC-BD-07/Rev1/2021.

<sup>51</sup> Code of Conduct, in particular, Articles 28(2) and 34. *See also* KSC-BD-04/Rev1/2021, Directive on Counsel, Section 18.

[REDACTED] has ‘substantial experience in the international criminal law field, and [REDACTED] linguistic competence as an Albanian speaker’ requires [REDACTED] presence in the courtroom. While [REDACTED] might possess the claimed competences, Mr Krasniqi’s team is filled with individuals with expertise in international criminal law, including among counsel, and other team members speak Albanian. Furthermore, the Panel notes that [REDACTED] now acts as an ‘investigator’ for the Krasniqi team, not as a legal advisor or language assistant. As for [REDACTED] contributing to the preparation of witnesses, the Defence has failed to establish that [REDACTED] physical presence in the courtroom is necessary or justified for that purpose. The Panel notes, in this regard, that SPO investigators are not present in the courtroom so that no inequality of treatment arises between the Parties. There is, therefore, no concrete indication that preventing [REDACTED]’s attendance in court would hinder the work of the Krasniqi Defence or undermine the effectiveness of Mr Krasniqi’s defence.

29. The Panel further finds that the relief sought has no demonstrable impact on the independence of the Defence. The Defence is free to conduct and present its case as it wishes, *in accordance with the Law and the Rules*. Its composition is unchanged, and the Panel has not been asked to interfere with the composition of the Krasniqi Defence team. Furthermore, the relief sought does not result in subjecting the inner workings of the Defence team to anyone’s control, but pertains to the regulation of courtroom attendance and the good order of the proceedings.

30. The Panel also notes, once again, the particularly sensitive and intimidating environment in which witnesses are being asked to testify. The Panel also reiterates that the concerns associated with their safety, well-being, dignity and privacy are real and concrete as apparent, *inter alia*, from: (i) the protective measures that have been granted to lower the risks to them; and (ii) the fact that

two protected witnesses have already recorded their concern with respect to [REDACTED]'s presence in the courtroom.

31. Based on the above, the Panel finds that restricting [REDACTED]'s access to the courtroom during the testimony of protected witness is necessary in the circumstances to effectively guarantee the safety and well-being of witnesses and the integrity and fairness of proceedings. The Panel further finds that limiting [REDACTED] courtroom attendance in respect only of those witnesses who have been granted protective measures is proportionate as it accounts for the fact that each and all of these witnesses have been found to warrant particular measures of protection in light of the risk to their safety, well-being, privacy or dignity.

32. The Panel wishes to clarify that there is no suggestion that [REDACTED] has violated the Code of Conduct, and the Panel is making no adverse finding concerning the professional conduct of [REDACTED].

#### D. ATTENDANCE NOTICE

33. The SPO asks the Panel to direct the Krasniqi Defence to comply at all times with the notice requirement provided in paragraph 129 of the Order on the Conduct of Proceedings.<sup>52</sup>

34. The Krasniqi Defence responds that: (i) it complied with the notification requirements by notifying CMU by email, as all Parties, including the SPO, were doing; (ii) [REDACTED] was correctly introduced onto the record on [REDACTED]; (iii) it complied with the "expanded practice" of sending email notifications to all Parties as well as to CMU, and will continue to do so; and (iv) accordingly, no further order is necessary, or, in the alternative, any such order should be extended to all Parties.<sup>53</sup>

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<sup>52</sup> Motion, para. 8(b).

<sup>53</sup> Response, paras 33-37, with further references.

35. In its Order on the Conduct of Proceedings, the Panel ordered the following:<sup>54</sup>

Attendance in court shall in principle be limited to Counsel and case managers. Where a Party wishes to bring in the courtroom another team member, it shall give 24-hour advance notice to all Parties and participants, to the Registry and to the Trial Panel.

36. Parties are, therefore, already under an obligation to give advance notice of team members who are to attend hearings. The Panel hereby reminds all Parties of their obligation of notification under the above-mentioned paragraph of the Order on the Conduct of Proceedings and directs all of them to comply with their obligation in that regard and to continue with the 'expanded practice' of communicating attendance lists not just to CMU but to all Parties and participants.

#### IV. DISPOSITION

37. Based on the above, the Panel hereby:

**(a) GRANTS** the Motion in part;

**(b) ORDERS** that [REDACTED] shall not be present in the courtroom during the testimony of witnesses with protective measures; and

**(c) REMINDS** all Parties and participants that: (i) attendance in court shall in principle be limited to Counsel and case managers; and (ii) where a Party or participant wishes to bring another team member into the courtroom, it shall give 24-hour advance notice to all Parties and participants, to the Registry and to the Panel.

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<sup>54</sup> Order on the Conduct of Proceedings, para. 129.



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**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Wednesday, 21 June 2023

At The Hague, the Netherlands.