

**In:** KSC-BC-2018-01  
**The Prosecutor v. Driton LAJÇI**

**Before:** **Single Judge**  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Driton Lajçi

**Date:** 12 November 2022

**Language:** English

**Classification:** **Public**

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**Public Redacted Version of Reply to Prosecution Response to Defence Application for Certification for Leave to Appeal the Decision on Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi (KSC-BC-2018-01/F00258)**

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**Specialist Prosecutor**

Jack Smith

KSC-BC-2018-01  
12/11/2022

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## I. INTRODUCTION

1. On 3 October 2022, the Single Judge rejected the Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against the Applicant (“Impugned Decision”).<sup>1</sup>
2. On 10 October 2022, the Applicant applied for leave to certify appeal (“Request”).<sup>2</sup>
3. On 21 October 2022, the SPO submitted its Response (“Response”).<sup>3</sup>

## II. SUBMISSIONS

4. The Applicant contends that the submissions by the Specialist Prosecutor’s Office (“SPO”) merely set out a disagreement with the issues being argued rather than any matter within Article 45 of the Law on the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (“Law”)<sup>4</sup> or Rule 77 of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers (“Rules”).<sup>5</sup>

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<sup>1</sup> KSC-BC-2018-01/F00258, *Decision on Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajci*, 3 October 2022, Confidential.

<sup>2</sup> KSC-BC-2018-01/F00261, *Application for Certification for Leave to Appeal the Decision on Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajci*, 10 October 2022, Confidential.

<sup>3</sup> KSC-BC-2018-01/F00264, *Prosecution Response to Driton Lajci’s Request for Leave to Appeal Decision on Second Application to Terminate Investigation (KSC-BC-2018-01/F00258)*, 21 October 2022, Confidential.

<sup>4</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office.

<sup>5</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020.

5. The Applicant submits that at paragraphs 8 and 9 of the Response,<sup>6</sup> the SPO asserts that the Request is repetitive. The three Issues are discrete topics arising from the Impugned Decision and significantly and materially impacting fairness, expeditiousness, and outcome of the proceedings.

**A. First Issue**

6. At paragraph 12, the SPO wrongly claims that the First Issue is merely a disagreement with the Single Judge concerning which actions of ‘administrative and judicial authorities’ are relevant. The First Issue relates to the submission as to which institutions should be included in the considerations. It is argued that the conduct of [REDACTED] the SPO and KSC, should be expressly addressed, including how the conduct of any of them impacted the Single Judge’s reasoning, and if it did not, why not.
7. The SPO also asserts that the conduct of the SPO and KSC was discussed in the Impugned Decision. The Single Judge referenced their conduct generally when setting out the SPO arguments<sup>7</sup> or the procedural history.<sup>8</sup> The Single Judge failed to consider, expressly and concretely, the conduct of the SPO, KSC and [REDACTED].
8. Contrary to the SPO submission in paragraph 13, the First Issue would also affect the fair and expeditious conduct of the proceedings, and the outcome of the trial. The Request identifies that the conduct of the SPO and the KSC should be considered.

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<sup>6</sup> KSC-BC-2018-01/F00264, paras. 8-9.

<sup>7</sup> Impugned Decision, paras 21-23, 25-26.

<sup>8</sup> Impugned Decision, para 26.

The fact, that the SPO investigation reports are *ex parte* and confidential, precludes the Applicant from setting out what actions the SPO or KSC should have taken, and how the outcome would have been different had their conduct been considered.

9. A prompt referral to a Panel of the Court of Appeals Chamber will settle whether the SPO and KSC are domestic institutions and as such their conduct [REDACTED], should be considered as part of the assessment of reasonableness.

### **B. Second Issue**

10. In paragraph 16, the SPO incorrectly claims that the Request is a misrepresentation in that the Single Judge wrongly attributed the delay to the Applicant. The SPO refers to the finding that [REDACTED] need not be attributable to Mr Lajçi personally.<sup>9</sup>
11. On a correct reading of this finding combined with paragraphs 25 and 26 of the Impugned Decision, the Single Judge did exactly that. The Single Judge did not expressly say that the delay caused by [REDACTED] is not attributable to the Applicant personally, but rather found that such delay 'need not be attributable to the Applicant personally', which means that the delay caused by [REDACTED] can be used as a factor significantly weighing against the Applicant, rather than in his favour, even though he is not personally responsible for the delay and irrespective of the any actual extent of his contribution.
12. This Issue satisfies all the prongs of the test for certification as set out in the Request.

### **C. Third Issue**

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<sup>9</sup> Impugned Decision, para 26.

13. Contrary to the SPO submission in paragraph 19, the Request is not a misrepresentation and does not ignore the First Decision.<sup>10</sup> It is correct that the Single Judge applied the ECtHR test when considering 'reasonable time'. However, he failed to consider that ultimately it is the Republic of Kosovo which is responsible for the overall organisation of its judicial and prosecutorial system, such that its courts and prosecutorial authorities can comply with the requirements of Article 6(1) ECHR. It is argued that the SPO and KSC are domestic institutions<sup>11</sup> and that this is a material consideration in the overall assessment of reasonableness.
14. The Single Judge failed to consider this important factor, which is relevant to the question of who and to what extent is responsible for the delay, and its reasonableness.
15. This Issue satisfies all the prongs of the test for certification as set out in the Request.
16. Had the Single Judge taken the Three Issues into account his conclusion regarding 'reasonable time' would have been different.

### III. CONCLUSION

17. The Applicant maintains the submissions in the Request, and requests certification of the three Issues for leave to appeal.

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<sup>10</sup> KSC-BC-2018-01/F00180, Decision on Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi, 23 July 2021, Confidential.

<sup>11</sup> Request, paras 30-33.

**IV. CLASSIFICATION**

18. This Application is filed confidentially, with reference to the confidential classification of the Impugned Decision and Response. There is no objection to reclassifying the filing as public and there is no need for redactions.

Word Count: 990 words



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