



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

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor's Office
Date: 7 May 2024
Language: English
Classification: Confidential

**Prosecution response to Kilaj request for certification to appeal the Single Judge's
decision (F00611)**

Specialist Prosecutor's Office

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1. Isni KILAJ's Request¹ should be denied because it fails to meet the requirements for leave to appeal under Article 45(2) of the Law² and Rule 77 of the Rules.³ Specifically, KILAJ fails to clearly identify any error of law or fact emanating from the Decision,⁴ and fails to show any significant impact on the fairness and expeditiousness of proceedings or the outcome of the trial.

2. The Request's sole challenge is to the Single Judge's finding that the SPO's retention request was timely. KILAJ mainly repeats submissions made at first instance without acknowledging that they were based on the false premise that the SPO's retention request⁵ was filed out of time, a contention already rejected by the Single Judge⁶ and belied by the plain language of the underlying search and seizure decision at issue.⁷

3. In the Search and Seizure Decision, the Single Judge ordered that the seized items shall be returned within three months from the execution of the searches and seizures, unless the SPO requests further retention.⁸ Consequently, the three-month time limit prescribed in the Search and Seizure Decision applied solely to the SPO's request for further retention of the seized items, and not to the Single Judge's ruling on that request. Given that – as KILAJ no longer disputes – the Retention Request was timely filed within the three-month time limit set by the Search and Seizure Decision, there was no need for the SPO to request for more time for the filing of its retention request. The eventual timing of the Decision – six weeks after the SPO's retention

¹ Kilaj request for leave to appeal "Decision on Request on Variation of Time Limits concerning Retention of Evidence" (F00611), KSC-BC-2018-01/F00645, 25 April 2024, Confidential ('Request').

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' are to the Rules.

⁴ Confidential Redacted Version of 'Decision on Request on Variation of Time Limits concerning Retention of Evidence, KSC-BC-2018-01/F00611/CONF/RED, 12 March 2024, Confidential ('Decision').

⁵ Prosecution request for retention of evidence (F00484), KSC-BC-2018-01/F00566, 2 February 2024, Confidential ('Retention Request').

⁶ See Decision, KSC-BC-2018-01/F00611, para.19.

⁷ See Confidential Redacted Version of Decision Authorising Search and Seizure, KSC-BC-2018-01/F00484/CONF/RED, 20 October 2023, Confidential ('Search and Seizure Decision'), para.50.

⁸ Search and Seizure Decision, KSC-BC-2018-01/F00484/CONF/RED, para.50.

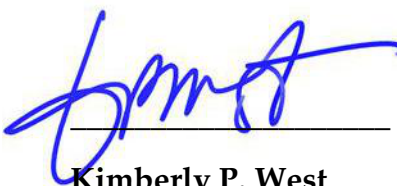
request – further confirms that the Single Judge did not intend the three-month time limit to apply to his ruling. Thus, the error KILAJ alleges does not emanate from the Decision and is therefore not appealable. Moreover, given the Single Judge’s considerable discretion regarding the management of timelines both as set by him and/or in the Rules,⁹ KILAJ’s attempt to insert his own assessment in place of that of the Single Judge amounts to mere disagreement.

4. In addition, KILAJ fails to establish that the issue significantly affects the fairness and expeditiousness of the proceedings or the outcome of the trial.¹⁰ In particular, KILAJ’s submission that the ‘fairness of any future trial will be compromised’ from continued retention is speculative at present,¹¹ since it cannot yet be ascertained whether any evidence obtained from the seized items would be used in proceedings against KILAJ.

5. In sum, KILAJ has failed to meet each of the requirements for leave to appeal. Rather, the Request comprises a mere disagreement with the Single Judge’s correct application of the Rules, which does not merit the exceptional grant of interlocutory appeal and must be denied.

6. This submission is confidential pursuant to Rule 82(4).

Word Count: 598



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Specialist Prosecutor

Tuesday, 7 May 2024

At The Hague, the Netherlands.

⁹ Rule 9(5), (6).

¹⁰ Request, KSC-BC-2018-01/F00645, paras 15-18.

¹¹ Request, KSC-BC-2018-01/F00645, paras 16-17.