



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
Date: 16 September 2020
Language: English
Classification: Strictly Confidential and *Ex Parte*

URGENT

Prosecution request for order authorising seizure of documents

Specialist Prosecutor's Office

Jack Smith

1. On 16 September 2020, the Kosovo Liberation Army War Veterans Association ('KLA WVA') convened a press conference at which they announced they had, that afternoon, received a package of documents allegedly relating to the Special Investigative Task Force ('SITF') and/or Specialist Prosecutor's Office ('SPO') ('Documents'). The KLA WVA states that the documents relate to SITF/SPO cooperation with the Serbian authorities and include witness statements. Unauthorised access to and distribution of such documents therefore present immediate potential risks to investigations and witnesses.

2. Pursuant to Articles 35(2), 39(3) and 53 of the Law¹ and Rules 30-33, 37, 39 and 48(2) of the Rules,² the SPO requests an order from the Single Judge Panel ('Single Judge') (i) requiring Mr Hysni GUCATI, head of the KLA WVA, and/or the KLA WVA (with an address at Rruga Uçk 77, Pristina, Kosovo) to immediately produce and hand-over all copies of Documents to the SPO and (ii) authorising seizure of the Documents by the SPO.

3. As previously found by the Single Judge in similar circumstances, the relevant requirements are met in this case:³

- a. there is a reasonable expectation of privacy with respect to the relevant location and items to be seized;⁴
- b. the seizure is necessary to collect and preserve evidence of a crime within the jurisdiction of the Specialist Chambers, pursuant to Article 15(2) of the Law;

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

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev1/2017, 5 July 2017 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ See Decision Authorising Seizure, KSC-BC-2018-01/F00121, 7 September 2020, Strictly Confidential and *Ex Parte* ('Authorising Decision'), para.5.

⁴ See Authorising Decision, KSC-BC-2018-01/F00121, para.10.

- c. the seizure is necessary for protection of the investigation and of potential witnesses, as the documents are typically not public and contain sensitive information;⁵
- d. the measure sought is unavoidable (in that, in the specific circumstances, evidence may not be otherwise obtained and the requested seizure appears to be the only effective means for the purposes of the investigation);⁶ and
- e. the resulting interference into the person's right to personal integrity, privacy or property is proportionate to the legitimate aim of the investigation and does not negate the essence of the guaranteed right. The SPO will abide by the requirements of the Rules and the terms set by the Single Judge to ensure that rights to personal integrity, privacy and property are protected.⁷

4. Finally, considering the sensitive nature of the Documents and the concrete risk to witnesses and the SPO's investigations posed by any further dissemination, it is appropriate to order Mr GUCATI, the KLA WVA and any other individual in possession of the Documents and/or their content to refrain from recording or copying, in whatever form, and further disseminating, by whatever means of communication, the Documents or their content.⁸

5. The SPO respectfully requests the Single Judge to urgently:

- a. grant the Request;

⁵ See Authorising Decision, KSC-BC-2018-01/F00121, para.12.

⁶ See Authorising Decision, KSC-BC-2018-01/F00121, para.12.

⁷ See Authorising Decision, KSC-BC-2018-01/F00121, para.13.

⁸ See Authorising Decision, KSC-BC-2018-01/F00121, para.21.

- b. order Mr GUCATI and/or the KLA WVA to immediately produce and handover the Documents to the SPO;
- c. authorise the seizure of the Documents;
- d. authorise the SPO, as a competent authority,⁹ for service and execution of the order;
- e. issue an order against further duplication or dissemination of the Documents, in the terms set out in paragraph 4 above; and
- f. caution Mr GUCATI or any other individual who is in possession of the Documents and/or their content, that should they obstruct the execution of the present decision or violate its conditions, this may constitute an offence under the 2019 Criminal Code of Kosovo, No. 06/L-074, by virtue of Article 15(2) of the Law.

Word count: 651



Jack Smith

Specialist Prosecutor

Wednesday, 16 September 2020

At The Hague, The Netherlands.

⁹ See Authorising Decision, KSC-BC-2018-01/F00121, para.20.