



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

In: KSC-BC-2020-07
Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 14 October 2020

Language: English

Classification: Public

Public Redacted Version of

**'Prosecution notice and related request', filing KSC-BC-2020-07/F00010 dated 23
September 2020**

Specialist Prosecutor's Office

Jack Smith

Counsel for Hysni Gucati

Jonathan Elystan Rees

Duty Counsel for Nasim Haradinaj

Bastiaan Martens

1. On 22 September 2020, the Kosovo Liberation Army War Veterans Association ('KLA WVA') convened a press conference at which they announced they had received documents allegedly relating to the Specialist Prosecutor's Office ('SPO') ('Documents'). Based on images released, the SPO determined [REDACTED].
2. In the circumstances, the SPO determined that it was necessary to immediately obtain the Documents to (i) collect and preserve evidence of a crime within the jurisdiction of the Specialist Chambers; and (ii) avoid an imminent risk of serious and irreversible harm to witnesses and other persons.
3. Upon learning of the KLA WVA's possession of the documents, SPO personnel called the KLA WVA. Mr Hysni GUCATI informed the SPO that it could collect the documents.
4. The SPO issued an order for Mr GUCATI and/or the KLA WVA to (i) produce all documents and records, including internal work product, of the Specialist Prosecutor's Office; and (ii) refrain from recording or copying, in whatever form, and further disseminating, by whatever means of communication, the documents or their content ('Order'). Thereafter, SPO personnel went to the KLA WVA premises, served the Order on the KLA WVA, and certain Documents were obtained.¹
5. The SPO acted pursuant to its authority under Articles 35(2) and 53(1) of the Law.² The Order was limited to SPO documents and, in the circumstances described above, the Order's execution did not anticipate or involve any search or other

¹ The Order and acknowledgement of service are attached at Annex 1. The SPO investigator who served the Order corrected the date to 22 September 2020 before serving it (it erroneously read 9 September 2020). The SPO arrived at 13.07 at the KLA WVA's offices. At 13.30, Nasim HARADINAJ signed the acknowledgement of service in the presence of SPO investigator [REDACTED] and SPO security officer [REDACTED], as well as KLA WVA counsel Tome GASHI, Hysni GUCATI, Faton KLINAKU, and Mixhen SHALA. Four volumes of documents were provided to the SPO. SPO personnel were told that the media was allowed to photograph the documents following the press conference, but that no copies had been made by the KLA WVA. Nasim HARADINAJ also showed the SPO video footage of the man dropping off the documents on the KLA WVA's premises.

² 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. See order at Annex 1.

compelled intrusion of KLA WVA offices in which there was any reasonable expectation of privacy. In turn, Rules 37-39 of the Rules³ did not apply.

6. Nevertheless, out of an abundance of caution, the SPO hereby notifies the Single Judge Panel ('Single Judge') of the measures taken, and should the Single Judge consider Rules 37-39 to have applied seeks approval accordingly.⁴ In this regard, the SPO notes that relevant safeguards including service of a certified copy of the order and presence of both the person concerned and their counsel were applied.

7. Finally, in light of the ongoing nature of the KLA WVA's unauthorised access to and dissemination of non-public and confidential documents and the accompanying risks,⁵ the SPO requests that, pursuant to Articles 38(1), 39(3), and 62, the Single Judge order Mr GUCATI, the KLA WVA and any representative, member or agent of the KLA WVA to (i) immediately notify the SPO if it has in its possession or in future obtains any further documents that appear to be confidential or non-public and relate to Special Investigative Task Force (SITF) or SPO investigations or witnesses, or proceedings of the Kosovo Specialist Chambers ('KSC'); and (ii) without authorisation of the SPO or Single Judge, refrain from recording or copying, in whatever form, or disseminating, by whatever means of communication, such documents or their contents. This order should be accompanied by a caution that any violation of its conditions may constitute an offence under the Criminal Code of Kosovo, by virtue of Article 15(2).

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' herein refer to the Rules, unless otherwise specified.

⁴ Rule 38(2).

⁵ According to the KLA WVA, the unidentified individual who allegedly provided the documents to the KLA WVA also allegedly indicated to the KLA WVA that further documents on a CD would be provided in future. Despite SPO requests that the KLA WVA contact the SPO when they receive such documents, the KLA WVA has stated that it does not cooperate with the SPO and therefore disseminates such documents to the media.

Word count: 761



Jack Smith

Specialist Prosecutor

Wednesday, 14 October 2020

At The Hague, The Netherlands.