

## STATEMENT

1. My name is Abelard Tahiri. Between September 9, 2017 and February 3, 2020, I was Minister of Justice in the Government of Kosovo. In that capacity, in addition to my general responsibilities for the administration of justice, I also had overall responsibility for facilitating the work of the Kosovo Specialist Chambers, as stipulated by Law No. 05/L-054 on *Legal Protection and Support for Potential Accused Persons in Trials Before the Specialist Chambers*. The operational responsibility for liaison with the KSC was delegated to one of my officials, Driton Lajci, who was the Head of Division within the Ministry of Justice, the Division that was established to implement Ministry's responsibilities as stipulated by abovementioned law.
2. On 31 August 2015, the Kosovo Assembly adopted Law No. 05/L-054 on *Legal Protection and Support for Potential Accused Persons in Trials Before the Specialist Chambers* (Annex AT/1). The purpose of the Law was to establish a scheme for the payment of legal costs and expenses of individuals facing charges at the KSC. It was to be administered by the Ministry of Justice. The Law was publicly adopted and published in the Official Gazette, and the fact that the Government had made provision for the payment of costs was well-known. This scheme was established in addition to the legal aid scheme that was still being set up by the KSC, in order to ensure that sufficient funds would be available to enable accused to instruct counsel of their choice.
3. We received no objection or adverse comment from the anyone at the KSC when this Law adopted. No criticism was made of the Assembly's decision to establish a fund for this purpose. However, as soon as it came into force, we identified an apparent ambiguity in the provisions of the law. Whilst the title of the law, and the text of article 1 referred to "potential accused", the operative provisions of article 3 (which conferred the right to request financial assistance from the Ministry of Justice) referred to the provision of assistance to "accused persons". It was not immediately clear, therefore, whether the scheme authorised payment to individuals summoned for interview by the SPO as suspects, or only to those who were actually charged on an indictment. The situation was further



complicated by the fact that SPO summonses typically did not specify whether an individual was being called for interview as a witness and a suspect.

4. Accordingly, I sought advice from the Government's legal advisers on this issue. We had a number of lengthy meetings with the Government Legal Office in an attempt to clarify the position. We eventually concluded that the correct interpretation was that the Ministry of Justice was only authorised to make payments under the scheme to people who had been actually indicted. The scheme also made it clear that funds could not be released on account. They could only be reclaimed from the Ministry of Justice after the event, and then only if they were supported by an invoice from the attorney concerned for work already completed. I was aware that both of these restrictions could present problems. Firstly, this interpretation meant that the scheme could not pay for legal advice and representation prior to or during an SPO interview that predated the issuance of a confirmed indictment. In addition, some international lawyers were known to require payments on account.
5. The other problem was that the limitations on the scheme were not generally understood by the public, including those who were being called in for interview by the SPO. We initially received quite a significant number of requests for financial assistance at the Ministry of Justice. Some of these were supported by specific costs estimates. Others simply requested a lump payment., without much in the way of explanation. I had to refuse them all.
6. Although the Ministry could not assist, it is always possible for a citizen to apply to the Government for a discretionary payment from the Government Reserve Fund. This is known as the Unforeseen Expenses Programme. It is established in the Law on the Kosovo Budget with the reference number 232-13100. Such requests can be made for any legitimate purpose and are entirely within the discretion of the Prime Minister and Cabinet. Payments under this scheme can cover anything the Government deems appropriate such as loss caused by a natural disaster, or medical expenses for a condition that requires treatment that is only available abroad. The fund for unexpected contingencies is in the region of €8 million to €10 million per year.



7. There are no set procedures, and no specific requirements, such as the need to provide invoices. If a discretionary grant is approved by Cabinet, an order is signed, usually by the Prime Minister, and the decision is then processed by the Ministry of Finance. The Ministry of Finance has authority to amend the categorisation of the payment, and allocate it to a particular budget stream, but may not unilaterally alter the amount of the payment. No Minister, including myself, has unilateral power to authorise discretionary payments.
8. One of the first people to approach the Ministry of Justice for financial assistance was Sami Lushtaku. I met with him myself and informed him that there was no basis for the Ministry of Justice to fund his legal representation under the 2015 Law. He had no legal representation at the time, and was seeking funding for a lawyer to advise and represent him at interview. He subsequently sought and obtained a discretionary award from the Cabinet, as a result of which he was able to instruct Sir Geoffrey Nice QC to represent him.
9. At my request, Driton Lajci, the Head of Division within the Ministry of Justice, travelled to The Hague on the day of Sami Lushtaku's interview. He travelled in his capacity as a Government official. As far as we were aware, this was the first time the SPO had summoned anyone to The Hague for interview using its statutory powers. The Ministry of Justice was keen to understand the procedural aspects, so that we could assess the extent to which our involvement was likely to be necessary for future interviews.
10. I later learned that there was some disquiet within the SPO because Mr. Lajci had been present in the interview of Sami Lushtaku, and acted as a *de facto* interpreter. I made enquiries of Mr. Lajci and he told me that he had disclosed the fact that he was a Government employee before the interview began, but the SPO was content to allow the interview to go ahead on that basis. This has since been confirmed to me. I was therefore puzzled to learn that the SPO had referred to this incident in its objections to provisional release. The matter was clearly dealt with at the time. Mr. Lajci was informed by the SPO that, as a Government employee, he should not attend interviews in future. He apologised for the initial misunderstanding, but pointed out that the SPO had been aware of his status, and had



allowed the interview to continue with him as acting as interpreter. He undertook not to attend interviews in the future.

11. Often, requests would be submitted to the Ministry of Justice in the first instance (with or without supporting documents). After informing each applicant that the Ministry could not fund legal representation, the Ministry would usually forward the request to the Cabinet, so that it could decide whether to make a discretionary payment and, if so, to fix the amount of the payment. However, on occasions, if the applicant was aware that the Ministry of Justice could not assist, he would submit an application direct to the Government, through the office of the Prime Minister or the Cabinet. There was no set procedure for bringing a request for discretionary financial assistance to the Government. Such requests could be made for any purpose, from a school or hospital, to a situation of individual personal need. In the context of requests for assistance relating to legal representation at the KSC, there was no requirement for a request to be submitted to the Ministry of Justice in the first instance, although this often happened in practice.
12. I recall that on one occasion, a request for payment was put before the Cabinet in respect of three individuals at the same time. These requests had originally been submitted to the Ministry of Justice with supporting documents, but rejected for the reasons outlined above. In this instance, the Ministry of Justice was not responsible for submitting the requests to Cabinet for a discretionary payment. They each went away empty handed, and later submitted their own requests directly to the Government.
13. One of the three, Syleman Selimi, had requested €20,000 and the others had requested somewhat smaller sums. On that occasion, the Cabinet has decided, in the exercise of its discretion, that the total amount to be awarded should not exceed €30,000. As a result, each applicant received an award, the largest single award being €13,000 for Mr. Selimi. The other two awards were €10,000 for Sami Lushtaku and €7,000 for Mahir Hasani. There is no particular reason I can recall for these different awards, other than the overall budget figure that had been agreed for that particular session of Cabinet. That figure was not calculated with precision.



14. On 19 March 2019, I attended a meeting of the Cabinet. One of the items on the agenda was a request for financial assistance for Lahi Brahimaaj. By that time, the message had got around that the Ministry of Justice could not help, and so it is entirely unsurprising that Mr. Brahimaaj made his request direct to the Government, particularly as he is the uncle of Ramush Haradinaj, who was then Prime Minister.
15. The motion was presented by the Office of the Prime Minister and the Cabinet. I was present at the meeting. However, because this request had been directly to the Office of the Prime Minister, I had not seen it in advance of the meeting. There was nothing odd about that. Some requests came via the Ministry, and others went directly to the Government. As I explained to the SPO when I was interviewed as a witness on 12 November 2019, "Like I said, from the moment these individuals understood that the ministry would not pay for legal expenses related to their lawyer's services, from that moment onward all of them would direct their applications to the Office of the Prime Minister and bypassing the Ministry of Justice". Some requests to the Government were supported by detailed invoices but, as I explained to the SPO, "the Government has the right to assist them, to help them financially, even in the absence of any supporting documents".
16. The Cabinet voted on the Lahi Brahimaaj motion, and unanimously approved the request. I do not now remember any particular discussion about the amount claimed. As I indicated, there was no set procedure for these exceptional awards, and no agreed criteria. In retrospect, in the absence of formal rules, there was an element of inherent risk that decisions might appear inconsistent, or that the actual sums awarded might seem arbitrary. As I explained to the SPO during my interview: "We in the Ministry of Justice would have asked for supporting documents for any type of expenses... However, the Government has a different role. It can also provide this form of support in the form of a subsidy without necessarily asking for clear, detailed supporting documents, such as invoices or other things.
17. However, I can state categorically that no one in the Cabinet mentioned, implied or even contemplated the possibility that the



sum awarded to Mr. Brahimaj might be related to anything other than the payment of legal and related costs. This was a collective decision. It is in my view ridiculous to suggest that it was some kind of bribe. I was one of those who voted for it, and it never even occurred to me that there was anything improper in the payment. I do not believe there was anything untoward taking place. I know the other members of Cabinet, and I am confident that they approached the request in the same way that I did.

18. Mr. Brahimaj's expenses were likely to be higher than others because he was considered by most people to be at significant risk of prosecution. This was due to his acknowledged role in Jabllanice (for which he had been convicted by the ICTY) and also because he had been a member of the KLA General Staff. We presumed (rightly as it happens) that events at Jabllanice would form part of any overarching accusations against the KLA leadership. I think it is likely that the Cabinet all presumed there was a potential need for Lahi Brahimaj to have legal representation going beyond simply attending for interview. This may well account for the comparatively large sum agreed. I know Mr. Brahimaj had already engaged international counsel some weeks earlier, and we all recognised that in his case the expenses might well be more substantial than others.
19. The record of the decision to award that sum to Mr. Brahimaj is marked ERN064677. A copy is appended as annex AT/2. It is apparent that it is dated 19 March 2019. Although the typed name at the bottom of the order is Ramush Haradinaj, it was clearly signed by the Deputy Prime Minister Enver Hoxhaj. As I recall, Mr. Haradinaj recused himself from the decision because he was personally related to the applicant. Decisions of this nature must be signed by either the Prime Minister or the Deputy Prime Minister. They cannot be signed off by any other Minister or member of the Cabinet.
20. As far as I am aware the joint award to Syleman Selimi and others, and the separate award to Lahi Brahimaj, are the only two occasions on which I was present whilst a discretionary award was made for this purpose, during the period I was in Government.



21. In order to make the position about the Ministry of Justice scheme absolutely clear to the public, the Ministry of Justice began work on an Administrative Instruction setting out the scheme with precision. The work began in mid-2017, and it was intended to implement the new scheme in September of that year. However, in July, the Prime Minister, Ramush Haradinaj, resigned, leading to a new election. When it was eventually implemented, the Administrative Instruction stated in terms that the expression "potential accused person" was to be interpreted to mean "a natural person against whom criminal proceedings have been initiated before the Specialist Chambers". This confirmed the interpretation I had adopted in the first place.
22. On 12 and 13 November 2019, I was interviewed by representatives of the SPO. During the course of the interview, I was asked to explain the process by which individuals summoned for interview had received Government funds. The answers that I gave during those interviews were true to the best of my knowledge and belief. I append to this witness statement four interview transcripts in which I explained the process (Annex AT/3, AT/4 AR/5 and AR/6).
23. As I explained to the SPO, the Ministry of Justice compiled a list of individuals that had applied to the Ministry for financial assistance, and supplied this to the SPO. As regards the decisions made by the Cabinet under the discretionary scheme, consideration was given to the question whether these awards should remain confidential. After discussions with the Prime Minister it was decided that these would not be treated as confidential.

Signed:



Abelard Tahiri

Date:

Pristina