

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

**Before:** Single Judge  
Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

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

**Date:** 15 June 2021

**Language:** English

**Classification:** Public

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**PUBLICLY REDACTED**

**Application for an Order Directing the Specialist Prosecutor to  
Terminate the Investigation against Mr. Driton Lajçi**

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**Specialist Prosecutor**

Jack Smith

**Specialist Counsel**

Toby Cadman

## I. INTRODUCTION

1. Pursuant to Rule 47(2) of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers, Specialist Counsel for Mr. Driton Lajçi requests the Pre-Trial Judge to order the immediate termination of the Specialist Prosecutor's ("SPO") investigation of Mr. Lajçi.
2. The failure of the SPO to file an indictment after two years of investigating Mr. Lajçi requires the Specialist Prosecutor pursuant to Law No. 05/L-053 ("Law"), the Kosovo Criminal Procedure Code 2012 Law No. 04/L-123 ("Criminal Procedure Code") and the Rules of Procedure and Evidence of the KSC ("Rules") to terminate the investigation against Mr. Lajçi.

## II. THE LAW

3. Article 19(2) of the Law No. 05/L-053 on the Kosovo Specialist Chambers and Specialist Prosecutor's Office provides that:

*"In determining its Rules of Procedure and Evidence the Specialist Chambers shall be guided by the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123."*

4. Article 159(1) of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 provides:

*“If an investigation is initiated, the investigation shall be completed within two (2) years. If an indictment is not filed, or a suspension is not entered under Article 157 of this Code, after two (2) years of the initiation of the investigation, the investigation shall automatically be terminated.”*

5. Rule 47(1) of the Rules of Procedure and Evidence of the KSC provides:

*“If the Specialist Prosecutor does not file an indictment with the Specialist Chambers pursuant to Article 38(4) of the Law within a reasonable time after the person became a suspect and was notified thereof, the suspect may request the Specialist Prosecutor to terminate the investigation against him or her.”*

6. The applicable legal framework does not require the establishment of bad faith on the part of the SPO nor does it require the establishment that the investigation is no longer subject to ongoing investigative actions. Article 159(1) of the KCPC is clear, the termination is mandatory and not subject to any discretionary powers.

### **III. BACKGROUND**

7. Mr. Lajçi was the ‘Head of Division’ for Coordinating Legal Protection and Financial Support for Potential Accused Persons in Trials before the Specialist

Chambers at the Kosovo Ministry of Justice from 26 November 2018 until 2 November 2020.

8. In that capacity, on 3 May 2019, Mr. Lajçi was visited by [REDACTED], at that time the Deputy Specialist Prosecutor, at Mr. Lajçi's office at the Ministry of Justice in Prishtinë, Republic of Kosovo.
9. There is dispute between the parties, subject to proceedings before the KSC Ombudsperson, as to whether the meeting was formal or informal in nature. For the purpose of this application, the nature of that meeting is entirely irrelevant. What is relevant is that during the course of the meeting [REDACTED] presented Mr. Lajçi with an Order of the Single Judge, dated 2 April 2019, for the seizure of his telephone, resulting in the physical seizure of the telephone, and a summons for Mr. Lajçi to be interviewed as a suspect, with an initial suspect interview to take place on 29-30 May 2019.
10. The first suspect interview was postponed.
11. Subsequently, on 25 September 2019, Mr. Lajçi received a further summons to attend an interview as a suspect on 17-18 October 2019.
12. On 13 October 2019, on behalf of Mr. Lajçi as his appointed Specialist Counsel, further details were requested as to the basis and foundation of the allegations from SPO. The request specifically argued that the summons was insufficiently particularised and failed to disclose any offence in

contravention of accepted national and international standards for the investigation and prosecution of criminal offences.

13. On 14 October 2019, [REDACTED], the assigned Specialist Prosecutor, responded by e-mail by simply advising that “...*there is no requirement in the Law that the SPO provide your client with details of the evidence in its possession at this time.*” The e-mail went on to state that “*The Specialist Prosecutor’s Office is investigating the role of your client’s office and your client personally in possible obstruction of justice, including without limitation possible violations of Article 394 (obstruction of evidence or official proceedings) and Article 395 (intimidation during criminal proceedings) of the Criminal Code of the Republic of Kosovo, incorporated under Article 15(2) of the Law.*” No further details were provided at that time.
14. Mr. Lajçi’s suspect interview took place on 17 October 2019 between 09:51 – 10:30 and 10:35 – 10:54.
15. On 14 November 2019, a referral on behalf of Mr. Lajçi was lodged with the Constitutional Court Panel at the KSC.<sup>1</sup>
16. On 15 November 2019, the SPO filed a request for classification of the referral from public to confidential in order “*to protect the integrity of an ongoing investigation.*”<sup>2</sup> This was rejected by the Constitutional Court Panel on 20

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<sup>1</sup> Decision to Assign Judges to a Constitutional Court Panel, KSC-CC-2019-07/ F00002, public, 15 November 2019.

<sup>2</sup> Public redacted version of ‘Prosecution request for reclassification of filing KSC-CC-2019-07-F00001’, public, 15 November 2019.

November 2019 on the basis that the information was of a general character and that it was an important component of the right to a fair trial that proceedings are transparent and subject to public scrutiny.

17. On 13 January 2020, the Constitutional Court Panel declared Mr. Lajçi's referral inadmissible as it was deemed "premature" because Mr. Lajçi had not been charged.<sup>3</sup>
18. On 11 December 2020, Specialist Counsel to Mr. Lajçi wrote to the Specialist Prosecutor requesting the termination of the investigation against Mr. Lajçi for reasons not connected to the length of the investigation. The Specialist Prosecutor responded by stating that it did not intend to terminate the investigation.
19. On 5 February 2021, a *Strictly Confidential and Ex Parte Order* of the Single Judge was issued. It was communicated via secure electronic communication to Specialist Counsel on 16 February 2021. The Order required the SPO to complete the actions set out in the Order, and not repeated here due to the Strictly Confidential nature of the Order, within a deadline of four (4) months from receipt of the data described in the Order.

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<sup>3</sup> Decision on the Referral of Driton Lajçi Concerning Interview Procedure by the Specialist Prosecutor's Office, KSC-CC-2019-07/ F00013, public, 13 January 2020, at para. 25.

20. On 26 March 2021, Specialist Counsel to Mr. Lajçi submitted a Complaint on behalf of Mr. Lajçi to the Ombudsperson of the KSC, that matter remains pending.
21. On 24 May 2021, Specialist Counsel to Mr. Lajçi wrote for the second time to the Specialist Prosecutor requesting the termination of the investigation against Mr. Lajçi, given that the SPO has investigated Mr. Lajçi for well over two years, without filing an indictment.
22. On 27 May 2021, the Specialist Prosecutor's Office responded rejecting the request to terminate the investigation against Mr. Lajçi, notably not denying that Mr. Lajçi had been summonsed for a suspect interview well over two years ago and failing to consider Article 159(1) of the Kosovo Criminal Procedure Code 2012, or the Criminal Procedure Code, at all, relying on the broader test of Rule 47(1) of the KSC Rules of Procedure and Evidence. On the same day, Specialist Counsel for Mr. Lajçi responded to the Specialist Prosecutor with certain clarifications.
23. Since 3 May 2021, two years have passed since Mr. Lajçi was first notified of being a suspect by being presented with the Single Judge's Order and having been summonsed for a suspect interview.

#### IV. SUBMISSIONS

24. Specialist Counsel for Mr. Lajçi seeks an Order from the Single Judge directing the SPO to terminate the investigation of Mr. Lajçi, in accordance with the applicable legal framework of the KSC, on the grounds that Mr. Lajçi has been the subject of the SPO's investigation for well over two years and the SPO has to date failed to bring charges for any crime he is alleged to have committed.

25. It is recalled that Article 19(2) of the Law unequivocally requires:

*"In determining its Rules of Procedure and Evidence the Specialist Chambers **shall** be guided by the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123."* (emphasis added)

26. Article 159(1) of the Kosovo Criminal Procedure Code provides:

*"If an investigation is initiated, the **investigation shall be completed within two (2) years. If an indictment is not filed, or a suspension is not entered under Article 157 of this Code, after two (2) years of the initiation of the investigation, the investigation shall automatically be terminated.**"* (emphasis added)

27. The SPO in its response to the 24 May 2021 letter from Specialist Counsel to Mr. Lajçi, requesting the SPO to terminate the investigation, referred solely to Rule 47(1) of the Rules, which states:



*“If the Specialist Prosecutor does not file an indictment with the Specialist Chambers pursuant to Article 38(4) of the Law **within a reasonable time** after the person became a suspect and was notified thereof, the suspect may request the Specialist Prosecutor to terminate the investigation against him or her.”*

***Initiation of investigation or notification of being a suspect***

28. First, it is submitted that the *initiation of an investigation* (wording used in the Criminal Procedure Code) and the *notification of being a suspect* (wording used in the Rules) are different points in time, but regardless of which one is the starting point, the SPO is out of time to file an indictment.
29. Logically, an investigation against Mr. Lajçi was initiated *before* he was even formally invited for a suspect interview on 3 May 2019. An application to seize his mobile telephone was made prior to the Order of the Single Judge, dated 2 April 2019. In any event, he was formally notified of being a suspect on 3 May 2019, when presented with the Order and the Summons, which is now well over two years ago.
30. Further, while the SPO in its response letter went to lengths to point out small errors (a typo and a date) in the Specialist Counsel’s letter requesting the termination of the investigation, the SPO did not deny that Mr. Lajçi was notified to be a suspect on 3 May 2019.

31. The Specialist Prosecutor sought to argue that their inquiries were ongoing, and that Specialist Counsel had omitted reference to the Strictly Confidential Order of 5 February 2021. With respect to the Specialist Prosecutor, those matters are entirely irrelevant. The Strictly Confidential Order of 5 February 2021 relates to a time period that ended on 2 November 2020, and the Specialist Prosecutor has had ample opportunity to fully investigate this matter, and where necessary bring charges. It has not.
32. Accordingly, it is undeniable that Mr. Lajçi has been the subject of an investigation and been an official suspect for well over two years.

*Two years to file an indictment*

33. The SPO in its response letter also failed to mention the relevant provision in the Kosovan Criminal Procedure Code, and only relied on the “*reasonable time*” limit to file an indictment in Rule 47(1) of the Rules; also without any explanation as what constitutes a “*reasonable*” time to the SPO.
34. While the “*reasonable time*” limit in Rule 47(1) would, if read in isolation of the relevant applicable and the KSC’s binding legal framework, appear broad, it cannot be read as such because the KSC Law *requires* the *determination* of the Rules to be *guided* by the Kosovan Criminal Procedure Code, which in turn unequivocally stipulates the period of **two years** to file an indictment.

35. As has been stated above, the SPO has failed to file an indictment and charge Mr. Lajçi with any crime within the required time limit.

## V. CONCLUSION

36. Specialist Counsel for Mr. Lajçi accordingly seeks an order directing the termination of the SPO investigation against Mr. Lajçi.

Word Count: [2014] words



**Toby Cadman**

**Specialist Counsel**