



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2018-01
Before: **Single Judge**
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Date: 25 September 2020
Language: English
Classification: **Public**

**Public Redacted Version of
Decision on Specialist Prosecutor's Request for Order in Relation to Non-Public
and Confidential Documents**

Specialist Prosecutor
Jack Smith

Counsel for Hysni Gucati
Jonathan Elystan Rees
Huw Bowden

Counsel for Nasim Haradinaj
Toby Cadman
Carl Buckley

THE SINGLE JUDGE¹ is seised of the Specialist Prosecutor's strictly confidential and *ex parte* "Prosecution notice and related request",² filed on Wednesday, 23 September 2020, and hereby renders his decision.

I. PROCEDURAL BACKGROUND

1. On 23 September 2020, the Specialist Prosecutor's Office ("SPO") submitted a notice of the execution of an order pursuant to Article 35(2) and 53(1) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") on Hysni Gucati ("Mr Gucati") and the Kosovo Liberation Army War Veterans Association ("KLA WVA") and related request for an order by the Single Judge ("Request").³

II. SUBMISSIONS

2. The SPO submits that, on 22 September 2020, the KLA WVA claimed to have received documents allegedly relating to the SPO ("Documents") which, on the basis of released images, were assessed by it as [REDACTED].⁴ In these circumstances, the SPO determined that it was necessary to immediately obtain the Documents in order to collect and preserve evidence of a crime within the jurisdiction of the Specialist Chambers and avoid an imminent risk of serious and irreversible harm to witnesses and other persons.⁵

3. The SPO contacted the KLA WVA and was informed by Mr Gucati that it could collect the Documents.⁶ It also issued an order for Mr Gucati and/or the KLA WVA to:

¹ KSCPR-2018, F00004, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, strictly confidential and *ex parte*.

² KSC-BC-2018-01, F00126, Specialist Prosecutor, *Prosecution Notice and Related Request*, 23 September 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

³ See footnote 2 above.

⁴ Request, para. 1.

⁵ Request, para. 2.

⁶ Request, para. 3.

(i) produce all documents and records, [REDACTED], of the SPO; and (ii) refrain from recording or copying, in whatever form, and further disseminating, by whatever means of communication, the Documents or their content (“SPO Order”).⁷ Thereafter, the SPO went to the KLA WVA premises, served the SPO Order on the KLA WVA, and obtained certain documents.⁸

4. The SPO submits that: (i) it acted pursuant to its authority under Articles 35(2) and 53(1) of the Law; (ii) the SPO Order was limited to SPO documents; and (iii) in the circumstances, the execution of the SPO Order did not anticipate or involve any search or other compelled intrusion of the KLA WVA offices entailing a reasonable expectation of privacy, and that therefore, Rules 37-39 of Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”) did not apply.⁹ Nevertheless, out of an abundance of caution, the SPO notifies the Single Judge of the measures taken and, should the Single Judge consider Rules 37-39 of the Rules to have been applicable to the aforementioned circumstances, it requests the required approval under Rule 38(2) of the Rules.¹⁰

5. Lastly, in light of the available information concerning the risk of the KLA WVA’s unauthorised access to and dissemination of further non-public and confidential documents, the SPO requests the Single Judge to:

- (a) order Mr Gucati, the KLA WVA, and any representative, member, or agent thereof to: (i) immediately notify the SPO if it has in its possession or in the future obtains any further documents which appear to be confidential or non-public and relate to the Special Investigative Task Force (“SITF”) or SPO investigations or witnesses, or proceedings of the Specialist Chambers; and (ii) refrain from recording or copying, in whatever form, or disseminating, by

⁷ Request, para. 4; KSC-BC-2018-01, F00126/A01, Annex 1 to Request.

⁸ Request, para. 4.

⁹ Request, para. 5.

¹⁰ Request, para. 6.

whatever means of communication, such documents or their content, in the absence of authorisation of the SPO or the Single Judge; and

- (b) caution that any violation of such order may constitute an offence under the 2019 Criminal Code of Kosovo, No. 06/L-074 (“Criminal Code”), by virtue of Article 15(2) of the Law.¹¹

III. APPLICABLE LAW

6. Pursuant to Article 39(3) and (11) of the Law, at the request of the Specialist Prosecutor, the Single Judge may issue any orders as may be required for the conduct of the investigation and, where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, and the protection of persons.

7. According to Article 53(1) of the Law, all entities and persons in Kosovo shall comply without undue delay with any request for assistance, order or decision issued by the Specialist Chambers.

8. Pursuant to Article 62(1) of the Law, given the security and privacy considerations, the documents, papers, records, and archives of the Specialist Chambers, the Registry, and the SPO shall not be considered public documents of Kosovo.

IV. DISCUSSION

A. COLLECTION OF DOCUMENTS BY THE SPECIALIST PROSECUTOR’S OFFICE

9. The Single Judge notes that before going to the KLA WVA offices, the SPO was informed by Mr Gucati that it could collect the Documents.¹² It is also noted that the SPO Order, the service of which was acknowledged by Nasim Haradinaj,¹³ was based

¹¹ Request, para. 7.

¹² Request, para. 3; KSC-BC-2018-01, F00126/A01, Annex 1 to Request.

¹³ Request, footnote 1.

on Articles 35(2) and 53(1) of the Law.¹⁴ Further, the Single Judge notes that the SPO Order did not foresee any search of or compelled intrusion into the premises of the KLA WVA and no search of the KLA WVA was conducted.¹⁵ Lastly, the Documents appear to have been voluntarily provided to the SPO, upon service of the SPO Order.¹⁶ In these circumstances, no authorisation pursuant to Rule 38(3) of the Rules is required.

B. REQUESTED ORDER

10. The Single Judge notes that, according to information provided by the KLA WVA, further non-public and confidential documents relating to the work of the SITF, the SPO, and/or the Specialist Chambers may be provided to the KLA WVA.¹⁷ Considering the accompanying risks to the integrity of the SPO investigations and Specialist Chambers' proceedings, as well as to the safety and security of potential witnesses and other persons, the Single Judge considers it appropriate to grant the Request and issue an order pursuant to Articles 39(3) and (11), 53(1), and 62(1) of the Law requiring the KLA WVA and any representative, member, or agent thereof to: (i) immediately notify the SPO if it has in its possession or in the future obtains any documents which appear to be confidential or non-public and to relate to the work of the SITF, the SPO, or the Specialist Chambers, and (ii) refrain from recording or copying, in whatever form, or disseminating, by whatever means of communication, such documents or their content, in the absence of authorisation of the SPO or the Single Judge. The Single Judge further considers it appropriate to caution the KLA WVA, and any representative, member, or agent thereof, that any violation of the aforementioned order may constitute an offence under the Criminal Code.

¹⁴ Request, paras 3-4; KSC-BC-2018-01, F00126/A01, Annex 1 to Request.

¹⁵ Request, para. 5.

¹⁶ Request, footnote 1.

¹⁷ Request, footnote 5.

C. EXECUTION AND SERVICE OF THE REQUESTED ORDER

11. Pursuant to Article 35(3) of the Law, the police within the SPO has the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law and it may be considered a “competent authority” under Rule 49(1) of the Rules to execute and serve orders of the Specialist Chambers, including the annexed order.¹⁸

V. DISPOSITION

12. For the above reasons, the Single Judge hereby:

- a. **GRANTS** the Request;
- b. **ISSUES** the annexed order to be served on any representative of the Kosovo Liberation Army War Veterans Association, as appropriate; and
- c. **AUTHORISES** the SPO to disclose, as appropriate and necessary, the annexed order for the purpose of its execution.



Judge Nicolas Guillou
Single Judge

Dated this Friday, 25 September 2020

At The Hague, the Netherlands.

¹⁸ Notifying the present decision to the Specialist Prosecutor, the transmission is deemed fulfilled, in accordance with Rule 49(1) of the Rules.