

ANNEX 2 to

**Thaçi Defence Application for the Recusal of the President Ekaterina
Trendafilova from assigning a Court of Appeals Panel to adjudicate Mr Thaçi's
appeal on provisional release**

Public

Notes from diplomatic briefing on 11 February 2021

Head of Mission Coordination Meeting – 11 February 2021

Excellences,

I am grateful to the Portuguese Ambassador for inviting me to speak to you today about the Kosovo Specialist Chambers (KSC). My focus will be on the most important and recent developments since I last spoke to you in December.

I. 1. As you know, the KSC currently has before it three cases that are in the pre-trial phase. The accused in the first case, Mr Salih Mustafa, is charged with four counts of war crimes.

The second is the larger and senior leadership case, involving Messrs Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi. They are charged with 10 counts of war crimes and crimes against humanity.

The accused in the last case, Messrs Hysni Gucati and Nasim Haradinaj, are charged with two counts of criminal offences of crimes against the public order and four counts of crimes against the administration of justice and public administration.

2. I assigned one Pre-Trial Judge, Judge Nicolas Guillou, to deal simultaneously with all three cases at the pre-trial phase. This will ensure consistency in the jurisprudence and predictability of the practices before the KSC and it will also ensure the sound management of the court's budget.

Since his assignment, Judge Nicolas Guillou, with the excellent support of the legal team, has issued about 300 decisions and orders on a variety of different issues, such as the confirmation of indictments, the detention of the accused, the disclosure of evidence, victim participation, protection, and cooperation. Eighteen hearings were held from September last year until today, which were attended by all parties, in person or via video-link.

The enormous increase in judicial activity, a large portion of which is classified as strictly confidential or confidential, has taken place uninterrupted, notwithstanding the measures imposed as a result of the COVID-19 pandemic.

II. Next, I turn to the planning of the upcoming trial proceedings.

1. In the case against Mr Mustafa, the Specialist Prosecutor has indicated his readiness to proceed to trial by March this year. The Defence, however, has indicated that it needs time to prepare until August. The Pre-Trial Judge is currently assessing,

based on a variety of factors, when he will hand the case over to the Trial panel of the Basic Court composed of three Judges and one reserve Judge.

The case against Mr Gucati and Mr Haradinaj will be handled by a Single Judge and it is anticipated that it will proceed to trial before the case against Mr Mustafa. An exact date for the commencement of this trial will be communicated to the public as soon as the Pre-Trial Judge issues a decision to this effect.

2. In the fulfilment of my responsibility for the proper judicial administration of the KSC, I have already requested the presence of the trial Judges in the Mustafa case at the seat of the court as of 1 March. The purpose is to familiarize themselves with the case and thus to ensure that the trial proceedings will commence without delay as soon as the case is handed over to them.

The same purpose informed my decision to request the presence of the Single Judge in the Gucati and Haradinaj case at the court as of 1 February.

As to the third case against Mr Thaci et al., it is still too early to project when this case will proceed to trial. The complexity and voluminous scope of the case, as well as the need for the Defence to have sufficient time to adequately prepare for trial, are factors that are taken into consideration when making projections. That being said, the Pre-Trial Judge is mindful of the need to proceed expeditiously and efficiently with this case as well. I am confident that we will be in a position to provide more specific projections for this case in due course.

3. Apart from the Pre-Trial Judge, the Court of Appeal has also been quite busy. All seven accused have been denied provisional release over the course of the past few weeks and several have appealed these decisions. The first such appeal, filed by Mr Gucati, was denied by the Appeals Panel. Since then, Mr Haradinaj, as well as the four accused in the Thaçi et al. case have also appealed the decisions of the Pre-Trial Judge denying their provisional release. The Appeals Panel this Tuesday denied Mr Hardinaj's appeal in its entirety and the decisions on the appeals filed in the Thaçi et al. case are currently pending.

4. I am also pleased to inform you that all seven detainees are being treated in accordance with the highest standards at the KSC Detention Facilities. One recent noteworthy example is the assistance provided by the KSC's Detention Management Unit in facilitating the casting of the accused's votes in the upcoming elections in Kosovo.

III. While I am pleased to inform that the cases are proceeding in an efficient and expeditious manner, the KSC and the Specialist Prosecutor's Office (SPO) continue to face a number of challenges. As I previously updated you, the efforts to undermine our institutions has not ceased and will likely increase, in different forms, as the judicial proceedings progress.

For example, there have been renewed calls to seise the Kosovo Constitutional Court with requests to reconsider its April 2015 decision that paved the way for the establishment of the KSC and the SPO.

Similarly, calls have been made to gather signatures to amend the Law on Specialist Chambers and Specialist Prosecutor's Office, which while legally not possible, could have very problematic consequences if pursued by the Kosovo government. More specifically, attempts could be made to amend the Law to allow for pardons for those who are convicted by the KSC or to move either the seat of the KSC or the archives to Kosovo, or both.

This certainly will put at stake the life, safety and security of people who have or will be willing to cooperate with us. Such changes would, certainly, have a chilling effect on witnesses, who may no longer want to appear, thus making it impossible for the Specialist Prosecutor to continue with his cases.

It should thus be emphasized that the framework upon which the European Union and Kosovo agreed in the 2014 Exchange of Letters should remain unaltered until the mandate of the KSC and the SPO has been accomplished or, in the alternative, may only be amended through a consultation process with the EU. The mandatory consultation process with the EU when it comes to the KSC and the SPO framework has been affirmed by the KSC Specialist Chamber of the Constitutional Court in its recent judgment on 26 November 2020.

Next, the need for comprehensive cooperation agreements with States for the protection of witnesses and, where necessary, the relocation of their families has also been brought to the forefront by the increase in judicial activity and the progression of proceedings. Without these agreements, it will be very difficult if not impossible in some cases to ensure that testimony can be given freely and without any fear. Cooperation is also crucial where States might be approached with requests for the freezing of assets and proceeds as well as for the transfer of persons from the territory of States to the seat of the KSC/SPO.

Accordingly, your support and that of the Third Contributing States is indispensable. We all, the Specialist Prosecutor, the Registrar and myself, greatly

appreciate your political support, particularly in assisting us with the ongoing efforts by some in Kosovo to undermine the KSC and the SPO, as well as your practical support, when it comes to the conclusion of agreements and to answering requests from the Specialist Prosecutor for information relevant to his cases.

Conclusion

In sum, I am very pleased to have been able to share that the three cases are proceeding in an expeditious and efficient manner and that we have been able to undertake our judicial activities uninterrupted, despite the challenges posed by the COVID-19 pandemic, thanks to the excellent work of the Pre-Trial Judge, the Judges of the Court of Appeals Panel, and all our staff members.

Excellences, as I conclude my remarks before you today, I wish to underline our strong commitment to maintaining the excellent institutional spirit and strong motivation of all of us at the KSC and the SPO.

The KSC will ensure that it fulfils its mandate in accordance with the highest standards and as provided for by its legal framework. Political support on your part has been and will be critical to ensuring that the KSC carry out its mandate effectively, efficiently, fairly, safely and securely.

I thank you for your attention and I look forward to responding to your questions.