

ANNEX 2 to

Thaçi Defence Application for the disqualification of Judge Emilio Gatti from the Court of Appeals Panel adjudicating Mr Thaçi's appeals on provisional release and jurisdiction, annulment of the Decisions of the President Nos. KSC-BC-2020-06/IA010/F00005 and KSC-BC-2020-06/IA009/F00015 , dated 26 August 2021 and 30 August 2021, respectively, and the reinstatement of the Court of Appeals Panel appointed by the President by Decision KSC-BC-2020-06/IA004/F00002, dated 4 February 2021 to rule on Mr Thaçi's appeals on provisional release and jurisdiction

Public

Euronews Article from 15 February 2021, containing notes from diplomatic briefing on 11 February 2021

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Kosovo could try to move war crimes court to Pristina, judge warns

COMMENTS

By [Orlando Crowcroft](#) • Updated: 23/02/2021



President of the Kosovo Specialist Chambers Ekaterina Trendafilova 2nd from right, arrives at a media conference on Monday, Nov. 23, 2017 - Copyright [Visar Kryeziu/Copyright 2017 The Associated Press. All rights reserved.](#)

The head of a Netherlands-based court investigating war crimes allegedly committed by the Kosovo Liberation Army (KLA) during its conflict with Serb forces two decades ago has urged EU diplomats to help fight back against a campaign to undermine its work in Kosovo.

In a confidential briefing to European diplomats in the Hague on February 11, Kosovo Specialist Chambers President Judge Ekaterina Trendafilova warned that the court was facing increased efforts from within Kosovo to hinder ongoing legal proceedings, including against former Kosovan president, Hashim Thaci, who was indicted on war crimes charges last year.

In a transcript of the briefing, obtained by Euronews, Trendafilova said that attempts were already being made to challenge the law that set up the court in 2015, and could include efforts to either pardon those convicted of crimes or even see the entire court - and its vast confidential records - moved from the Hague, where it is currently based, to Pristina, Kosovo's capital.

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“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,” Trendafilova said.

Trendafilova, who is Bulgarian, also warned about the safety of witnesses appearing for the prosecution in ongoing cases, and urged European nations to consider “comprehensive cooperation agreements” that could see witnesses and their families relocated to Europe.

“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,” Trendafilova said.

The court indicted Thaci and the former speaker of Kosovo’s parliament, Kadri Veseli, on war crimes charges in October, along with two other former KLA militants.

Both men were senior commanders during 1998 and 1999 when the NATO-backed KLA fought Yugoslav army units and Serb paramilitaries after a campaign of brutal ethnic cleansing which saw hundreds of thousands of Kosovars forced from their homes and thousands murdered.

The indictment against Thaci, Veseli and two others allege that they were responsible for atrocities against Serbs and other minorities, as well as ethnic Albanians accused of being collaborators with the Serbian forces. All of the men deny the charges against them.

A spokesperson for the Kosovo Specialist Chambers told Euronews that the briefing was confidential and the transcript had been circulated accidentally and was intended for the internal use of diplomatic missions. It is not clear how many people received the transcript.

Old guard

The indictments of Thaci and Veseli, and the work of the court in general, have been controversial since it was set up in 2015 by an act of the Kosovar parliament.

Kosovo, which declared its independence from Serbia in 2008, has been led largely by politicians that were former KLA fighters, including Thaci, who served two terms as president.

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Even those who are no friends of the old guard of Kosovar politicians - such as Albin Kurti, the leader of the Vetevendosje movement - [have criticised the court](#). Kurti has called for charges of war crimes to be heard in local courts and not in The Hague, where Kosovo Specialist Chambers is based.

Unlike the International Tribunal for Crimes in the Former Yugoslavia (ICTY), which probed war crimes abuses across the Balkans following the wars of the 1990s, Kurti - [who is likely to be Kosovo's next prime minister after Sunday's election](#) - said that the Hague-based court had singled out the KLA.

Euronews has reached out to a spokesperson for Kurti and to Kosovo's Ministry of Justice for comment.

Yugoslav leader Slobodan Milosevic was indicted for war crimes by the ICTY along with seven other Serbian military and political figures after the war in Kosovo. Six were convicted and sentenced to between 15 and 27 years in prison, and one was acquitted. Milosevic died during his trial in 2006 for crimes committed in Kosovo as well as in Bosnia and Herzegovina.

The ICTY also indicted a number of former KLA leaders for war crimes, some of whom had risen to senior positions within the government of Kosovo.

In 2005, after he had served as prime minister for just 100 days, the KLA's former commander for Western Kosovo, Ramush Haradinaj, was indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY), stepped down and delivered himself to the Hague.

Haradinaj was found not guilty in 2008, tried again in 2011 and once again acquitted.

Read the leaked transcript in full below:

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,

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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 Thaci et al. case have also appealed the decisions of the Pre-Trial Judge denying their provisional release. The Appeals Panel this Tuesday denied Mr Haradinaj's appeal in its entirety and the decisions on the appeals filed in the Thaci 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.

The court told Euronews that the confidential briefing was "routine practice" for courts based in the Hague. Euronews

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 seize 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

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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.