



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 12 October 2022
Language: English
Classification: Public

Public Redacted Version of 'Prosecution Response to the Second Application to Terminate the Investigation against Driton Lajçi with Strictly Confidential and Ex Parte Annex 1', KSC-BC-2018-01/F00240, dated 15 July 2022

Specialist Prosecutor's Office
Jack Smith

Counsel for Mr Lajçi
Toby Cadman

I. INTRODUCTION

1. Pursuant to Articles 19, 35, and 38 of the Law,¹ and Rules 30 and 47 of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby responds to Driton Lajçi's ('Lajçi') second application to terminate the investigation ('Application').³ The Application lacks merit and should be dismissed.

II. PROCEDURAL HISTORY

2. Lajçi filed his first application seeking to terminate the investigation on 15 June 2021, arguing that there was a strict two-year limit for investigations.⁴ On 23 July 2021, the Single Judge Panel ('Single Judge') rejected Lajçi's arguments and declined to terminate the investigation.⁵

3. Lajçi sought⁶ and received⁷ permission to appeal one issue resulting from the Single Judge's decision. Lajçi filed his appeal on 3 September 2021.⁸ On 1 October 2021, the Court of Appeals Chamber Panel dismissed the appeal.⁹

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All reference to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi, KSC-BC-2018-01/F00238, 4 July 2022.

⁴ Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Mr. Driton Lajçi, KSC-BC2018-01/F00172, 15 June 2021; *see also* Prosecution Response to the Application to Terminate the Investigation against Driton Lajçi, KSC-BC-2018-01/F00175, 25 June 2021; Reply to the Prosecution Response regarding the Defence Application to Terminate the Investigation against Driton Lajçi, KSC-BC-2018-01/F00178, 30 June 2021.

⁵ Decision on Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi, KSC-BC-2018-01/F00180, 23 July 2021 ('Decision').

⁶ Application for Certification on Leave to Appeal the Decision on Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi, KSC-BC-2018-01/F00181, 29 July 2021.

⁷ Decision on Application for Leave to Appeal the Decision F00180, KSC-BC-2018-01/F00184, 24 August 2021.

⁸ Appeal Against Decision KSC-BC-2018-01/F00180 Regarding the Termination of the Investigation against Driton Lajçi, KSC-BC-2018-01/IA001/F00002, 3 September 2021; *see also* Prosecution Response to Driton Lajçi's Appeal Regarding Termination of the Investigation, KSC-BC-2018-01/IA001/F00003, 16 September 2021; Defence Reply to Prosecution Response to Driton Lajçi's Appeal Regarding Termination of Investigation, KSC-BC-2018-01/IA001/F00004, 20 September 2021.

⁹ Decision on Appeal Against 'Decision on Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi', KSC-BC-2018-01/IA001/F00005, 1 October 2021 ('Appeals Decision').

4. On 2 June 2022, Lajçi sent a letter to the SPO requesting termination of the investigation. The SPO responded on 9 June 2022, declining to do so as the investigation is ongoing and remains within a reasonable period of time considering the factors identified by the Single Judge and upheld by the Appeals Chamber.

5. On 4 July 2022, Lajçi filed the Application.

III. APPLICABLE LAW

6. Rule 47 states that if the Specialist Prosecutor does not indict an individual within a reasonable time after that individual becomes a suspect and is notified thereof, the suspect may request the Specialist Prosecutor to terminate the investigation. If the request is rejected or not considered, the suspect may bring the matter to a Single Judge.

7. Article 19(2) of the Law states that:

The Rules of Procedure and Evidence shall reflect the highest standards of international human rights law including the ECHR and ICCPR with a view to ensuring a fair and expeditious trial taking into account the nature, location and specificities of the proceedings to be heard by the Specialist Chambers. In determining its Rules of Procedure and Evidence the Specialist Chambers shall be guided by Kosovo Criminal Procedure Code 2012, Law No. 04/L-123.

IV. SUBMISSIONS

8. The Single Judge, in a holding affirmed by the Court of Appeals, has clearly delineated the applicable standard in assessing whether the length of an investigation is reasonable within the meaning of the Law and Rules. The relevant inquiry, relying on the European Court of Human Rights' ('ECtHR') analysis of reasonableness under Article 6 of the European Convention on Human Rights ('ECHR'), is whether, 'on the basis of an overall assessment of the circumstances of the present case'¹⁰ the elapsed time is reasonable in view of: '(i) the complexity of investigation; (ii) the conduct of Mr Lajçi and the relevant administrative and judicial authorities; and (iii) what is at stake for Mr Lajçi.'¹¹ The ECtHR has also noted that ECHR Article 6 'commands that

¹⁰ Decision, KSC-BC-2018-01/F00180, para.28; see also ECtHR, *Boddaert v. Belgium*, no. 12919/87, Judgment, 12 October 1992, para.36.

¹¹ Decision, KSC-BC2018-01/F00180 para.28; Appeals Decision, KSC-BC-2018-01/IA001/F00005, para.22.

judicial proceedings be expeditious, but it also lays down the more general principle of the proper administration of justice' and as such, there is a 'fair balance to be maintained between the various aspects of this fundamental requirement.'¹² Thus, while proceedings may not be unreasonably delayed, neither may deliberate and careful investigations be unduly rushed, as that, too, could occasion harms that Article 6 seeks to prevent.¹³

9. For the purposes of calculating the length of time that has elapsed, the starting point is when Lajçi was informed he was a suspect on 3 May 2019.¹⁴ Considering the relevant factors, the length of the investigation remains reasonable under the circumstances.

A. Complexity of the Investigation

10. As the Single Judge has previously noted, 'the investigation against Mr Lajçi in relation to obstruction of justice is of significant complexity.'¹⁵ It remains true that, 'the investigation against Lajçi is connected to investigations and/or cases pertaining to core crimes falling within the jurisdiction of the SC.'¹⁶ The SPO is examining the actions of Lajçi [REDACTED] as part of a larger effort to obstruct the Kosovo Specialist Chambers ('KSC'), [REDACTED]¹⁷ case. As such, there continue to be many possible co-defendants in the investigations underway, as well as a need to assess [REDACTED].¹⁸ That the investigation touches on government affiliations and [REDACTED]¹⁹ adds complexity because [REDACTED]. Moreover, any resulting indictment could contain multiple counts.

¹² ECtHR, *Coëme and Others v. Belgium*, no. 32492/96, Judgment, 22 June 2000, para.140.

¹³ Cf. ECtHR, *Neumeister v. Austria*, no. 1936/63, Judgment, "As to the Law" para.21 ('It should moreover be pointed out that a concern for speed cannot dispense those judges who in the system of criminal procedure in force on the continent of Europe are responsible for the investigation of the conduct of the trial from taking every measure likely to throw light on the truth or falsehood of the charges.').

¹⁴ Decision, KSC-BC-2018-01/F00180, para.28.

¹⁵ Decision, KSC-BC-2018-01/F00180, para.29.

¹⁶ Decision, KSC-BC-2018-01/F00180, para.29.

¹⁷ [REDACTED].

¹⁸ Decision, KSC-BC-2018-01/F00180, para.29.

¹⁹ Decision, KSC-BC-2018-01/F00180, para.29.

B. Conduct of Lajçi and Relevant Administrative and Judicial Authorities

11. The SPO continues to contend with [REDACTED]. The Single Judge has already noted previous [REDACTED].²⁰ [REDACTED] was ongoing at the time of the Single Judge's last decision rejecting Lajçi's request to terminate the investigation, and it unfortunately remains ongoing today. [REDACTED].²¹

12. Although [REDACTED].²² As previously noted, [REDACTED].²³

13. Lajçi argues that the SPO is part of the Government of Kosovo and therefore 'is responsible for any perceived failure on the part of the State to advance its investigations.'²⁴ But Article 19(2) of the Law itself mandates that interpretation of the applicable Rules, including those governing the reasonableness of the length of an investigation, must take account of 'the nature, location and specificities of the proceedings to be heard by the Specialist Chambers.' The nature, location, and specificities of the proceedings before the KSC all advise that there are significant differences between the operations of the SPO and a traditional domestic prosecuting authority. These differences, and the added challenges that the SPO faces, must be taken into account, and wholly rebut the false equivalency Lajçi seeks to impose.

14. Despite these challenges, the SPO has nevertheless been diligent and active in its investigation. The investigation is ongoing and [REDACTED].²⁵

C. What is at Stake for Lajçi

15. Although Lajçi could face arrest and possible imprisonment as a result of the ongoing investigation, he has not been detained, or otherwise had any other restrictive measures placed on him (or his assets), at any time during the investigation,

²⁰ Decision, KSC-BC-2018-01/F00180, para.30.

²¹ See [REDACTED]; see also [REDACTED].

²² See Decision, KSC-BC-2018-01/F00180, para.30.

²³ See, e.g., [REDACTED].

²⁴ Application, KSC-BC-2018-01/F00238, paras 22-23.

²⁵ See [REDACTED].

as the Single Judge has previously noted.²⁶ This factor therefore does not indicate that the investigative period has been unreasonably lengthy.

V. CONCLUSION

16. Therefore, the SPO submits that considering the aforementioned factors together and in their proper context, the investigation period still remains reasonable. Accordingly, the SPO respectfully requests the Single Judge to dismiss the application.

Word count: 1,534



Jack Smith

Specialist Prosecutor

Wednesday, 12 October 2022

At The Hague, the Netherlands.

²⁶ Decision, KSC-BC-2018-01/F00180, para.31; *see also* ECtHR, *Sagura v. Ukraine*, Judgment, no. 33736/16, 21 January 2021, para.39; ECtHR, *Khlebik v. Ukraine*, no. 2945/16, 25 July 2017, para.78.