



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Date: 3 October 2022
Language: English
Classification: Public

**Public Redacted Version of Decision on Second Application for an Order
Directing the Specialist Prosecutor to Terminate the Investigation against Driton
Lajçi**

Specialist Prosecutor
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THE SINGLE JUDGE,¹ pursuant to Articles 3, 19(2) and 33(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 47 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 15 June 2021, the Defence for Driton Lajçi ("Defence" or "Mr Lajçi") filed his first application for an order directing the Specialist Prosecutor's Office ("SPO") to terminate the investigation against him.² On 23 July 2021, the Single Judge issued a decision rejecting Mr Lajçi's request to terminate the investigation ("First Decision").³
2. On 1 October 2021, upon certification,⁴ the Court of Appeals dismissed the appeal ("Appeals Decision").⁵
3. On 4 July 2022, following the rejection by the SPO to immediately terminate the investigation, Mr Lajçi filed a second application before the Single Judge to order the termination of the investigation against him ("Application").⁶

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

² KSC-BC-2018-01, F00172, Specialist Counsel, *Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Mr. Driton Lajçi*, 15 June 2021, confidential. A public redacted version was submitted on the same day, F00172/RED.

³ KSC-BC-2018-01, F00180, Single Judge, *Decision on Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi*, 23 July 2021, confidential. A public redacted version was submitted on the same day, F00180/RED.

⁴ KSC-BC-2018-01, F00184, Single Judge, *Decision on Application for Leave to Appeal the Decision F00180*, 24 August 2021, public.

⁵ KSC-BC-2018-01, IA001/F00005, Court of Appeals, *Decision on Appeal Against "Decision on Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi"*, 1 October 2021, public.

⁶ KSC-BC-2018-01, F00238, Specialist Counsel, *Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi*, 4 July 2022, public. A corrected version with confidential Annexes A and B was filed on 25 July 2022, F00238/COR. [REDACTED].

4. On 15 July 2022, the SPO filed its response (“Response”).⁷
5. On 10 August 2022, the Single Judge issued a decision requesting further submissions from the SPO (“August Order”).⁸
6. On 24 August 2022, the SPO filed a report pursuant to a previous order issued by the Single Judge in 2021 that contains, *inter alia*, further information on the progress made regarding certain aspects of the investigation to date.⁹
7. On 26 August 2022, the SPO filed further submissions pursuant to the Single Judge’s August Order.¹⁰

II. SUBMISSIONS

8. The Defence submits that the length of the investigation against Mr Lajçi can no longer be considered “reasonable”, as three years and two months have passed since he was formally notified of being under investigation and no indictment has been filed or publicly notified.¹¹ According to the Defence, the investigation is not of significant complexity,¹² there is no evidence to suggest that Mr Lajçi has obstructed the investigation or otherwise caused delays,¹³ the alleged

⁷ KSC-BC-2018-01, F00240, Specialist Prosecutor, *Prosecution Response to the Second Application to Terminate the Investigation against Driton Lajçi*, 15 July 2022, confidential with strictly confidential and *ex parte* Annex 1.

⁸ KSC-BC-2018-01, F00249, Single Judge, *Order to the Specialist Prosecutor for Further Submissions*, 10 August 2022, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00249/CONF/RED.

⁹ KSC-BC-2018-01, F00252, Specialist Prosecutor, *Prosecution Report and Request for Court Orders*, 24 August 2022, with Annexes 1-10, strictly confidential and *ex parte*. Reference to this filing is made for the purposes of proper judicial reasoning and does not affect its classification as strictly confidential and *ex parte*.

¹⁰ KSC-BC-2018-01, F00253, Specialist Prosecutor, *Prosecution Response to “Order to the Specialist Prosecutor for Further Submissions” F00249*, 26 August 2022, strictly confidential and *ex parte* with Annex 1, strictly confidential and *ex parte*.

¹¹ Application, para.11.

¹² Application, paras 15-16.

¹³ Application, paras 18-20.

[REDACTED] is not attributable to him,¹⁴ and the length of the open investigation has had a significant impact on him and those close to him.¹⁵

9. The SPO responds that the continued investigation of Mr Lajçi remains reasonable in light of the complexity of the investigation,¹⁶ [REDACTED],¹⁷ and given that Mr Lajçi has not been detained or being subjected to any other restrictive measures during the investigation.¹⁸ [REDACTED].¹⁹ In light of the above, the SPO argues, the investigation's length remains reasonable.

III. APPLICABLE LAW

10. Pursuant to Article 3(2)(b) and (c) of the Law, the Specialist Chambers ("SC") shall adjudicate and function in accordance with, *inter alia*, the Law as the *lex specialis* and other provisions of Kosovo law as expressly incorporated and applied by the Law.

11. Pursuant to Article 3(4) of the Law, any other Kosovo law, regulation, piece of secondary regulation, other rule or custom and practice which has not been expressly incorporated into the Law shall not apply to the organisation, administration, functions or jurisdiction of the SC and SPO. The Law shall prevail over any and all contrary provisions of any other law or regulation.

12. Pursuant to Article 19(2) of the Law, the Rules shall reflect the highest standards of international human rights law including the European Convention on Human Rights ("ECHR") and the International Covenant for Civil and Political Rights 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 SC.

¹⁴ Application, paras 21-23.

¹⁵ Application, para. 24.

¹⁶ Response, para. 10.

¹⁷ Response, paras 11-13.

¹⁸ Response, para. 15.

¹⁹ Response, para. 14.

In determining its Rules, the SC shall be guided by the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 (“2012 Criminal Procedure Code”).

13. Pursuant to Rule 47(1) of the Rules, if the Specialist Prosecutor does not file an indictment with the SC 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.

14. Pursuant to Rule 47(2) of the Rules, if a request under Rule 47(1) of the Rules is rejected or not considered, the suspect may request a Single Judge, assigned pursuant to Article 25(1)(f) of the Law, to consider the matter and, if necessary, terminate the investigation against the suspect.

IV. DISCUSSION

15. At the outset, the Single Judge notes that the SPO has declined to terminate the investigation against Mr Lajçi.²⁰ The Application is therefore admissible before the Single Judge.

16. Turning to the legal test under Rule 47 of the Rules, the Single Judge recalls that a suspect may request the SPO to terminate the investigation if the SPO failed to bring an indictment within “a reasonable time after the person became a suspect and was notified thereof”. Upon rejection, the Single Judge must determine whether, in absence of an indictment filed by the SPO, the relevant period exceeds the “reasonable time” limit.

17. The “reasonable time” is assessed from the moment that the person concerned is notified of his or her status as a suspect until the date of a decision on a request to terminate the investigation against him or her pursuant to Rule 47(2) of the

²⁰ See, Annex B to the Application, F00238/COR/A02, p. 3.

Rules.²¹ In the present case, the relevant time period stretches from 3 May 2019 until the date of the present decision.²²

18. As regards Mr Lajçi's argument that Article 159(1) of the 2012 Criminal Procedure Code may inform the Single Judge when determining the reasonable time requirement,²³ the Single Judge recalls that while Article 159(1) of the 2012 Kosovo Criminal Procedure Code, Law No. 04/L-123 can indeed inform his decision regarding a request to terminate an investigation, it has no binding effect.²⁴ Accordingly, the Single Judge has resorted to other available sources, such as international human rights law, to interpret the reasonable time requirement.

19. According to the jurisprudence of the European Court of Human Rights ("ECtHR"), the reasonableness of the length of proceedings is to be determined in light of the circumstances of the case,²⁵ which calls for an overall assessment, having regard to factors, such as the (i) complexity of the case; (ii) applicant's conduct; and that of the relevant administrative and judicial authorities; and (iii) what was at stake for the applicant in the dispute.²⁶ The Single Judge will therefore assess each of these factors below, in the circumstances of the present case.

A. THE COMPLEXITY OF THE INVESTIGATION

20. The Defence argues that this investigation cannot be considered to be of considerable complexity.²⁷ Even if related to a case involving multiple

²¹ First Decision, para. 27.

²² First Decision, para. 27; Application, paras 10, 12; Response, para. 9.

²³ Application, paras 7-9.

²⁴ First Decision, paras 16, 20; Appeals Decision, paras 16, 22 ("The Panel finds that, although Article 159(1) of the [2012 Kosovo Criminal Procedure Code] is *informative* and can guide the relevant panel (...), it has *no binding effect* as it was not expressly incorporated in the Law" (emphasis added).

²⁵ First Decision, para. 28. ECtHR, *Boddaert v. Belgium*, no. 12919/87, [Judgment](#), 12 October 1992, para. 36.

²⁶ First Decision, para. 28; Appeals Decision, para. 22; *similarly, see among others*, ECtHR, *Frydlender v. France* [GC], no. 30979/96. [Judgment](#), 27 June 2000, para. 43.

²⁷ Application, para. 15.

co-defendants, according to the Defence there remains a significant discrepancy in the complexity of the present investigation and cases involving complex international crimes,²⁸ or investigations that span across several jurisdictions.²⁹ Lastly, the Defence avers that there is no evidence for the claim that [REDACTED] were implicated in any alleged obstruction.³⁰

21. According to the SPO, the investigation is indeed of considerable complexity. The SPO emphasizes that it is examining the actions of Mr Lajçi [REDACTED] as part of a broader effort to obstruct the SC, involving, *inter alia*, [REDACTED].³¹ The SPO further adds that the investigation involves the assessment of [REDACTED].³² Finally, the SPO recalls that the investigation touches on the involvement of [REDACTED], which in turn renders it more complex due to [REDACTED].³³

22. The Single Judge recalls that the investigation against Mr Lajçi is connected to investigations and/or cases pertaining to core crimes falling within the jurisdiction of the SC. It is not limited to Mr Lajçi, but extends also to other government affiliated interference, [REDACTED]. The Single Judge further takes note of the SPO's statement that there continue to be many possible co-defendants in the investigations underway.³⁴ Therefore, even though it pertains to allegations of obstruction of justice, it does not follow that the present investigation is of lesser complexity than those involving core crimes.

23. Furthermore, the Single Judge notes that there are additional factors in this investigation, which inform its complexity. These include: (i) the need for the SPO to assess [REDACTED];³⁵ (ii) the voluminous nature of such material;³⁶ and (iii)

²⁸ Application, para. 15.

²⁹ Application, para. 16.

³⁰ Application, para. 17.

³¹ Response, para. 10.

³² Response, para. 10.

³³ Response, para. 10.

³⁴ Response, para. 10.

³⁵ Response, para. 10.

³⁶ Response, para. 10.

[REDACTED].³⁷ In light of the above considerations, the Single Judge finds that the investigation against Mr Lajçi remains of significant complexity.

B. THE CONDUCT OF THE SUSPECT AND THE RELEVANT AUTHORITIES

24. The Defence repeats its previous submissions that the SPO does not appear to be arguing that Mr Lajçi withheld all – or even a significant part of – the material requested, and that from the information available to the Defence, it is unclear to Mr Lajçi what actions he is alleged to have taken and how they have contributed to the delay, especially since he resigned from his government post in November 2020.³⁸ In addition, the Defence argues that it is not clear what specific requests have been personally addressed to Mr Lajçi to obtain allegedly missing information in his possession, and that in any event, he is not obliged to cooperate with the authorities in his own investigation.³⁹

25. In its Response, the SPO points to the [REDACTED] as a key factor delaying the investigation, notably by providing [REDACTED].⁴⁰ The SPO further submits that although [REDACTED].⁴¹

26. With regard to the conduct of the relevant administrative and judicial authorities, the Single Judge recalls that [REDACTED]. Since that time, the Single Judge has [REDACTED]. The SPO indicates in its Response that [REDACTED].⁴² Contrary to the Defence's claim,⁴³ [REDACTED] need not be attributable to Mr Lajçi personally. The Single Judge therefore considers that [REDACTED] has significantly protracted the investigation and continues to hamper it.

³⁷ Response, para. 12.

³⁸ Application, paras 18, 20.

³⁹ Application, para. 19.

⁴⁰ Response, paras 11-12.

⁴¹ Response, para. 12.

⁴² Response, para. 11.

⁴³ Application, paras 21-23.

27. With regard to the conduct of Mr Lajçi, even though Mr Lajçi is not required to contribute actively to the investigation against him, the Single Judge has already found that Mr Lajçi's conduct [REDACTED] did compound the delay in relation to the investigation.⁴⁴ This finding continues to stand at present, since [REDACTED], remain only partially addressed to date. The Single Judge therefore takes this factor into account.

C. WHAT IS AT STAKE FOR THE SUSPECT

28. The Defence alleges that Mr Lajçi has not been kept abreast of any developments in the investigation against him,⁴⁵ and that the ongoing investigation has had "a significant impact upon him and those close to him".⁴⁶ While it concedes that Mr Lajçi has not been detained pending investigation, it avers that the pre-charge period of over three years must be taken into account for assessing the length of proceedings, if Mr Lajçi were to be charged.⁴⁷

29. The SPO acknowledges that Mr Lajçi faces potential arrest and imprisonment, but highlights that he has not been detained during the investigation.⁴⁸

30. The Single Judge first notes that the SPO is not under an obligation to provide periodic updates to suspects about the developments in investigations against them. The Single Judge further observes that, according to the jurisprudence of ECtHR, in determining the reasonableness of the length of proceedings in criminal cases, the question of whether the applicant is in detention is a relevant factor.⁴⁹ In the case at hand, even though Mr Lajçi could potentially face a criminal conviction and imprisonment, should an indictment be filed and confirmed against him, he

⁴⁴ First Decision, para. 30.

⁴⁵ Application, para. 8.

⁴⁶ Application, para. 24.

⁴⁷ Application, para. 24.

⁴⁸ Response, para. 15.

⁴⁹ ECtHR, *Khlebiak v. Ukraine*, no. 2945/16, [Judgment](#), 25 July 2017, para. 78.

has neither been deprived of his liberty during the investigation nor have any restrictive measures falling short of detention been imposed against him. Although alleging that the ongoing investigation has adversely affected him, Mr Lajçi has not tangibly demonstrated that he or those close to him have suffered any particular prejudice while the investigation has been ongoing. Further, calling for consideration of a “pre-charge period” to the overall length of proceedings is speculative and premature at this stage. In these circumstances, the length of the investigation against Mr Lajçi cannot be considered unreasonable on this basis.

D. CONCLUSION

31. Considering the aforementioned factors, in particular the complexity of the investigation, [REDACTED], the Single Judge finds that the investigation against Mr Lajçi from 3 May 2019 until the date of the present decision does not contravene the “reasonable time” criterion under Rule 47 of the Rules. Accordingly, the Application is dismissed.

V. CLASSIFICATION

32. In order to ensure publicity of proceedings, the SPO shall file a public redacted version of its Response, with necessary redactions to protect its ongoing investigation, by **Friday, 14 October 2022**.

VI. DISPOSITION

33. For the above-mentioned reasons, the Single Judge hereby:

- (a) **REJECTS** the Application; and
- (b) **ORDERS** the SPO to submit a public redacted version of its Response by no later than **Friday, 14 October 2022**.



Judge Nicolas Guillou

Single Judge

Dated this Monday, 3 October 2022

At the Hague, the Netherlands.