



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

Pronouncement of Ruling on the Request of Mr Mahir Hasani for Interim Measures

(KSC-CC-2019-05)

7 February 2019

At The Hague, the Netherlands

Introduction

This pronouncement is a summary of the ruling of the Specialist Chamber of the Constitutional Court on the request of Mr Mahir Hasani (the “Applicant”) for an interim measure in relation to the Order of the Specialist Prosecutor’s Office of 20 December 2018 (the “Order”).

The public has been informed, in advance, of the date and the time of the Chamber’s pronouncement. The text of this pronouncement is available on the website in the three official languages of the Kosovo Specialist Chambers.

Brief Procedural Background

On 15 January 2019, the Applicant lodged with the Specialist Chamber of the Constitutional Court (the “Chamber”) a referral, dated 11 January 2019. The Applicant lodged the Referral under Article 113(7) of the Constitution of the Republic of Kosovo (the “Constitution”). The Applicant was represented by Dr Artan Qerkini.

In the Referral, the Applicant complained that the Order of the Specialist Prosecutor’s Office directing him to provide documents and information violated his right to silence and breached the privilege against self-incrimination and the presumption of innocence. The Applicant relied on Articles 30(6) and 31(5) of the Constitution and

Article 6(2) of the European Convention on Human Rights and Fundamental Freedoms.

The Applicant has applied, pursuant to Rule 21(1) and (2) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court for an order in the form of an interim measure suspending the Order, pending a determination by the Chamber of the admissibility and merits of the Referral.

On 15 January 2019, the President of the Specialist Chambers, pursuant to Article 33(3) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, assigned a Constitutional Panel to rule on the Referral.

On 25 January 2019, the Specialist Prosecutor filed his replying submissions in relation to the Applicant's request for an interim measure.

On 25 and 26 January 2019 the Constitutional Panel, composed of Judge Ann Power-Forde, presiding, and Judge Vidar Stensland and Judge Roland Dekkers, met to deliberate in person.

This pronouncement relates only to the Chamber's ruling on the Applicant's request for an interim measure. The Chamber's ruling on the Referral will follow in due course.

Brief Factual Background

On 20 December 2018, the Specialist Prosecutor's Office served on the Applicant two documents, namely, a summons to appear for questioning on 11 February 2019 (the "Summons") and the Order to provide certain documents and information to the Specialist Prosecutor's Office on the same day.

In the Order, the Specialist Prosecutor's Office stated that the Applicant was "obligated to produce" all documents, data, notes and information as specified in the

Order and was warned that a failure to produce the documents “shall be considered contempt” which, as a result thereof, the Specialist Prosecutor’s Office may request the Specialist Chambers to undertake measures that enforce compliance with the Order.

The Order also stated that there were “reasons to believe that [the Applicant] [had] been involved in the commission of a crime within the jurisdiction of the Kosovo Specialist Chambers [...]”.

The Applicant has requested this Chamber to grant an interim measure suspending the Order *obligating* him to produce the documents, data, notes and information as specified in the said Order.

Applicable Law

The Chamber recalls that, in accordance with Rule 21(1) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court, an interim measure may be ordered where an individual faces “a real risk of serious harm” if the interim measure were not granted.

Findings

In assessing whether there is “a real risk of serious harm” if the interim measure were not granted, the Chamber has had regard to the Specialist Prosecutor’s submission that the Applicant will be informed of his rights to silence and to not incriminate himself on 11 February 2019 and recognises that this carries some weight.

However, the Chamber finds it difficult, at this point in time, to reconcile that submission with the terms of the Prosecutor’s Order *obligating* the Applicant to provide the specified documents and information when he appears for questioning on 11 February 2019, in default of which a finding of contempt shall be made.

The Chamber considers that, on its face, the Order is problematic in terms of the requirements of justice, in that it constitutes an *order* to a confirmed suspect to produce documents, data and information when he appears for questioning. Such an order could, if complied with, cause serious harm to the Applicant, should his status change from that of a suspect to that of an accused. If not complied with, the Order warns that the Applicant's failure to produce the documents 'shall be considered contempt'.

Under the express terms of the Order, the Applicant has no other choice but to comply with its directions and to provide the requested documents if he wants to avoid a finding of contempt and the consequences which may follow thereafter.

Having regard to the foregoing and bearing in mind the time constraints under which the Applicant's request for an interim measure is made, the Chamber is prepared to accept that, in the very specific circumstances of this case, there is a real risk of serious harm in the event that the interim measure is not granted.

The Chamber confirms that this Order granting an interim measure does no more than ensure that the *status quo* is maintained pending its determination of the Referral.

The Chamber confirms that this Order is without prejudice to its determination of the Referral, including, to any findings it may make on the admissibility or merits thereof.

The Chamber further confirms that this Order is without prejudice to the Applicant's obligation to appear, pursuant to the Summons, for questioning before the Specialist Prosecutor's Office on 11 February 2019.

Effective Date

This Order on the interim measure is effective immediately.

Order

Having provided this summary of the Chamber's ruling, the operative provisions of its Order are as follows:

The Specialist Chamber of the Constitutional Court, unanimously,

Suspends the Order of the Specialist Prosecutor's Office of 20 December 2018 in so far as it *obliges* the Applicant to provide the documents, data, notes and information specified in the Order, until such time as the Chamber decides on the Referral or until further order.

This concludes the Chamber's pronouncement.

**Judge Ann Power-Forde
Presiding Judge**