

English translation of the article:

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The indictments filed before the Special Court are not against the KLA nor against Kosovo. So insists Special Prosecutor Jack Smith. In an interview to KOHA, given in written form due to the pandemic and the sensitivity of the case, the American prosecutor Smith said he was convinced that the indictments filed by his Office would be upheld. He also said that the Court has given defence counsel sufficient time to prepare.

But he has left no dilemma as to what the purpose of his office is. “We are seeking convictions of each of the Accused, which will withstand any appeals process and be upheld as fair,” said Smith pointing out that for this reason his Office “has a deep and abiding interest in the Defence having adequate time and facilities to prepare.”

“The Defence must have a fair opportunity to prepare for trial and I believe, given what has been and will be provided to the Defence, and what is already known by them, this should take months, not years. As we have argued in court, delaying the start of this trial beyond September of 2021 is simply unwarranted for trial preparation,” said Smith to KOHA.

During the interview, Prosecutor Smith warned that investigations are ongoing and that there is a possibility that other indictments will be submitted to the Court, while he also spoke about the leak of Special Court documents, as well as the issue of religious affiliation of the victims mentioned in the indictment. “The indictment does not in fact make any reference to Catholic Albanians, or any other specific religious group. However, it is the case that certain Catholic Albanians, together with many others, were amongst the victims of the crimes charged in the indictment, and consequently this is something that is reflected in the evidence put forward, and in the Confirmation Decision analysing that evidence,” said Smith.

Q: Last year, Your Office, The Office of the Special Prosecutor, submitted a few indictments to the Specialist Chambers, which were subsequently confirmed. Taking into consideration that the work of your office is receiving high attention by the public in Kosovo, can we assume that by the end of 2021 your Office will have submitted all indictments from your investigation? Here I am not including potential criminal offences of the obstruction of justice that might occur!

Smith: In 2020 my office submitted multiple indictments to the Court for consideration and now has three cases in pre-trial proceedings charging seven individuals. The first relates to Salih Mustafa. He was the first person to be arrested and transferred to The Hague on September 24, 2020. He is a KLA Commander charged with criminal responsibility for arbitrary detention, cruel treatment, torture and murder, and war crimes under international law. The second relates to Hysni Gucati and Nasim

Haradinaj, who were arrested and transferred to The Hague on 25 and 26 September. They are charged with offences against the administration of justice, including intimidation of witnesses, retaliation and violation of the secrecy of proceedings.

The third relates to Hashim Thaci, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi. They are charged with individual criminal responsibility, under various modes of liability, for the war crimes of illegal or arbitrary arrest and detention, cruel treatment, torture, and murder, and the crimes against humanity of imprisonment, other inhumane acts, torture, murder, enforced disappearance of persons, and persecution, committed from at least March 1998 through September 1999. That indictment, which is available for your readers' review on our website, charges Mr Thaci and his co-accused with hundreds of criminal acts committed at over 40 detention sites across Kosovo, including nearly 100 murders. The victims were predominantly civilians and included many Kosovar Albanians as well as Serbs, Roma and political opponents of the defendants.

To fully understand the scope and grave nature of the crimes charged in that case, I would invite your readers to read the Court's detailed 280-page decision confirming the indictment. The Court's decision, which is extremely thorough and relies on the evidence we submitted in support of the indictment, confirmed not only every count submitted against each defendant, under multiple grounds of liability, but did so finding a well-grounded suspicion that "would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence." The Court based its findings on "concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment."

Each of these cases and any additional cases will be based solely upon the individual criminal responsibility of the accused. Our investigation is continuing and there exists the possibility that additional indictments will be submitted to the Court. This includes cases against those who seek to criminally obstruct the work of the Court or interfere with witnesses. I will only make such submissions where the evidence we have collected clearly warrants doing so. At this time, I cannot provide additional information about the number of indictments or when they may be submitted.

Q: The right to fair trial is one of the basic human rights in criminal procedure. Right to fair trial includes that the indicted and their defence has enough time to prepare their defence. We saw that your prosecutors are asking that the trial in Thaci's case and others to start as soon as possible, whereas the defence are seeing this approach as a violation of the principles and standards on the equality of arms. How do you explain this from the perspective of human rights?

Smith: Thank you very much for this question. I believe it is an important issue for the public to understand. The SPO has every interest that these proceedings be conducted with transparency and fairness for all parties. We are seeking convictions of each of the Accused which will withstand any appeals process and be upheld as fair. As such, the SPO has a deep and abiding interest in the Defence having adequate time and facilities to prepare. The Defence must have a fair opportunity to prepare for trial and I believe given what has been and will be provided to the Defence, and what is already known by them, this should take months, not years. As we have argued in court, delaying the start of this trial beyond September of 2021 is simply unwarranted for trial preparation.

As an initial point, I would note that the disclosure regime for the Kosovo Specialist Chambers is very robust, and places demanding responsibilities on the prosecution. This, in my view, is a very good thing. Indeed, in each of the cases my Office has proactively put forward ambitious disclosure deadlines, with a view to providing the accused with relevant information in an expedited fashion. We have already provided the accused with a detailed indictment, a vast amount of material supporting that indictment and a detailed outline demonstrating the relevance of that material, particularly as to the conduct of each accused.

Each of the accused is represented by well-resourced teams of able and experienced counsel who know how to prepare expeditiously for trial if required to do so by the court. All of the accused have vocally alleged their innocence of the charges that have been confirmed against them by the Court. In some instances, through counsel, they have already articulated their detailed defences to the charges against them. By bringing this matter to trial expeditiously, we will allow the facts to be aired and considered by independent and impartial judges and ensure the rights of participating victims are respected. I am confident that my Office can do so with full respect of the rights of the accused.

It is also important for the public to know that whatever arguments are put forward by my Office and by the various defence counsel, it is the Court that will, and should, decide this issue about the time needed for preparation. From everything I have seen, the judges of the Kosovo Specialist Chambers are independent, impartial and committed to justice. As such, I simply cannot imagine that they would allow the accused to be tried in a way that is contrary to their basic human rights.

The costs of delaying proceedings are real. In addition to ensuring that the Defence has adequate time to prepare, the Court has a duty to ensure expeditious proceedings and to protect the rights and interests of victims and witnesses. A climate of serious witness intimidation has existed in past cases involving KLA leaders. This is a reality which has been found by multiple courts, and rightly acknowledged by Defence Counsel before this court as a relevant factor in assessing whether pre-trial detention is warranted. Unfortunately, the longer our institution takes to bring cases to trial, the greater the opportunity to intimidate and coerce witnesses. Many people have waited over two decades to tell their story and see justice for themselves and their family members. My view is that these people have waited long enough that their voices should be heard without delay.

For those who seek additional information to better understand the issues related to when trial will commence, I would direct you to a public filing by my office located here: https://repository.scp-ks.org/details.php?doc_id=091ec6e98038948e&doc_type=stl_filing&lang=sqi.

Q: Kosovo public, media and civil society are watching very closely the work of your office and court. The correspondence and communication in public by court and your Office is conducted in English, including Court documents published. How can the public in Kosovo gain trust in your work if the documents are not distributed in Albanian and Serbian language?

Smith: The official languages of the Specialist Chambers and the SPO are Albanian, Serbian and English. Simultaneous translation is provided in all of these languages for everyone participating in the proceedings and for all members of the public following the hearings from the public gallery or online through the website. I would encourage anyone who is interested to watch the public hearings online where you can select Albanian, Serbian or English as your preferred language. On the website you can also find detailed information about the SPO and the Specialist Chambers in Albanian, Serbian and English, including different language versions of all of the key legal documents and of the public indictments.

When it comes to the new public documents that are constantly coming up as my Office and the Defence make their arguments and as the pre-trial judge makes his decisions, these are typically available first in English. This is because the law requires that for each case the judge decides on a working language. In all of our current cases, both the Defence and my Office agreed that this should be English.

The KSC and the SPO translate all new public documents and filings into the languages of the Court as rapidly as possible, but this can take some time because they need to be translated to the highest standards. You can find summaries of all the cases, together with links to key documents such as the indictments in all three languages at: <https://www.scp-ks.org/en/cases>.

Q: Security and safeguards of witnesses and criminal procedure are of utmost importance for fair, independent trial and judicial proceedings based on integrity. However, to our surprise we saw that potential confidential documents were leaked. In this regard, can you assure the public in Kosovo and witnesses that the integrity of the process is not damaged and witnesses and their family members are not in danger?

Smith: In September the leaders of the KLA Veterans Association, Hysni Gucati and Nasim Haradinaj, published confidential and non-public documents related to confidential investigations. In response to this threat, my Office acted swiftly, securing orders to recover the documents in question, conduct searches of the KLA Veterans Association offices and arrest Gucati and Haradinaj for offences against the administration of justice, including intimidation of witnesses. My Office also issued a public statement commending the many Kosovo journalists who understood exactly what Haradinaj and Gucati were trying to do and refused to publish the materials that were presented to them.

Subsequently, my office engaged with relevant cooperation partners to ensure that measures are taken to prevent such occurrences in the future. In addition to these steps, communicating with our witnesses in relation to that event, and addressing any concerns they had, was a priority for the Office. In sum, while this was an incident of serious concern, it also provided us with lessons to learn from as we move forward. There has been a history of attempts to obstruct prosecutions of former KLA leaders and we remain vigilant against attempts to intimidate or retaliate against those who have cooperated with, or supported, the Court.

I believe our swift and decisive action in the face of such threats has shown that my Office will not countenance such acts and will not hesitate to file criminal charges in such cases if appropriate and supported by admissible evidence. The SPO is committed to vigorously investigating and prosecuting individuals who commit any such crimes, including the disclosure of the identity of individuals who may be called before the court or any information that could lead to their identification.

Q: In this respect, we did not see any consequences or inquiry within your Office or Court regarding the leak of confidential documents. Was there any inquiry, what is the result and why is the public not informed (if there was any)?

Smith: We have looked thoroughly into this incident. I can say with confidence that none of the documents were accessed as a result of any malfeasance of the part of any SPO staff.

Q: Did you receive support and assistance by institutions in Kosovo to execute your mandate?

Smith: Applicable law requires Kosovo institutions to comply with lawful requests for cooperation and support from the SPO. The SPO has called upon the support of the Kosovo Police in certain operational matters, most notably in the arrest and search operations conducted during September and November 2020. We are grateful for the professional assistance provided by them. The SPO has also sought cooperation from and made requests to other entities and institutions in Kosovo on a range of matters.

Q: Did all Kosovo institutions respect the law and your requests. Are there any ongoing investigations against any Kosovo institution for not cooperating? (I am not asking for particular names).

Smith: As is apparent from public filings, some cooperation requests that were made by my Office resulted in litigation, including court orders. I am constrained in what I can say on this matter as investigative actions, including cooperation requests, are typically subject to confidentiality. However, the Law and Rules do set out mechanisms which can be pursued in the event of non-cooperation. The legal framework also provides in certain instances for individuals to be held liable for obstructing cooperation efforts, including for failure to comply with court orders.

Q: Other former members of the KLA General Staff and high ranking KLA members have been mentioned in the indictments already published, for example in the indictment against Thaci and others. They are mentioned for carrying out the alleged crimes but are not charged. How do you explain this from your perspective?

Smith: The indictment relates solely to the individual criminal responsibility of the accused. In the *Thaçi et al.* case, that is Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi. However, when charging Joint Criminal Enterprise (JCE) as a mode of liability, it is a legal requirement for an indictment to also name certain other identifiable key actors. JCE is a widely recognized mode of liability used in a wide variety of cases and this is a standard charging requirement, which we complied with.

JCE is in fact a legal term which does not describe a group of people as such but refers to the legal responsibility of an individual who acts together with at least one other person to achieve an illegal objective or pursue an objective through unlawful means. The indictment itself is very clear that what is charged is the individual criminal responsibility of the specific accused who used the war to commit crimes and to achieve their own criminal ends. The cases brought are against individuals, not against the KLA, and certainly not against Kosovo. The Court will adjudicate the individuals charged to determine guilt or innocence of the accused not the KLA.

The offenses alleged in the indictments filed by my office are serious crimes and in the course of seeing that justice is done, we must not lose sight of the suffering of the victims. I cannot commend highly enough the hundreds of brave witnesses who have come forward to assist my Office.

Q: It has been widely discussed in Kosovo that the confirmed indictments mention the separation of victims on religious grounds as well. A special category of victims is mentioned as "Catholic". For this categorization there have been complaints from the accused but also ordinary citizens. How do you respond to this?

Smith: I have seen this concern reflected in the media, in particular in relation to the *Thaci et al.* case, and welcome the opportunity to provide clarification. The indictment does not in fact make any reference to Catholic Albanians, or any other specific religious group. However, it is the case that certain Catholic Albanians, together with many others, were amongst the victims of the crimes charged in the indictment, and consequently this is something that is reflected in the evidence put forward, and in the Confirmation Decision analysing that evidence.

Q: As we understand, your office is against releasing the accused on bail. Why do you consider it necessary for the accused, including former president Thaci and other high-profile figures, remain in detention until the trial is concluded?

Smith: The Law and Rules provide a mechanism whereby detention on remand is subject to continual review by the Judges, including a mandatory review process every two months. This, very stringent, regime is designed to ensure that detention only occurs in cases where it is necessary and does not continue for longer than necessary. Last year, upon request of the SPO, the Judge seized with the *Thaçi et al.* case issued arrest warrants for the four accused finding their arrest and detention to be necessary, and in particular that the requirements of Article 41(6) of the Law are satisfied.

We have set out our position regarding detention in a number of filings before the court, for which public versions are available, and which describe serious and concrete risks that if the accused were released they would seek to interfere with witnesses and evidence, commit further crimes, or flee from justice. Our position is based on a significant amount of information we have collected, and which we have set out in detail for the Court. Each of the four accused have utilised the procedures

available to them under the Law and Rules to challenge their detention. The Court very recently issued the following opinions on this issue which I would invite your readers to read:

https://repository.scp-ks.org/details.php?doc_id=091ec6e9803e3665&doc_type=stl_filing&lang=eng

https://repository.scp-ks.org/details.php?doc_id=091ec6e9803e6a75&doc_type=stl_filing&lang=eng

https://repository.scp-ks.org/details.php?doc_id=091ec6e9803e6454&doc_type=stl_filing&lang=eng

https://repository.scp-ks.org/details.php?doc_id=091ec6e9803e6459&doc_type=stl_filing&lang=eng

Q: Finally, since the outset, the Specialist Chambers have been criticised as being unfair, because it has a mandate to prosecute only former KLA members who are suspected of committing crimes, and the mass of crimes committed by Serb forces against Kosovo-Albanian civilians are not being investigated. Is this true, and if yes why? What happens in cases when your investigation provides you with information of a potential war crime committed by Serbian military or police forces in 1998 or 1999?

Smith: The SPO has jurisdiction over crimes against humanity, war crimes and certain other crimes under Kosovo law that were committed in Kosovo between January 1998 and December 2000 where either the perpetrator or the victim was from Kosovo or the then Federal Republic of Yugoslavia, and which relate to the Council of Europe Parliamentary Assembly Report of January 2011. The Law does not distinguish on the basis of ethnicity or other affiliation. I can assure you that my Office will objectively, professionally and impartially investigate crimes under our jurisdiction. To maintain the integrity of our investigations, I cannot discuss the existence or status of investigations or charging decisions.

Q: There has been criticism about the way the SPO decided to go public with information about the indictment against Mr. Thaci and Mr. Veseli, in June 2020. There were some who even claimed it was a "move" designed to interfere in the political process led by Mr Thaci. In the press statement, the SPO said the reason for going public is a "secret campaign" Mr Thaci and Mr Veseli were believed to have conducted "to overturn the law creating the Court" and "otherwise obstruct the Court". Can you be more specific what exactly you believe they did, and who else was involved in that campaign?

Smith: The statement, which was made with judicial authorization, speaks for itself and I have nothing additional to add to it at this time.