



INADMISSIBILITY DECISION OF THE OMBUDSPERSON

**Following a Complaint of Driton Lajçi
Against the Specialist Prosecutor's Office
and
Against the Kosovo Specialist Chambers**

Ref. No. OMB-C-2021-02
Issued on 2 August 2021

PUBLIC

The Ombudsperson of the Kosovo Specialist Chambers ('the Ombudsperson') sitting on 2 August 2021,

Having considered the aforementioned complaint, further to the authority of the Ombudsperson prescribed in Article 162(11) of the Kosovo Constitution, Article 34(9) of the Law on Specialist Chambers and Specialist Prosecutor's Office and Rules 28 and 29 of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers on the role and functions of the Office of the Ombudsperson and the Office of the Ombudsperson Complaints Procedure adopted by the Ombudsperson on 12 September 2018,

Having deliberated, issues the following decision:

I. COMPLAINT BEFORE THE OMBUDSPERSON

1. The complaint was registered with the Ombudsperson on 25 March 2021.
2. In support of his complaint, the complainant also submitted a copy of the letter of 11 December 2020, which his counsel sent on his behalf to the Specialist Prosecutor, requesting the termination of the investigation against the complainant.

3. The Ombudsperson acknowledges that the complainant submitted a clarification to the complaint on 4 June 2021, which clarified certain facts to assist with the ongoing inquiry. These clarifications were given due consideration.

4. In accordance with the provisions of Section 14.3 of the Ombudsperson's Complaints Procedure, in the handling of complaints and inquiries, the Ombudsperson's Office may, for the purpose of protecting the legitimate interests of a complainant or a third party, treat specific information contained in a complaint or other document or material received as confidential. The complainant has confirmed that he has no objection to having his identity disclosed and the Ombudsperson has concluded that there are no compelling reasons to treat any information received from the complainant as confidential.

5. The Specialist Prosecutor submitted a Response to the complaint on 21 May 2021. The Ombudsperson provided the views of the Specialist Prosecutor to the complainant on 9 June 2021. The complainant then submitted a Reply to the views of the Specialist Prosecutor on 9 July 2021. The Ombudsperson acknowledges the arguments raised in the Response and Reply, and has given each due consideration in this assessment.

II. THE COMPLAINT AGAINST THE SPECIALIST PROSECUTOR

6. The complainant included the following allegations in his submission to the Ombudsperson regarding the Specialist Prosecutor's Office ('SPO'):

7. On 3 May 2019,¹ the complainant met with the Deputy Specialist Prosecutor of the SPO in an informal meeting, who provided the complainant with an order of the court authorizing the seizure of his mobile phone.

8. On 25 September 2019, the complainant received a summons from the SPO requiring him to appear for questioning. The summons noted that there were grounds to believe that the complainant had been involved in the commission of a criminal offence.

¹ The Ombudsperson acknowledges the Clarification of 4 June 2021 that the complainant submitted with regard to this particular allegation, in which he clarifies that the meeting with the Deputy Specialist Prosecutor was indeed informal, and took place on 3 May 2019, not on 29 December 2019 as originally alleged in his complaint.

9. On 13 October 2019, the complainant requested the SPO to inform him of specific allegations against him and to disclose materials giving rise to those allegations. The next day, the SPO informed the complainant under which provisions of the Criminal Code of the Republic of Kosovo it was investigating the complainant, including without limitation possible violations of Article 394 (obstruction of evidence or official proceedings) and Article 395 (intimidation during criminal proceedings), incorporated under Article 15(2) of the Law on the Specialist Chambers and Specialist Prosecutor's Office ('Law'),² and refused to provide him with evidence in that regard.

10. On 16 October 2019, the SPO called the complainant's counsel on the evening before their scheduled interview, and asked counsel if the complainant intended to submit to the interview or instead invoke his right to silence.

11. On 17 October 2019, the complainant, accompanied by his counsel, attended an interview with the SPO. As argued by the complainant, his counsel could not advise him properly since the details of the allegations against the complainant had remained undisclosed. Therefore, the complainant read a prepared statement and thereafter exercised his right to silence. Nevertheless, the complainant submits that during the interview, the Specialist Prosecutor repeated for the record that the complainant had refused to answer questions on the basis of his right to freedom from self- incrimination. However, the complainant exercised his right to silence on the advice of counsel and not on the right to freedom from self- incrimination.

12. On 14 November 2019, a referral was filed with the Specialist Chamber Constitutional Court by the complainant. In his referral—similar to the allegations at hand—the complainant alleged that the SPO summons directing him, as a suspect, to submit himself for an interview and the interview procedure violated his fundamental rights under Article 6 of the ECHR. In particular, the complainant argued that the SPO had not indicated a criminal offence that he was suspected of having committed and had not disclosed evidence giving rise to that suspicion.³ On 13 January 2020, the Specialist Chamber Constitutional Court declared the

² Law No.05/L-053, On Specialist Chambers and Specialist Prosecutor's Office, Article 15(2).

³ Decision on the Referral of Driton Lajçi Concerning Interview Procedure by the Specialist Prosecutor's Office, 13 January 2020, paras. 8, 9.

complainant's referral as inadmissible because the complainant had not yet been criminally charged and, accordingly, his referral was premature.⁴

13. On 11 December 2020, the complainant wrote to the SPO requesting that the Specialist Prosecutor terminate the investigations into the complainant. The complainant has alleged that the SPO never responded to this request.

14. The complainant alleges in his complaint to the Ombudsperson that the SPO's procedures and overall treatment of him interferes with his fundamental right to a fair trial, pursuant to Article 6 of the European Convention on Human Rights ('ECHR').

III. REMEDIES SOUGHT

15. With respect to the above allegations, the complainant sought the following remedies:

16. An independent and impartial inquiry into the incidents involving Mr. Lajçi detailed in the submissions, in particular the violation of the presumption of innocence after having his full name published without redaction;

17. A finding of a violation of his right to be presumed innocent, specifically that, as a result of this violation, Mr. Lajçi can no longer be guaranteed a fair trial and any proceedings against him would now constitute an abuse of process; and

18. A call for the SPO to immediately terminate any investigation against Mr. Lajçi.

IV. THE OMBUDSPERSON'S ASSESSMENT

19. As a matter of substantive law, the Ombudsperson is empowered to apply the human rights instruments as set out in Chapter II of the Kosovo Constitution. In particular, the Ombudsperson notes the provisions of Article 22 of the Kosovo Constitution, which set out the direct applicability of human rights and fundamental freedoms guaranteed by international agreements and instruments. Therefore, the ECHR and its Protocols and the International Covenant on Civil and Political Rights and its Protocols are of particular relevance to the work of the

⁴ See Decision on the Referral of Driton Lajçi Concerning Interview Procedure by the Specialist Prosecutor's Office, 13 January 2020.

Ombudsperson as they set out the minimum standard for the protection of human rights to be guaranteed by public authorities in a democratic society.

20. In accordance with Article 162(11) of the Kosovo Constitution, the Ombudsperson of the Kosovo Specialist Chambers has exclusive responsibility for the Specialist Chambers and the SPO.

21. Rule 28(2) of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers ('RPE') sets out the scope of the Ombudsperson's jurisdiction, which is limited to monitoring, defending and protecting the fundamental rights of persons interacting with the KSC and the SPO.

22. Before considering the complaint on its merits, the Ombudsperson has to decide whether to accept the complaint, taking into account the applicable law, the admissibility criteria set out in Rule 29(3) of the RPE.

23. In accordance with Rule 29(3) (e) of the RPE, a request to the Ombudsperson may be rejected if it has not been filed within six months of the alleged violation, unless good cause has been shown.

24. Notably, the complainant acknowledged in his submission that "incidents [] happened longer than six months ago," but "are relevant to the contextual background of the matter, to give a more holistic view of the treatment of Mr. Lajçi."⁵

25. Accordingly, although these incidents are directly related to the ongoing SPO investigation against the complainant, the specific allegations involving the: (1) seizure of the complainant's mobile phone pursuant to a court order; (2) summons for an interview with the SPO; (3) telephone call made by the SPO on the eve of the interview, enquiring whether the complainant would invoke his right to silence; (4) repeated statements by the SPO for the record that the complainant invoked his right to freedom from self-incrimination rather than his right to silence on the advice of counsel; and (5) claim that the interview overall undermined the complainant's presumption of innocence, have not been submitted to the Ombudsperson within six months of their alleged occurrence. The Ombudsperson is also satisfied that no good cause has been shown by the complainant to allow any extension of the applicable deadline. Therefore, these

⁵ Submission on Behalf of Mr. Driton Lajçi (hereinafter, 'Complaint'), para. 1.7.

particular allegations must be rejected pursuant to Rule 29(3) (e) of the RPE and are deemed inadmissible.

26. The complainant, in his Reply, has clarified his allegation that the SPO failed to respond to his 11 December 2020 request to terminate the ongoing investigation against him.⁶ The complainant states that the Specialist Prosecutor indeed responded to his 11 December 2020 request to terminate the investigation. The Specialist Prosecutor responded that he did not intend to terminate this investigation.⁷

27. Given that the SPO responded to the complainant's 11 December 2020 request to terminate the investigation, the Ombudsperson is satisfied that the issue raised is moot. This particular allegation is deemed inadmissible and is rejected pursuant to Rule 29(3) (b) of the RPE because it fails to demonstrate a violation of human rights by the Specialist Prosecutor.

28. The complainant maintains that he has "exhausted all efforts available to a suspect during an SPO investigation" and that the Ombudsperson is the only remaining remedy available to him.⁸ Indeed, the complainant has requested, as part of the remedy sought, "[a] call for the Specialist Prosecutor's Office to immediately terminate any investigation against Mr. Lajçi".⁹

29. However, since submitting his complaint to the Ombudsperson seeking this remedy, the complainant has filed an application with the Specialist Chambers to have the investigation against him terminated in accordance with Rule 47 of the RPE.¹⁰

30. Given that this matter is before the Specialist Chambers, the Ombudsperson lacks jurisdiction to consider it further pursuant to Rules 29(1) and Rule 29(3) of the RPE.

⁶ See also Publicly Redacted Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Mr. Driton Lajçi, KSC-BC-2018-01, 15 June 2021. On 15 June 2021, in a separate filing pursuant to Rule 47(2) of the RPE, the complainant again requested the termination of the SPO investigation against him.

⁷ Publicly Redacted Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Mr. Driton Lajçi, KSC-BC-2018-01, 15 June 2021, para. 18.

⁸ Reply to Prosecution Response Regarding the Complaint of Driton Lajçi ('Reply'), para. 2.11.

⁹ Complaint, para. 4.1.

¹⁰ See Publicly Redacted Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Mr. Driton Lajçi, KSC-BC-2018-01, 15 June 2021.

V. THE COMPLAINT AGAINST THE SPECIALIST CHAMBERS

31. The complainant has also submitted a complaint regarding the Specialist Chambers, and has alleged the following:

32. On 17 November 2020, the Request for Arrest Warrants¹¹ against Mr. Hashim Thaçi, Mr. Kadri Veseli, Mr. Rexhep Selimi and Mr. Jakup Krasniqi, originally filed on 28 May 2020 and classified as strictly confidential, was reclassified as public by the Pre-Trial Judge of the Specialist Chambers in that case.¹² In the public redacted version, a separate filing, the complainant's full name is cited and included in statements of fact without redaction.

33. On 22 January 2021, the Pre-Trial Judge rendered a public redacted decision regarding the interim release of Mr. Kadri Veseli in the above-mentioned case.¹³ In his findings, the Pre-Trial Judge included the complainant's full name without redaction.

34. With respect to his complaint against the Specialist Chambers, the complainant alleges that the publication of his full name in both the public redacted Request for Arrest Warrants and the Decision on Interim Release violate his fair trial rights pursuant to Article 6 of the ECHR. The complainant submits that the publication of his name, in the absence of a conviction or criminal charge, violates his fundamental right to be presumed innocent and to have a matter determined by an independent and impartial court of law. The complainant further submits that the statements in the public filings regarding his specific actions are included as established facts of guilt, rather than mere allegations, which undermines his presumption of innocence under Article 6(2) of the ECHR.

VI. REMEDY SOUGHT

¹¹ Public Redacted Version of 'Request for arrest warrants and related orders,' KSC-BC-2020-06/F00005, 28 May 2020, with public redacted Annex 1 and public Annexes 2-3 (hereinafter, 'Request for Arrest Warrants'). Although the complainant refers to the filing in question as an *arrest warrant* throughout his complaint, this is a mischaracterization; rather, the filing is a *request for arrest warrants*, which was filed by the Specialist Prosecutor and later reclassified as public by order of the Pre-Trial Judge in Case 06.

¹² *Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Case No. KSC-BC-2020-06.

¹³ Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021 (hereinafter, 'Decision on Interim Release').

35. The complainant called for the Kosovo Specialist Chambers to issue an appropriate public statement retracting the unfounded and unproven statement concerning Mr. Lajçi in the Request for Arrest Warrants and the Decision on Interim Release.

VII. ASSESSMENT OF THE OMBUDSPERSON

36. Pursuant to Rules 29(1) and 29(3) (a) of the RPE, the Ombudsperson shall not intervene in cases or other legal proceedings before the Specialist Chambers, except in instances of unreasonable delays.¹⁴

37. The Ombudsperson is of the view that the complaint at hand directly emanates from filings in the case of the *Specialist Prosecutor v Hashim Thaçi et al.* (Case 06).¹⁵ The Request for Arrest Warrants was reclassified as public by order of the Pre-Trial Judge in Case 06 in accordance with the regime adopted in the Framework Decision on Disclosure of Evidence and Related Matters,¹⁶ likewise, the Decision on Interim Release was issued by the Pre-Trial Judge in accordance with Case 06 before the Specialist Chambers.¹⁷

38. Accordingly, the Ombudsperson lacks jurisdiction over the complaint because he is prohibited from intervention in any case pursuant to Rule 29(1), as well as Rule 29(3) (a), of the RPE.

VIII. CONCLUSION

¹⁴ See also CDL-AD(2019)005 – *Principles on the Protection and Promotion of the Ombudsman Institution* (“*The Venice Principles*”), European Commission for Democracy Through Law (Venice Commission) (Strasbourg, 2 May 2019), para. 13 (“The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system.”).

¹⁵ *Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Case No. KSC-BC-2020-06.

¹⁶ See Framework Decision on Disclosure of Evidence and Related Matters, Case No. KSC-BC-2020-06. See also RPE 82(3)-(5) (“Unless and until otherwise ordered by a Panel, the filing shall be treated according to that classification.”).

¹⁷ *Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Case No. KSC-BC-2020-06.

39. The Ombudsperson has concluded that the complaints made against the Specialist Prosecutor and Specialist Chambers must be rejected pursuant to Rules 29(1), 29(3) (d) and 29(3) (e) of the RPE.



Pietro Spera

Ombudsperson, Kosovo Specialist Chambers.

Dated this Monday, 2 August 2021
At The Hague, the Netherlands.