

REGULATION NO. 2001/21

UNMIK/REG/2001/21

20 September 2001

ON CO-OPERATIVE WITNESSES

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo and UNMIK Regulation No. 1999/24 of 12 December 1999 on the Law Applicable in Kosovo,

Recognizing the need to prevent and combat crime in Kosovo,

For the purpose of creating legislative measures to provide incentives for co-operative witnesses in court,

Hereby promulgates the following:

Section 1

Co-operative Witness

A "Co-operative Witness" is a person who is:

(a) Suspected by the public prosecutor of having committed an offence, or who is under investigation by an investigating judge, or under indictment where the indictment has not yet been read at the hearing; and

(b) Expected to give evidence in Court which:

(i) is likely to prevent further criminal offences by another person;

(ii) is likely to lead to the finding of truth in a criminal proceeding;

(iii) is voluntarily made with full agreement to testify truthfully in Court;

(iv) is adjudged by the Court to be truthful and complete; or

(v) is such that it might lead to a successful prosecution of other perpetrators of a criminal offence.

Section 2

Co-operative Witness Order

2.1 The public prosecutor may make written application to the Court for an order that a person be declared a Co-operative Witness. The application shall contain a separate declaration of factual allegations by the prosecutor, whose declaration may include a request to keep these allegations secret from the other parties and their legal representatives and the reasons for such a request. The Court may at any time after receiving a request for secrecy from the prosecutor make an order for secrecy with respect to factual allegations contained in a declaration.

2.2 Upon receiving the application, any of the judges referred to in section 2.4 shall hear the application in a closed session to the public. The public prosecutor and the legal representative of the Co-operative Witness may participate in the questioning to evaluate his or her credibility and to ensure that the requirements in section 1 are met. Statements made to the judge during this questioning cannot be used in criminal proceedings against the Co-operative Witness or against any other person as evidence to support a finding of guilt.

2.3 The provisions, which apply to the questioning of witnesses in the preliminary examination, Articles 225 through 235 of the applicable Law on Criminal Procedure, inclusive, shall be appropriately applied to the questioning of the Co-operative Witness, and the statement shall be entered in the record pursuant to Article 222 of the applicable Law on Criminal Procedure.

2.4 The judge issuing the order shall be that judge assigned to the investigation, or the Presiding Judge assigned to the planned trial, of the Co-operative Witness. If there is no investigation or indictment of the Co-operative Witness, then the District Judge who is assigned the investigation or to preside at the trial where the Co-operative Witness's testimony is to be heard shall issue the order. Otherwise, any District Judge in Kosovo may issue the order.

2.5 At the conclusion of the hearing the judge may make an order declaring a person is a Co-operative Witness and such order shall state that there shall be no initiation or continuation of criminal proceedings against the Co-operative Witness for the criminal offence specified in the order and that no punishment shall be imposed for the offence so specified.

2.6 The order shall specify the criminal offences, by describing the acts and their qualifications, for which prohibition of initiation or continuation of criminal proceedings is given, the nature and substance of cooperation given by the Co-operative Witness and the conditions for the revocation of the order.

2.7 A judge shall not issue such an order if the Co-operative Witness is suspected by the public prosecutor or determined by an investigating judge, or is presently accused by indictment or a petition to conduct a preliminary investigation, of being the organiser or the leader of a group of two or more persons, which commits a criminal offence.

2.8 The order shall not prohibit the initiation or continuation of criminal proceedings against a Co-operative Witness for subsequent acts committed after the date the order was issued. The order shall not prohibit the initiation or continuation of criminal proceedings

against a Co-operative Witness for criminal offences punishable with ten or more years of imprisonment.

Section 3

Revocation of the Order

3.1 On the application of the public prosecutor, the order may be revoked by a panel of three judges (paragraph 6 of Article 23 of the applicable Code of Criminal Procedure) if it is established that the testimony of the Co-operative Witness was false in any relevant part or that the Co-operative Witness purposely omitted to state the complete truth.

3.2 A Co-operative Witness whose testimony was false in any relevant part or who purposely omitted to state the complete truth to the public prosecutor or police, or to the judge, or to the Court in hearing or trial, commits a criminal offence and shall be liable upon conviction to imprisonment of 3 months up to 5 years.

3.3 If a Co-operative Witness who commits the offence referred to in section 3.2 withdraws the testimony, and testifies truthfully before the end of his testimony before the Court, he or she shall be liable upon conviction to a fine of up to 1,000 DM and/or imprisonment of up to 90 days or may be released of the charge if the Court finds mitigating circumstances.

3.4 The Co-operative Witness shall be warned of the consequences of giving false testimony in any relevant part or purposely omitting to state the complete truth before being heard by the judge under section 2.2, and before testifying at any trial under the protection of the order. Such warning shall be given by the public prosecutor or police before testimony is made before them and any such testimony must be either in written form in the Co-operative Witness's language, signed by him or her to acknowledge its truthfulness, or recorded on audio or video tape which is determined to be authentic by the Court.

3.5 Any violation of an order for secrecy established under section 2.1 of this regulation shall be prosecuted by the public prosecutor under Article 50 and Article 50(2) of the applicable Kosovo Criminal Code shall not be a defence.

Section 4

Rules of Evidence and Procedure

4.1 The accused against whom the Co-operative Witness is expected to testify shall be served with a copy of the order prior to the trial of the accused.

4.2 The panel of judges shall not find any person guilty solely upon the evidence of testimony given by the Co-operative Witness.

Section 5

Remission or Reduction of Sentence of Perpetrators Who are not Determined in Advance of Trial to be a Co-operative Witness

5.1 Upon the application of the public prosecutor, the Court may decide not to impose a punishment upon a perpetrator who is not a Co-operative Witness, or to reduce it in accordance with Article 43 of the applicable Criminal Code when the perpetrator voluntarily cooperated and his or her cooperation prevented any further criminal offences by others, or led to a successful prosecution of other perpetrators of a criminal offence.

5.2 If the perpetrator is found guilty of a criminal offence punishable with ten or more years of imprisonment the Court shall not waive or suspend or refuse to impose a sentence on the perpetrator for the charge.

Section 6

Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present regulation.

Section 7

Applicable Law

7.1 The present regulation shall supersede any provision in the applicable law that is inconsistent with it, including Article 18 of the applicable Law on Criminal Procedure.

7.2 Nothing in the present regulation shall affect the authority and responsibility of a judge or public prosecutor to perform the functions of his or her office.

Section 8

Transitional Provision

The present regulation shall also apply to offences committed and criminal proceedings initiated between 10 June 1999 and the date of the present regulation.

Section 9

Entry into Force

The present regulation shall enter into force on 20 September 2001.

Hans Haekkerup
Special Representative of the Secretary-General