Tribunal de première instance francophone de Bruxelles
Chambre du conseil

N° de notice : BR53.99.789/2022
Juge d'instruction : de VISSCHER
Dossier n° : 2022/087
N° de système : 22BC45677

ORDONNANCE

In the case of:

1. Lyudmyla KOZLOVSKA

2. The Open Dialogue Foundation (Private Foundation)

Having considered the documents of the criminal procedure, including the minutes of the civil party constitution and the requisitions below.

Having considered the notice sent on 29 September 2023 and 14 March 2024 by the clerk to the defendants sub1 and sub2 and to their respective counsel, Mr Tristan Wibault (sub1), as well as to the civil parties Korenskikh Alexandr Valeriyevich (RN), acting in the interest of the minor child Dmitriy Alexandrovich Korenskikh, born on 26 November 2012, Shinbayev Aslanbek Nurlybekovich (RN) acting in the interest of the minor children Nagima Aslanbekkyzy Nurlybek, born on 9 June 2012, Medina Aslanbekkyzy Nurlybek, born on 9 May 2014, Leila Aslanbekkyzy Nurlybek, born on 24 January 2017, Abdil Amalbek Douyssenbekouly (RN) acting in the interest of the minor children Medina Amalbekkyzy Duysenbek, born on 18 February 2016, Assiya Amalbekkyzy Duysenbek, born on 18 September 2016, Abdukarimov Erkinbek Usenovich (RN) acting in the interest of the minor children Erzhigit Erkinbekuly Ussen, born on 13 December 2013, Erbolat Erkinbekuly Ussen, born on 19 March 2015, Kypshakbayev Daurenbek Sultanbekuly (RN) acting in the interest of the minor children Alpamys Dayrenbekuly Sultanbek, born on 14 April 2010, Bektur Dayrenbekuly Sultanbek, born on 18 August 2011, Alinur Dayrenbekuly Sultanbek, born on 13 August 2015, Amina Dayrenbekuly Sultanbek, born on 7 September 2017, Nurov Kanat Karibayevich (RN) acting in the interest of the minor children Medina Kanatkyzy Karibay, born on 22 June 2017, Muslim Kanatkuly Karibay, born on 28 April 2021, Sharipov Eszhan Baglanovich (RN) acting in the interest of the minor children Aydina Eszhanuly Baglan, born on 18 October 2010, Bektor Eszhanuly Baglan, born on 15 March 2015, Nariman Eszhanuly Baglan, born on 25 July 2017, and to their counsel, Ms SINTZOFF Anne and Ms Legros Fanny (civil parties) (art. 127 of the Code of Criminal Procedure).

The file was made available to them in accordance with the law.

Having seen the deadline extension application sine die of 21 November 2023.

Having seen the continuance application of 11 April 2024.

Having seen the deliberation application of 30 May 2024.

Having heard:

- Mr de VISSCHER, investigating judge [juge d'instruction], in his report of April 11, 2024,
- Ms LEGROS Fanny and Ms SINTZOFF Anne-Elisabeth for the civil parties who file conclusions and documents.
- Ms du CASTILLON, deputy prosecutor, in her requisitions,
- Mr WIBAULT Tristan for the defendants who files summary conclusions and documents.

1.

The civil parties, acting on behalf of their respective minor children, reproach Ms KOZLOVSKA and her Foundation having posted videos online and having commented on videos showing the 17 minor children of the 7 complainants without their consent, which would cause them immeasurable prejudice.

2.

Regarding charges A, B, C, and D against Ms. KOZLOVSKA

In order for Belgian jurisdictions to be competent, a constituent or aggravating element of the offense being committed in Belgium or the perpetrator or victim being Belgian, are sufficient.

In this case, assuming the facts are established,

- neither the plaintiffs nor the defendant are of Belgian nationality;
- the elements of the file do not allow to conclude that at least one constituent element of offenses A, B, C, or D was committed in Belgium.

Still assuming the facts are established, the civil parties' argument drawn from "the simple persistence of the infringing situation" cannot establish the jurisdiction of Belgian courts, as it is not a constituent element of the offenses that these parties are denouncing.

It is therefore rightfully that the public prosecutor and the defendant conclude the territorial incompetence of the chamber of the council.

Regarding charges D against the OPEN DIALOGUE FOUNDATION

Assuming the facts are established, the Foundation is being prosecuted for acts that would have been committed by Ms. KOZLOVSKA.

Consequently, and by identity of grounds with what was said above concerning defendant sub1 and by virtue of the principle of territoriality, the chamber of the council has no territorial jurisdiction.

3.

Since the civil parties are unsuccessful, they are liable for the payment of the procedural indemnity liquidated at the base amount for non-evaluable claims in money.

Partially departing from the grounds of the written requisitions,

By application of the following legal provisions:

- Articles 11, 12, 13, 16, 21, 31 to 37, 40 to 42 of the law of 15 June 1935 on the use of languages in judicial matters,
- Article 20 of the preliminary title of the Code of Criminal Procedure,
- Articles 127 and 128 of the Code of Criminal Procedure,
- Article 94 of the Judicial Code.

Declares the proceedings inadmissible against defendant sub1 (KOZLOVSKA) concerning charges A1, A2, A3, B1, B2, B3, C1, C2, C3, D1, D2, and D3 and against defendant sub2 (Open Dialogue Foundation (Private Foundation)) concerning charges D1, D2, and D3.

States that the costs of the procedure, taxed to date at 38.72 euros, are to be borne by the civil parties.

Condemns the civil parties, Korenskikh Alexandr Valeriyevich, Shinbayev Aslanbek Nurlybekovich, Abdil Amalbek Douyssenbekouly, Abdukarimov Erkinbek Usenovich, Kypshakbayev Daurenbek Sultanbekuly, Nurov Kanat Karibayevich, Sharipov Eszhan Baglanovich to pay EACH 24 euros (twenty-four euros) as a contribution to the fund for legal aid, in accordance with article 4§3 of the law of 19 March 2017 establishing a budgetary fund for second-line legal aid.

Condemns them to pay Ms KOZLOVSKA as well as the Open Dialogue Foundation (Private Foundation) the single sum of 1,800€ as procedural indemnity.

The French language was used for the procedure, which took place in closed session.

Pronounced after deliberation on June 28, 2024 in the chamber of the council, where were sitting:

Ms. DUFOUR , vice-president, sole judge

Mr. IANCOVICI , deputy prosecutor

Ms. RAMOISY , clerk

Approved the deletion of — lines and — words null.

RAMOISY DUFOUR [Signatures]