

In: KSC-BC-2020-07

Before: Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Hysni Gucati

Date: 29th September 2020

Language: English

File Name: *The Specialist Prosecutor v Nasim Haradinaj and Hysni Gucati*

CLASSIFICATION: Public

PARTICIPANTS TO WHICH THE SUBMISSION IS TO BE DISTRIBUTED: Single Judge, SPO, the President of the Specialist Chambers, Specialist Counsel for Mr Haradinaj

**Challenge to the Lawfulness of the Arrest in Accordance with Article 41(2):
Request for Assignment of a New Judge to Determine Challenge**

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Challenge to the Lawfulness of the Arrest in Accordance with Article 41(2):

Request for Assignment of a New Judge to Determine Challenge

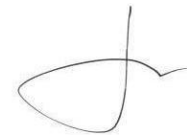
1. The Applicant, Mr Gucati, challenges the lawfulness of his arrest in accordance with Article 41(2) of the Law No.05/L-53 on Specialist Chambers and Specialist Prosecutor's Office ("Law").
2. Article 41(2) of the Law provides that:

"Any person deprived of his or her liberty by arrest or detention shall be entitled ... to challenge the lawfulness of his or her arrest... and to have such challenge decided speedily by the Specialist Chambers and his or her release ordered if detention is not lawful".
3. In the present case, the arrest and detention of the Applicant was carried out under the authority of the Single Judge, Nicolas Guillou. The challenge raised by the Applicant questions the lawfulness of the authority of the learned Judge to order his arrest and detention (see the filed submission entitled, "Challenge to the Lawfulness of the Arrest in Accordance with Article 41(2): The Arrest Warrant was Issued Without Lawful Authority").
4. The Applicant submits that a new Judge should be assigned to hear that challenge in the circumstances and consider afresh the extent or otherwise of the powers of a Single Judge to order an arrest pre-indictment.
5. The learned Judge was assigned under Article 33(2) of the Law ahead of the request for an arrest warrant, which states that the assignment shall be temporary in nature and shall cease as soon as the matter triggering the

assignment has been disposed of. The request for an arrest warrant has been disposed of and the assignment of the learned Judge should cease accordingly. The challenge to the lawfulness of that arrest warrant and other matters consequent thereof are new matters which should be considered by a new judge.

6. No disrespect is intended towards Judge Guillou in making that submission. The application for an arrest warrant was made *ex parte* and it is unknown as to the extent to which the learned Judge received any assistance as to the power in Article 39(3) of the Law.

Word count: 468 words



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