



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-07
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Single Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 30 September 2020

Language: English

Classification: **Confidential**

Order for Submissions on the Reclassification of Filings

Specialist Prosecutor
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THE SINGLE JUDGE,¹ in accordance with Articles 21(2) and 39(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following order.

I. PROCEDURAL BACKGROUND

1. On 22 September 2020, the SPO submitted a request for the issuance of arrest warrants and corresponding transfer orders against Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj").²
2. On 24 September 2020, the Single Judge issued arrest warrants for Mr Gucati and Mr Haradinaj (collectively "the Suspects"),³ together with orders for their transfer to the detention facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands ("SC detention facilities").⁴

¹ KSC-BC-2020-07, F00003, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2020-07, F00009, Specialist Prosecutor, *Urgent Request for Arrest Warrants and Related Orders*, 22 September 2020, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*, para. 35.

³ KSC-BC-2020-07, F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020, public; F00012/A03/COR/RED, Single Judge, *Public Redacted Version of the Corrected Version of Arrest Warrant for Nasim Haradinaj*, 24 September 2020, public.

⁴ KSC-BC-2020-07, F00012/A02/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public; F00012/A04/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public.

3. On 25 September 2020, the Suspects were arrested in Kosovo.⁵ Mr Gucati was transferred to the SC detention facilities on the same day.⁶ Mr Haradinaj was transferred to the SC detention facilities on 26 September 2020.⁷

4. On 28 September 2020, the Single Judge scheduled Mr Haradinaj's first appearance for 29 September 2020.⁸

5. On 29 September 2020, taking note of Specialist Counsel's request, the Single Judge scheduled Mr Gucati's first appearance for 1 October 2020.⁹

II. APPLICABLE LAW

6. Pursuant to Articles 21(2) and 39(6) of the Law, hearings shall be public, unless the competent Judge decides otherwise in accordance with the Rules.

7. Pursuant to Rule 82(5) of the Rules, where the basis for reclassification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

⁵ KSC-BC-2020-07, F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, strictly confidential and *ex parte*; F00016, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-07, F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁷ KSC-BC-2020-07, F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-07, F00023, Single Judge, *Decision Setting the Date for the First Appearance of Nasim Haradinaj*, 28 September 2020, public.

⁹ KSC-BC-2020-07, F00029, Single Judge, *Decision Setting the Date for the First Appearance of Hysni Gucati*, 29 September 2020, public.

III. DISCUSSION

8. Considering that the Suspects have been arrested and transferred to the SC detention facilities, and that Mr Haradinaj had his first appearance, while Mr Gucati is due to appear before the Single Judge,¹⁰ it is necessary to review the classification of certain filings in the case file, in order to adhere to the principle of publicity of proceedings, which extends beyond hearings in the courtroom to cover also filings and any other submission in the case file.

9. In so doing, regard must be paid, on the one hand, to the principle of publicity, as enshrined under Articles 21(2) and 39(6) of the Law, and the duty of the Single Judge to provide for the protection of victims and witnesses, including their safety, physical and psychological well-being, dignity and privacy, as stipulated by Article 23(1) of the Law.

10. Consequently, the Single Judge has the responsibility to ensure that any given filing in the case file bears the appropriate classification and may, accordingly, reclassify any filing *proprio motu* or upon request, should the basis for the current classification no longer exist.

11. The Single Judge intends to reclassify as public the following strictly confidential and *ex parte* filings in case file KSC-BC-2020-07, considering that the Suspects are in the custody of the SC, they were notified of selected filings, and that no sensitive information compromising the safety and security of witnesses is contained therein:

- F00005, 7 September 2020;
- F00007, 17 September 2020; and

¹⁰ See footnotes 8 and 9.

- F00012, 24 September 2020, including annexes classified as strictly confidential and *ex parte*;

12. Given the aforementioned considerations, but mindful of the SPO's ongoing investigations, the Single Judge further intends to reclassify as confidential and *ex parte*, as the case may be, the following strictly confidential and *ex parte* filings in case file KSC-BC-2020-07:

- F00013, 24 September 2020;
- F00014, 24 September 2020; and
- F00017, 25 September 2020, including annex.

13. It is also appropriate, at this stage, to request the Specialist Prosecutor to file confidential (redacted) and/or public (redacted) versions of the following strictly confidential and *ex parte* filings in case file KSC-BC-2020-07:

- F00004, 7 September 2020;
- F00006, 16 September 2020;
- F00008, 21 September 2020, including annex;
- F00009, 22 September 2020, including annexes;
- F00010, 23 September 2020, including annex;
- F00011, 23 September 2020, including annex; and
- F00028, 29 September 2020, including annex.

14. Should the Specialist Prosecutor wish to retain the current classification of some or all the above mentioned filings, he shall specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed.

15. It is also appropriate, at this stage, to request the Registrar to file confidential (redacted) and/or public (redacted) versions of the following confidential and strictly confidential and *ex parte* filings in case file KSC-BC-2020-07:

- F00015, 25 September 2020;
- F00016, 25 September 2020;
- F00018, 25 September 2020, including annex;
- F00019, 25 September 2020;
- F00020, 26 September 2020, including annex;
- F00021, 26 September 2020;
- F00022, 28 September 2020, including annex;
- F00026/COR, 28 September 2020, including annexes; and
- F00031, 30 September 2020, including annex.

16. If one of the aforementioned filings cannot be shared with both Suspects, the Registrar shall make them accessible only to the person concerned. Should the Registrar wish to retain the current classification of some or all the above-mentioned filings, she shall specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed.

17. It is also appropriate, at this stage, to request the Defence for Mr Gucati to file a public (redacted) version of the following confidential filing in case file KSC-BC-2020-07:

- F00025/COR, 28 September 2020.

18. Should the Defence for Mr Gucati wish to retain the current classification of the above mentioned filing, it shall specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed.

IV. DISPOSITION

19. For the above-mentioned reasons, the Single Judge hereby:

- a. **REQUESTS** the Specialist Prosecutor to submit, **by 14 October 2020**, his reasons for maintaining the classification of filings in case file KSC-BC-2020-07, as specified in paragraph 13 of the present order, or to submit confidential (redacted) and/or public (redacted) versions thereof;
- b. **REQUESTS** the Defence for Mr Gucati to submit, by **14 October 2020**, his reasons for maintaining the classification of the filing in case file KSC-BC-2020-07 as specified in paragraph 17 of the present order, or to submit a public (redacted) version thereof; and
- c. **REQUESTS** the Registrar to submit, **by 14 October 2020**, her reasons for maintaining the classification of filings in case file KSC-BC-2020-07, as specified in paragraph 15 of the present order, or to submit confidential (redacted) and/or public (redacted) versions thereof.



Judge Nicolas Guillou

Single Judge

Dated this Wednesday, 30 September 2020

At The Hague, the Netherlands.