



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: Single Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

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**'Submission of the Registrar Pursuant to Rule 23(2) on
COVID-19 Risk Mitigation Measures', filing KSC-BC-2020-07/F00022 dated 28
September 2020**

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I. INTRODUCTION

1. Pursuant to Rule 23(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('Rules')¹, the Registrar hereby submits representations to the Pre-Trial Panel on risk mitigation measures with regard to the novel coronavirus ('COVID-19') on the conduct of proceedings involving Mr Hysni Gucati and Mr Nasim Haradinaj (collectively, 'the Suspects').

II. PROCEDURAL HISTORY

2. On 12 June 2020, the Single Judge issued a strictly confidential and *ex parte* decision ('Decision') granting the request of the Specialist Prosecutor's Office ('SPO') for the arrest and transfer of the Suspects to the Detention Facilities of the Specialist Chambers ('Detention Facilities') in the Netherlands ('Host State').²

3. On 25 September 2020, the SPO arrested the Suspects in Kosovo.³ Following the execution of the transfer orders, the Suspects were received in the Detention Facilities on 25 and 26 September 2020.⁴

4. The Registrar submitted preliminary reports to the Single Judge on the arrest and transfer of the Suspects, in accordance with the Decision.⁵ The Registrar will submit a full report to the Single Judge before the Suspects are brought before the Single Judge.

III. DISCUSSION

5. This submission includes information regarding the COVID-19 risk mitigation measures: (a) in the Netherlands ('Host State'), with a particular focus on travel restrictions and self-quarantine measures; (b) in the Detention Facilities of the

¹ Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, as amended on 29 and 30 April 2020 ('Rules').

² Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2018-01/F00128, 24 September 2020, strictly confidential and *ex parte*.

³ Notification of Arrest Pursuant to Rule 55(4), KSC-BC-2018-01/F00132, F00133, 25 September 2020, strictly confidential and *ex parte*.

⁴ Notification of Reception in the Detention Facilities of the Specialist Chambers, KSC-BC-2018-01/F00135, F00137, 25 and 26 September 2020, strictly confidential and *ex parte*.

⁵ KSC-BC-2018-01/F00128, para. 35, 36(f).

Specialist Chambers ('Detention Facilities'), including during transport to and from the premises of the Specialist Chambers and Specialist Prosecutor's Office ('Premises') at Raamweg 47; and (c) in the courtroom of the Specialist Chambers ('Courtroom').

A. HOST-STATE

6. The basic rules for everyone in the Host State are to: get tested and stay at home if you have symptoms of COVID-19; stay 1.5 metres away from other people; wash your hands often; cough and sneeze into your elbow; work from home if possible; avoid busy places; and travel outside peak hours where possible.⁶ In terms of indoor workplaces, the general distancing measures for indoor spaces apply: people must stay 1.5 metres apart, insofar as tasks allow this.⁷ When traveling in private vehicles with persons of different households, it is also recommended to wear a non-medical face mask.

1. Travel restrictions for travellers from Kosovo

7. The Netherlands has certain travel restrictions in place for travellers from outside of the European Union ('EU'). Currently, the Netherlands and other EU and Schengen countries, as well as the United Kingdom of Great Britain and Northern Ireland ('UK'), have closed their external borders to people whose travel is not essential.

8. The travel ban does not apply to, *inter alia*, persons who work for international organisations.⁸ [REDACTED].

⁶ The measures in place in the Host State are available on the website of the Government of the Netherlands, "Coronavirus COVID-19", <https://www.government.nl/topics/coronavirus-covid-19> (last visited 27 September 2020). Additional measures for The Hague safety region are available on the website Haaglanden Veilig, "Coronavirus COVID-19" (only in Dutch), <https://haaglandenveilig.nl/coronavirus-covid-19> (last visited 27 September 2020).

⁷ See Government of the Netherlands, "Rules that apply indoors and outdoors," <https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/public-life> (last visited 27 September 2020).

⁸ See [REDACTED]; see also Rijksoverheid, "Naar Nederland reizen: Ik ben een zakenreiziger" (available only in Dutch), <https://www.rijksoverheid.nl/onderwerpen/coronavirus-covid-19/reizen-en-op-vakantie-gaan/buitenlandse-toeristen-naar-nederland> (last visited 27 September 2020).

2. Quarantine for travellers from Kosovo

9. On arrival in the Netherlands, travellers from outside of the EU, including those travelling from Kosovo, are advised to self-quarantine for 10 days.⁹ This applies even to persons who do not have symptoms and to persons who have tested negative for COVID-19, whether before or immediately after arrival in the Netherlands.

10. [REDACTED].

11. [REDACTED].

12. [REDACTED].

3. Temporarily leaving self-quarantine

13. As of 14 September 2020, other travellers are also allowed to leave the 10-day self-quarantine for several purposes, if absolutely necessary, as long as they do not have symptoms of COVID-19. For example, travellers may temporarily leave self-quarantine for the purpose of necessary work for designated international organisations, such as the Kosovo Specialist Chambers and Specialist Prosecutor's Office.¹⁰ Except for this specific purpose, travellers must still comply with the rules for self-quarantine.

4. Additional measures as of 20 September 2020

14. On 18 September 2020, the Host State announced additional measures to contain the spread of COVID-19 in the Host State, with effect from 20 September 2020. As of 20 September 2020, there is a general ban on gatherings of more than 50 people indoors

⁹ For travel advice related to Kosovo, see the website of Koninkrijk der Nederlanden (available only in Dutch), "Reisadvies Kosovo", <https://www.nederlandwereldwijd.nl/landen/kosovo/reizen/reisadvies> (last visited 27 September 2020).

¹⁰ See Government of the Netherlands, "When you don't have to self-quarantine (stay at home)", <https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/travel-and-holidays/when-you-dont-have-to-self-quarantine> (last visited 27 September 2020).

or outdoors,¹¹ with some exceptions, including for international organizations that are a party to a treaty with the Host State.¹²

B. DETENTION FACILITIES

15. The Medical Officer regularly advises the Registrar and the Chief Detention Officer on public health measures in the Detention Facilities.

16. The Detention Facilities are located within [REDACTED] the Host-State prison, PI Haaglanden ('Prison'). [REDACTED].

1. Public health measures

17. Since the outbreak of the pandemic, the Medical Officer¹³ has continuously provided advice [REDACTED] to safeguard and promote the health of detainees during the pandemic. [REDACTED].¹⁴

18. [REDACTED].

19. [REDACTED].

2. Visits with Detainees

20. [REDACTED].

21. Both video and necessary in-person Counsel visits are permitted in the Detention Facilities. [REDACTED].

22. In order to protect the health of Detainees and others in the Detention Facilities, no more than two visitors at a time are permitted to attend an in-person Counsel visit.¹⁵ Counsel are also required to answer public health questions and undergo a

¹¹ See Government of the Netherlands, "New regional measures to control the spread of coronavirus", <https://www.government.nl/latest/news/2020/09/18/new-regional-measures-to-control-the-spread-of-coronavirus> (last visited 27 September 2020).

¹² See Haaglanden Veilig, "Meldplicht samenkomsten meer dan 50 personen" (available only in Dutch), <https://haaglandenveilig.nl/meldplicht-samenkomsten-meer-dan-50-personeen> (last visited 27 September 2020).

¹³ Pursuant to Detention Rule 2.2, "Medical Officer" is defined as: "The responsible treating physician at the Detention Facilities, his or her deputy, or any other physician hired by competent authorities of the Host State for the purpose of providing medical treatment to a Detainee".

¹⁴ Annex 1: [REDACTED].

¹⁵ Registry Instruction on General Restrictions on Visits Due to COVID-19, KSC-BD-35, 23 September 2020, sect. 5.1.

temperature check before being allowed entry into the Detention Facilities.¹⁶ Furthermore, Counsel are required to wear personal protective equipment ('PPE') while in the Detention Facilities, including for the duration of their visits, to disinfect their hands upon entry and observe other hygienic measures, and to observe a certain physical distance from Detainees and others.

23. The Registrar has temporarily restricted in-person visits with family members and other personal visitors in the Detention Facilities. In lieu of in-person visits, the Registrar has authorised video visits with Close Relatives of Detainees.¹⁷

3. Transport to and from court hearings

24. In order to limit external contact, the external transport of Detainees is limited to special and urgent circumstances. In those circumstances, the transport service of the Host State Prison Service ('DV&O') has put in place preventative measures for transport of Detainees to and from court hearings that are in line with the Host State measures.

25. [REDACTED].

C. COURTROOM

26. On the Premises at Raamweg 47, the risk mitigation measures are in line with Host State measures. For example, building occupancy levels are capped to enable physical distancing, and communal areas such as the staff and public entrances are also configured to comply with the 1.5-metre distancing principle. Walkway instructions and hand sanitising stations are also clearly visible upon entry and throughout the Premises, as well as cleaning instructions and cleaning stations in communal areas.

27. The risk mitigation measures in the Courtroom are also in line with Host State measures. They include basic hygiene measures, such as hand sanitising before entry

¹⁶ See Detention Management Unit ('DMU') Instruction on Security Requirements to Enter the Detention Facilities, KSC-BD-32, 23 September 2020, sect. 11.

¹⁷ Registry Instruction on General Restrictions on Visits Due to COVID-19, KSC-BD-35, 23 September 2020; Registry Instruction on Video Visits, KSC-BD-34, 23 September 2020.

and exit and sanitising of equipment and furnishings before the start of each hearing and during any break between cases. Persons in the Courtroom will also be encouraged to use the cleaning materials at each workbench regularly.

28. Courtroom seating has also been reconfigured to maintain physical distance of 1.5 metres, along with the installation of glass shields. Although the seating plan provides for an appropriate physical distance, non-medical face masks will be provided as an extra precaution during brief moments when persons in the Courtroom need to confer with each other.

29. No adjustment to the Judges' bench is required for hearings by the Single Judge. Likewise, interpreter booths are wide enough to maintain the appropriate physical distance. In the holding cells at Raamweg 47, a glass partition has been installed in the Counsel visiting room.

30. The Courtroom and the Detention Facilities have the technical capability to provide two secure video-conferences broadcasting simultaneously in the Courtroom.

31. The public gallery has been reconfigured to allow for a maximum of 20 seated guests, plus one wheelchair. The public waiting room will not be used for overflow. In addition, the press area has been configured to facilitate a maximum of 14 persons in the press briefing area and an additional maximum of 6 persons at workstations in the media room.

32. Visitors to the Premises, including media, are required to pre-register and will be required to answer public health questions before being admitted to the Premises.

D. PROCEEDINGS

33. [REDACTED].

34. Should the Single Judge decide that the Suspects will be brought before the Single Judge by means of video-conference, the Registrar stands ready to facilitate the video-conference, with the necessary means of confidential communication in place between the Suspects and their Counsel. Should the Single Judge decide that the Suspects will be physically present before the Single Judge, the Registrar stands ready

to facilitate the Suspects' physical presence in the Courtroom, with the necessary safety measures in place.

35. This submission and its Annex are filed confidentially pursuant to Rule 82(1)(b) and (3) of the Rules, as they contain personal health-related information and information on internal Registry procedures.

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Dr Fidelma Donlon

Registrar

Wednesday, 14 October 2020

At The Hague, the Netherlands