



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

Filed by: Dr Fidelma Donlon

Date: 14 October 2020

Language: English

Classification: Public

Public Redacted Version of

**'Corrected Report on the Arrest and Transfer of Nasim Haradinaj
to the Detention Facilities', filing KSC-BC-2020-07/F00026/COR dated 28
September 2020**

Specialist Prosecutor's Office

Jack Smith

Counsel for Hysni Gucati

Jonathan Elystan Rees

Duty Counsel for Nasim Haradinaj

Bastiaan Martens

1. The Registrar hereby reports to the Single Judge on the arrest and transfer of Mr Nasim Haradinaj ('Mr Haradinaj') to the Detention Facilities of the Specialist Chambers ('Detention Facilities') located in the Netherlands ('Host State').

2. This report is submitted pursuant to the strictly confidential and *ex parte* Decision on Request for Arrest Warrants and Transfer Orders ('Decision')¹, together with annexed supporting material.² The Registrar previously submitted a preliminary report pursuant to the Decision, pending the receipt of additional relevant information.³

I. ARREST

1. The arrest of Mr Haradinaj was executed by SPO operational security officers, with logistical support from EULEX Kosovo and Kosovo police.

2. Prior to the arrest, the SPO officers and the interpreter tested negative for the novel coronavirus ('COVID-19'). SPO security officers and the interpreter wore facemasks throughout the arrest and transfer.

3. At 16:29 on 25 September 2020, SPO officers arrested Mr Haradinaj on Rruga Justiniani street in the Pejton area of Pristina, Kosovo. The SPO officers had identified Mr Haradinaj as the front seat passenger in a taxi driving away from the premises of the KLA War Veteran's Association. The SPO officers proceeded to follow the taxi [REDACTED]. From the manner in which the taxi was driving, it was apparent that Mr Haradinaj had seen the [REDACTED] vehicle in which the SPO officers were travelling and was attempting to evade. For example, despite the slow moving traffic, the taxi conducted several lane changes and at one point indicated left but then continued straight through an intersection. As the taxi turned into Rruga Justiniani street, it came to a stop in traffic. As the taxi stopped, Mr Haradinaj exited the vehicle

¹ See Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2018-01/F00128, 24 September 2020, strictly confidential and *ex parte*, para. 35; Order for a New Case File, KSC-BC-2020-07/F0001; see also Detention Rule 14.

² Annex 1, Arrest-Transfer File, strictly confidential and *ex parte*.

³ Preliminary report on the arrest and transfer of Nasim Haradinaj pursuant to Decision KSC-BC-2018-01/F00138, 26 September 2020.

and attempted to run from the SPO officers. The SPO officers quickly caught up with Mr Haradinaj and promptly detained him. No physical force or restraint was used at the point of arrest.

4. At the time of arrest, the SPO arresting officer identified himself, confirmed Mr Haradinaj's identity, and informed him that a warrant had been issued for his arrest. Communication between the arresting officer and Mr Haradinaj took place in Swedish. Very shortly after the SPO officers had first detained Mr Haradinaj, a crowd began gathering, many of whom were filming the interaction on their mobile phones and taking photographs. Mr Haradinaj was loud and demonstrative, particularly when interacting in Albanian with the bystanders.

5. Mr Haradinaj declared that he rejected being arrested by the SPO because he does not recognise the court, and insisted on having Kosovo police present. The SPO officers secured the space around Mr Haradinaj, prevented any escalation of the situation, and arranged for Kosovo police to come to the scene. [REDACTED]. [REDACTED]. The arresting officer also advised Mr Haradinaj that he did not need to speak further with the arrest team until an official interpreter was present.

6. Within a couple of minutes, three units of Kosovo police arrived. [REDACTED].

7. The Kosovo police vehicles then followed [REDACTED] to the Registry's secure transfer facility in Pristina, arriving at approximately 16:54.⁴ Upon arrival, Mr Haradinaj stated that he had received his wish of being transported by Kosovo police, and would now follow the directives of the arrest team.

8. While awaiting the interpreter, Mr Haradinaj was provided with a copy of the arrest warrant in English and Albanian. The interpreter arrived at the Registry's secure transfer facility at 17:21, and all communications thereafter were in English, translated into Albanian by an interpreter.⁵ [REDACTED].

9. At 17:30, an SPO officer repeated the information provided upon arrest, and two other SPO officers conducted a security search incident to arrest of Mr Haradinaj's

⁴ Annex 1, Record of Custody (SPO).

⁵ Annex 1, Record of Custody (SPO).

person and removed personal property, which they inventoried and placed into one sealed evidence bag under log number G128852.⁶

10. At 17:54, an SPO officer effected service of certified copies of the arrest warrant⁷ and transfer order⁸ on Mr Haradinaj in both English and Albanian.⁹

11. At 17:55, an SPO officer, in the presence of another SPO officer, informed Mr Haradinaj of his rights in English, which were translated into Albanian by the interpreter.¹⁰ The SPO officer informed Mr Haradinaj, *inter alia*, that he has: the right to legal assistance of Specialist Counsel of his choice and to have Specialist Counsel assigned free of charge if he does not have sufficient means to pay for it; the right to notify or have notified a family member or another appropriate person of his choice about his arrest; and the right to remain silent and that any statement he makes shall be recorded and may be used in evidence. The SPO officer also provided Mr Haradinaj with a hardcopy of Articles 21 and 41(4) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office in English and Albanian.¹¹ Mr Haradinaj confirmed with his signature that he had been provided with information about his rights.¹²

12. At 18:13, Mr Haradinaj was provided with a list of available Specialist Counsel. [REDACTED]. At 18:23, Mr Haradinaj was provided with a telephone [REDACTED].¹³ Thereafter, at 19:09, an SPO officer delivered [REDACTED] a letter from the Head of the Defence Office regarding Mr Haradinaj's arrest and transfer, as well as information on the right to counsel and information on contacting Mr Haradinaj at the Detention Facilities.¹⁴

⁶ Annex 1, Transfer of Custody (SPO-Registry).

⁷ Corrected Version of Arrest Warrant for Nasim Haradinaj, KSC-BC-2018-01/F00128/A03/COR, 24 September 2020, strictly confidential and *ex parte*.

⁸ Order for Transfer to Detention Facilities of the Specialist Chambers, KSC-BD-2018-01/F00128/A04, 24 September 2020, strictly confidential and *ex parte*.

⁹ Annex 1, Memorandum of Service (Arrest Warrant and Transfer Order).

¹⁰ Annex 1, Information About Rights.

¹¹ Annex 1, Record of Custody (SPO).

¹² Annex 1, Information About Rights.

¹³ Annex 1, Record of Custody (SPO).

¹⁴ Annex 1, Record of Custody (SPO); Annex 1, Letter from the Head of the Defence Office, KSC/REG/DEF/0128, 25 September 2020.

13. At 22:10, Mr Haradinaj was informed that he would be spending the night at the Registry's secure transfer facility, [REDACTED]. [REDACTED]. At 22:20, the SPO officers provided Mr Haradinaj with fresh bedding and water and thereafter monitored him overnight.¹⁵

14. At 10:49 on 26 September 2020, Mr Haradinaj was served breakfast, [REDACTED]. [REDACTED].¹⁶ [REDACTED].¹⁷

15. At 12:40, the SPO officers transported Mr Haradinaj by car to the point of custodial transfer [REDACTED].¹⁸ The transfer of custody was initiated at 13:15.¹⁹

II. TRANSFER

16. The transfer of Mr Haradinaj into the custody of the Specialist Chambers was executed by the Registry's mission security coordinator ('MSC'), accompanied by the Registry's escort team. A transport log detailing the transfer process was prepared in real time by the MSC, which is annexed to this report in its original, handwritten form along with a transcription prepared and certified by the MSC.²⁰

17. Prior to transfer, the MSC and escort team members tested negative for COVID-19.²¹ Throughout the transfer, the MSC and the escort team wore facemasks and ensured that Mr Haradinaj was also provided with a facemask and hand sanitiser gel.²² Restraints and tactile surfaces in the aircraft were also cleaned prior to transfer.²³

18. At 13:38, [REDACTED], the MSC explained the transfer process to Mr Haradinaj. [REDACTED].²⁴

¹⁵ Annex 1, Record of Custody (SPO).

¹⁶ Annex 1, Record of Custody (SPO).

¹⁷ Annex 1, [REDACTED].

¹⁸ Annex 1, Record of Custody (SPO).

¹⁹ Annex 1, Record of Custody (SPO); Annex 1, Detainee Transport Log.

²⁰ Annex 1, Detainee Transport Log.

²¹ Annex 1, Detainee COVID Checklist (Transfer).

²² Annex 1, Detainee COVID Checklist (Transfer).

²³ Annex 1, Detainee COVID Checklist (Transfer).

²⁴ Annex 1, Detainee Transport Log; Annex 1, photographs (at point of transfer).

19. At 13:45, the MSC signed for the transfer of custody of Mr Haradinaj from SPO to the Specialist Chambers. The MSC also signed for the transfer of one sealed evidence bag under log number G128852 and a second sealed bag of possessions, documents, and [REDACTED] under log number L00650715.²⁵
20. At 14:12, the airplane departed [REDACTED]. While in transit, Mr Haradinaj was served refreshment.²⁶
21. At 15:10 and 15:11, the Registrar informed the Embassy of the Republic of Kosovo in The Hague and the Swedish Embassy in The Hague that Mr Haradinaj was being transferred to the Detention Facilities in the Host State pursuant to the arrest warrant and transfer order.²⁷
22. At 16:30, the airplane landed [REDACTED].
23. At 16:40, the MSC transferred Mr Haradinaj [REDACTED] into the custody of the Transport and Support Service of the Netherlands ('DV&O'), along with the sealed bag L00650715.²⁸
24. The sealed evidence bag logged under number G128852 was retained by the MSC and delivered directly to the Detention Management Unit ('DMU') of the Registry at 17:05.²⁹
25. At 17:20, DV&O transferred Mr Haradinaj into the custody of the DMU for reception into the Detention Facilities.³⁰ DV&O reported to the MSC that no incidents occurred during transport.
26. The Chief Detention Officer promptly notified the Registrar, who immediately informed the Single Judge³¹ and the Head of the Defence Office in accordance with

²⁵ Annex 1, Transfer of Custody (SPO-Registry).

²⁶ Annex 1, Detainee Transport Log.

²⁷ Notes Verbales, Refs NV2020/0031, NV2020/0031, 26 September 2020.

²⁸ Annex 1, Detainee Transport Log; Annex 1, Request for Transport from Airport and Transfer of Detained Person.

²⁹ Annex 1, Transfer of Custody (SPO-Registry).

³⁰ Annex 1, Request for Transport from Airport and Transfer of Detained Person.

³¹ See Notification of Reception in the Detention Facilities of the Specialist Chambers, KSC-BC-2018-01/F00137, 26 September 2020.

Detention Rule 10, as well as the President and the Ombudsperson. The Registrar also informed the International Committee of the Red Cross.³²

27. Upon arrival at the Detention Facilities in the Host State, Mr Haradinaj was processed in accordance with the Rules of Detention.³³

28. [REDACTED].

29. The Chief Detention Officer conducted an arrival interview with Mr Haradinaj, with the assistance of an interpreter. During the arrival interview, Mr Haradinaj was provided with the information and documentation referenced in Detention Rule 12.3. The Chief Detention Officer confirmed that Mr Haradinaj had received certified copies of the arrest warrant and transfer order in English and Albanian.

30. During the arrival interview, Mr Haradinaj was provided with contact information for his consular offices, [REDACTED]. [REDACTED].

31. From 18:30 until 19:05, the Head of the Defence Office spoke to Mr Haradinaj by video-conference, along with the assistance of an interpreter. The Head of the Defence Office provided Mr Haradinaj with information and documentation concerning the availability of legal assistance pursuant to Detention Rule 12.2 and confirmed that the Administrative Office of DMU had provided Mr Haradinaj with all relevant documents concerning legal aid, as well as a letter explaining his right to counsel, in both English and Albanian.³⁴

32. The Head of the Defence Office also informed Mr Haradinaj that Duty Counsel had been appointed to him by the Registrar, should he wish to consult Duty Counsel at that time. [REDACTED].

33. [REDACTED].

34. [REDACTED].

³² See Agreement between the Kosovo Specialist Chambers and the International Committee of the Red Cross on Visits to Persons Deprived of Liberty Pursuant to the Jurisdiction of the Kosovo Specialist Chambers, 28 January 2019, para. 12(2).

³³ KSC-BC-2018-01/F00137A01.

³⁴ Annex 1, Letter from the Head of the Defence Office, KSC/REG/DEF/0125, 25 September 2020.

35. [REDACTED]. [REDACTED].

III. CLASSIFICATION

36. This report is submitted as strictly confidential and *ex parte* consistent with the classification of KSC-BC-2018-01/F00128, along with one strictly confidential and *ex parte* Annex.

37. The Registrar does not object to the reclassification of the core filing as public, subject to any objections by the SPO; however, it would likely be necessary to redact from any public version of the filing certain confidential [REDACTED] data and other personal details of Mr Haradinaj.

38. The Annex should not be reclassified until the names and initials of SPO officers and Registry staff members are redacted due to the important interests at stake, including the privacy and safety of those individuals, many of whom are involved in ongoing investigative activity and will be involved in future investigative activity, as well as future arrest and transfer operations, if any. Should the Single Judge consider reclassifying the Annex, the Registrar requests the opportunity to submit a public, redacted version of the Annex to the Single Judge or to submit comments on a proposed redacted version of the Annex to the Single Judge.

Word count: 2097



Dr Fidelma Donlon

Registrar

Monday, 14 October 2020

At The Hague, the Netherlands

Explanatory Note: In paragraphs 11, 16, 17, and 23, the name “Mr Haradinaj” has been corrected.