



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

Date: 27 October 2020

Language: English

Classification: **Public**

Decision on Defence Challenges

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THE SINGLE JUDGE,¹ in accordance with Articles 39(3), (13) and 41(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 22 September 2020, the Specialist Prosecutor's Office ("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, *Confidential Redacted Version of the Urgent Request for Arrest Warrants and Related Orders* ("SPO Request for Arrest Warrants"), 1 October 2020, confidential, with Annexes 1-2, public.

³ KSC-BC-2020-07, F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati* ("Arrest Warrant Mr Gucati"), 24 September 2020, public; F00012/A03/COR/RED, Single Judge, *Public Redacted Version of the Corrected Version of Arrest Warrant for Nasim Haradinaj* ("Arrest Warrant Mr 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 29 September 2020, Duty Counsel for Mr Haradinaj (“Defence for Mr Haradinaj”) submitted a request on “Initial appearance, preliminary motion to dismiss the charges and motion for immediate release”.⁸
5. On the same day, Defence Counsel for Mr Gucati (“Defence for Mr Gucati”) submitted three requests challenging the lawfulness of Mr Gucati’s arrest,⁹ and one request for temporary release.¹⁰
6. On 2 October 2020, upon order of the Single Judge,¹¹ the SPO submitted a response to the request of the Defence for Mr Haradinaj.¹²

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

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, public, with Annex 1, confidential.

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, public, with Annex 1, confidential.

⁸ KSC-BC-2020-07, F00030, Defence for Mr Haradinaj, *Initial Appearance, Preliminary Motion to Dismiss the Charges and Motion for Immediate Release* (“Request of Defence for Mr Haradinaj”), 29 September 2020, public.

⁹ KSC-BC-2020-07, F00032, Defence for Mr Gucati, *Challenge to the Lawfulness of the Arrest in Accordance with Article 41(2): Request for Assignment of a New Judge to Determine Challenge* (“First Request of Defence for Mr Gucati”), 29 September 2020, public; F00033, Defence for Mr Gucati, *Challenge to the Lawfulness of the Arrest in Accordance with Article 41(2): Request for Disclosure* (“Second Request of Defence for Mr Gucati”), 29 September 2020, public; F00034, Defence for Mr Gucati, *Challenge to the Lawfulness of the Arrest in Accordance with Article 41(2): The Arrest Warrant Was Issued Without Lawful Authority* (“Third Request of Defence for Mr Gucati”), 29 September 2020, public.

¹⁰ KSC-BC-2020-07, F00038, Defence for Mr Gucati, *Application for Bail*, 29 September 2020, public.

¹¹ KSC-BC-2020-07, First Appearance Mr Haradinaj, 29 September 2020, Official Public Transcript, p. 15, lines 18-22.

¹² KSC-BC-2020-07, F00039, Specialist Prosecutor, *Prosecution Response to Filing KSC-BC-2020-07/F00030* (“SPO Response to Haradinaj Request”), 2 October 2020, public.

7. On 9 October 2020, upon order of the Single Judge,¹³ the SPO submitted a consolidated response to the four requests of the Defence for Mr Gucati.¹⁴
8. The Defence for Mr Haradinaj and the Defence for Mr Gucati (together, the “Defence”) submitted no replies to the SPO responses within the time-limit provided in the Rule 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), nor did the Defence apply for an extension of time.
9. On 20 October 2020, the Defence for Mr Gucati submitted a request seeking an oral hearing before a newly assigned Single Judge and a hearing before a Court of Appeals Panel.¹⁵
10. On 21 October 2020, the SPO responded to the request of the Defence for Mr Gucati for an oral hearing.¹⁶
11. On the same day, the Defence for Mr Gucati submitted a further note in relation to the SPO’s response to the request for oral hearing.¹⁷
12. On 27 October 2020, the Defence for Mr Gucati submitted a further request for an urgent response from the Specialist Chambers to his previous requests for an oral hearing.¹⁸

¹³ KSC-BC-2020-07, First Appearance Mr Gucati, 1 October 2020, Official Public Transcript, p. 7, lines 13-19.

¹⁴ KSC-BC-2020-07, F00045, Specialist Prosecutor, *Consolidated Prosecution Response to Defence Motions Challenging Lawfulness of Arrest and Requesting Release* (“SPO Response to Gucati Requests”), 9 October 2020, public.

¹⁵ KSC-BC-2020-07, F00052, Defence for Mr Gucati, *Request for Oral Hearing*, 20 October 2020, confidential.

¹⁶ KSC-BC-2020-07, F00053, Specialist Prosecutor, *Prosecution Response to Defence Request for an Oral Hearing*, 21 October 2020, confidential.

¹⁷ KSC-BC-2020-07, F00054, Defence for Mr Gucati, *Request for an Oral Hearing: Further Note re Prosecution Response to Defence Request for an Oral Hearing*, 21 October 2020, confidential.

¹⁸ KSC-BC-2020-07, F00056, *Request for an Urgent Response from the Specialist Chambers: Relating to F00052 and F00054*, 27 October 2020, public.

II. SUBMISSIONS

13. Defence for Mr Haradinaj requests the Single Judge to, *inter alia*, determine that the accusations are not within SC jurisdiction, dismiss the charges and provide the Defence with all documents and materials supporting the indictment.¹⁹

14. The SPO submits that the Single Judge should dismiss the request of the Defence for Mr Haradinaj in its entirety.²⁰

15. Defence for Mr Gucati requests the Single Judge to, *inter alia*, end his own assignment in order for a new Judge to hear the Defence's challenges,²¹ order the disclosure of all material and relevant evidence or facts in possession of the SPO,²² and determine the lack of lawful authority of the arrest warrant issued for Mr Gucati.²³

16. The SPO submits that the Single Judge should dismiss all requests of the Defence for Mr Gucati.²⁴

III. APPLICABLE LAW

17. Pursuant to Articles 6(2) and 15(2) of the Law, the Specialist Chambers has jurisdiction over, *inter alia*, Articles 395, 396 and 400 of the 2012 Kosovo Criminal Code, Law No. 04/L-082 ("2012 KCC"). With the entry in force of the 2019 Kosovo Criminal Code, Law No. 06/L-074 ("2019 KCC"), these provisions were respectively renumbered as Articles 387, 388 and 392.

¹⁹ Request of Defence for Mr Haradinaj, p. 8.

²⁰ SPO Response to Haradinaj Request, para. 14.

²¹ First Request of Defence for Mr Gucati, para. 4.

²² Second Request of Defence for Mr Gucati, para. 11.

²³ Third Request of Defence for Mr Gucati, para. 17.

²⁴ SPO Response to Gucati Requests, para. 13.

18. In accordance with Article 33(1)(a) and (2) of the Law, the President of the Specialist Chambers (“President”) assigns, respectively, a Pre-Trial Judge upon the filing of an indictment or a Single Judge to deal with a matter which requires the assignment of a judge other than the Pre-Trial Judge.

19. In accordance with Articles 33(2), 39(3) and (13) of the Law, the Single Judge may issue any orders necessary for the preparation of a fair and expeditious trial.

20. Pursuant to Article 41(6)(a) of the Law, the Specialist Chambers or the Specialist Prosecutor shall only arrest a person when there is grounded suspicion that he or she committed a crime within SC jurisdiction. Pursuant to Article 41(4)(a) of the Law, upon arrest, a person shall be informed promptly, in a language which he or she understands of the reasons for his or her arrest.

21. Pursuant to Article 45(2) of the Law, interlocutory appeals, other than those from decisions or orders relating to detention on remand or preliminary motions challenging SC jurisdiction, must be granted leave to appeal through certification on the basis that it involves an issue which would significantly affect the fair and expeditious conduct of the proceedings and for which, in the opinion of the certifying Panel, an immediate resolution by a Court of Appeals Panel may materially advance the proceedings.

IV. DISCUSSION

A. JURISDICTION OF THE SPECIALIST CHAMBERS

22. The Defence for Mr Haradinaj avers that the Specialist Chambers has no jurisdiction to prosecute Mr Haradinaj, because: (i) “he was arrested [...] to appear

[...] on charges not relating to war crimes”;²⁵ (ii) the SC does not have subject jurisdiction on Article 387 of the Law;²⁶ (iii) the acts covered by Articles 387, 388 and 392 of the Kosovo Criminal Code fall outside the SC’s temporal jurisdiction, as provided in Article 7 of the Law;²⁷ and (iv) the alleged acts of Mr Haradinaj do not relate to SC official proceedings and officials.²⁸ The SPO responds that Articles 6(2) and 15(2) of the Law provide that the SC has jurisdiction over certain offences relating to the administration of justice, including Articles 387, 388 and 392, as renumbered in the 2019 KCC.²⁹ The SPO further submits that, as such offences must relate to SC or SPO official proceedings and officials, the temporal jurisdiction for such crimes necessarily extends beyond the time period set out in Article 7 of the Law.³⁰ Furthermore, the SPO argues that its investigations and prosecutions constitute criminal proceedings for the purpose of Articles 387 and 392 of the 2019 KCC.³¹

23. In relation to the subject matter jurisdiction of the Specialist Chambers, the Single Judge recalls that Article 6 of the Law confers jurisdiction to the SC on crimes against humanity (Article 13 of the Law), war crimes (Article 14 of the Law), other crimes under Kosovo law (Article 15(1) of the Law) as well as specifically indicated offences against the administration of justice, where they relate to “official proceedings and officials of the Specialist Chambers, the Registry and the Specialist Prosecutor’s Office” (Article 15(2) of the Law).

²⁵ Request of Defence for Mr Haradinaj, p. 2.

²⁶ Request of Defence for Mr Haradinaj, p. 6. The Single Judge assumes that Defence for Mr Haradinaj was in fact referring to Article 387 of the Kosovo Criminal Code.

²⁷ Request of Defence for Mr Haradinaj, p. 6.

²⁸ Request of Defence for Mr Haradinaj, p. 4.

²⁹ SPO Response to Haradinaj Request, para. 3.

³⁰ SPO Response to Haradinaj Request, para. 3.

³¹ SPO Response to Haradinaj Request, para. 5.

24. In relation to the provisions indicated in Articles 6(2) and 15(2) of the Law, the Single Judge notes that the listed numbers refer to the 2012 KCC, in force at the time the Law was adopted. The 2019 KCC, which entered into force on 14 April 2019,³² renumbered those provisions.³³ Given that the legislator clearly intended to confer jurisdiction over these offences to the Specialist Chambers and in compliance with the principle that persons must be prosecuted and punished in accordance with the law applicable at the time the alleged offences were committed,³⁴ the current proceedings rest on Articles 387, 388 and 392 of the 2019 KCC.

25. In relation to the temporal jurisdiction of the Specialist Chambers, the Single Judge recalls that the offences listed in Articles 6(2) and 15(2) of the Law relate to officials or official proceedings of the SC or SPO and must therefore relate to events subsequent to the creation of these institutions. Hence, the temporal jurisdiction of the Specialist Chambers extends beyond the scope of Article 7 of the Law, in so far as offences against the administration of justice are concerned.

26. In relation to the alleged acts of Mr Haradinaj and their relation to SC official proceedings, the Single Judge recalls that the Suspects are alleged to have publicised and disseminated confidential and non-public documents relating to SPO investigations.³⁵ The Single Judge reiterates his finding that SPO investigations constitute official proceedings for the purpose of offences under Article 15(2) of the Law.³⁶

³² See Article 434 of the 2019 KCC, published in the *Official Gazette of the Republic of Kosovo*, No. 2, 14 January 2019, Pristina.

³³ Articles 384-386, 388, 390-407, 409-411, 415, 417, 419, 421 and 423-424 of the 2012 KCC have become Articles 376-378, 380, 382-399, 401-403, 407, 409, 411, 413 and 416-417 of the 2019 KCC.

³⁴ Article 33(2) and (4) of the Kosovo Constitution.

³⁵ KSC-BC-2020-07, F00012, Single Judge, *Decision on Request for Arrest Warrants and Transfer Orders* ("Decision on Arrest Warrants"), 24 September 2020, public, paras 21, 26 and 29.

³⁶ It is further recalled that the 2019 KCC and the Kosovo Criminal Procedure Code of 2012, Law No. 04/L-123 ("KCPC") explicitly include prosecutorial investigations within the scope of "official

27. In light of the foregoing, the Single Judge finds the aforementioned challenges regarding jurisdiction without merit.

B. THE ISSUANCE OF ARRESTS PRIOR TO THE SUBMISSION OF AN INDICTMENT

28. The Defence for Mr Gucati submits that, in accordance with Article 39(3) of the Law and Rule 85(1) of the Rules: (i) the arrest and transfer of a person to the Specialist Chambers can only arise after an indictment has been filed;³⁷ and (ii) only a Pre-Trial Judge can issue an arrest warrant.³⁸ The SPO responds that the Law and the Rules provide for the arrest, transfer, and detention of persons prior to confirmation of an indictment.³⁹

29. In relation to the arrest of a person by the Specialist Chambers prior to the submission of an indictment, the Single Judge notes that nothing in the wording of Article 41 of the Law suggests that the arrest of a person is conditional upon the submission or confirmation of an indictment. In fact, the threshold required by Article 41(6)(a) of the Law for arresting a person (grounded-suspicion) is different from the threshold set out in Article 38(4) of the Law (well-grounded suspicion) for the submission of an indictment. Considering the definitions of these terms in the KCPC,⁴⁰ the Single Judge underlines that “well-grounded suspicion” is necessarily

proceedings”. Article 376 of the 2019 KCC defines “official proceedings” as including criminal proceedings defined in the KCPC. Article 6(2) of the KCPC provides that “[c]riminal proceedings shall only be initiated upon the decision of a state prosecutor that reasonable suspicion exists that a criminal offence has been committed”. Article 101 of the KCPC regulates the “[i]nitiation of Criminal Proceedings by Investigative Stage, or Indictment”. *See also* Decision on Arrest Warrants, paras 17, 26, footnote 44.

³⁷ Third Request of Defence for Mr Gucati, para. 7.

³⁸ Third Request of Defence for Mr Gucati, paras. 6, 9, 11, 13-15.

³⁹ SPO Response to Gucati Requests, para. 2.

⁴⁰ According to Article 19.1.12 of the KCPC, well-grounded suspicion is reached when the evidence “would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence”. According to Article 19.1.9 CPC, grounded suspicion is reached when the

more onerous than “grounded suspicion” and, as a result, a person may be arrested by the Specialist Chambers without an indictment being submitted against him or her. This is further confirmed by other provisions of the Law and the Rules. In particular, Article 39(4) of the Law provides for the arrest of an indicted person “if not already detained”. Rule 57(1) of the Rules sets out the review process and length of detention prior to the assignment of a Pre-Trial Judge. The Specialist Chamber of the Constitutional Court found no inconsistency between Rule 57(1) of the Rules and the Constitution.⁴¹ Furthermore, Article 35(2)(h) of the Law permits the Specialist Prosecutor to arrest a person under specific conditions “during the investigative stage” and Article 41(3) of the Law allows for the detention of such a person to be extended by a Specialist Chambers Judge. Consequently, the arrest of a person prior to the submission of an indictment is expressly permitted under the SC legal framework, as long as the threshold in Article 41(1)(a) of the Law is reached.

30. In relation to the competence for issuing an arrest warrant, the Single Judge recalls that, pursuant to Article 33(1)(a) of the Law, a Pre-Trial Judge is assigned only upon the filing of an indictment and that such an assignment elapses 30 days after the Trial Panel is constituted, or later if circumstances so require. This necessarily means that the arrest of a person outside the period of assignment of a Pre-Trial Judge would have to be ordered and/or reviewed by another SC Judge. Prior to the submission of an indictment, such a Judge would necessarily be a Single Judge assigned pursuant to Article 33(2) of the Law. The Law and the Rules confirm this understanding and refer

knowledge of information “would satisfy an objective observer that the person concerned is more likely than not to have committed the offence”.

⁴¹ KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office*, 26 April 2017, public, para. 123; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020*, 22 May 2020, public, paras 64-68.

to “Specialist Chambers” (Articles 41, 53(3) of the Law; Rule 55(4) of the Rules), “Panel”⁴² (Rules 48(2), 53(1), 54, 56 of the Rules) and “Single Judge” (Rule 57(1) of the Rules) when conferring judicial authority in relation to arrests. Consequently, the Law and the Rules do not limit competence for issuing an arrest warrant to the Pre-Trial Judge.

31. In light of the foregoing, the Single Judge finds the aforementioned challenges regarding the issuance of arrests prior to the submission of an indictment without merit.

C. THE ASSIGNMENT OF THE SINGLE JUDGE

32. The Defence for Mr Gucati submits that, in accordance with Article 33(1)(a), (2) of the Law, the assignment of the Single Judge is temporary in nature and a new Judge should be assigned to determine the pending challenges against arrest.⁴³ The SPO responds that the decision of the President assigning the Single Judge explicitly envisaged the issuance of, *inter alia*, arrest warrants and transfer orders and that such assignment continues to encompass all matters prior to the filing of an indictment, including the pending challenges against arrest.⁴⁴

33. At the outset, the Single Judge recalls the decision of the President assigning a Single Judge pursuant to Article 33(2) of the Law (“Assignment Decision”),⁴⁵ according to which the purpose of Articles 25(1)(f) and 33(2) of the Law is to capture those instances where an individual Judge needs to be assigned to deal with a specific

⁴² Rule 2(1) of the Rules define Panel as “[a]ny panel or individual judge assigned in accordance with Article 25(1) and 33 of the Law, unless otherwise specified”.

⁴³ First Request of Defence for Mr Gucati, paras 3-5.

⁴⁴ SPO Response to Gucati Requests, para. 2.

⁴⁵ KSC-BC-2020-07, F00003, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law* (“Assignment Decision”), 29 May 2018, public.

matter without the conditions for the assignment of a Pre-Trial Judge under Article 33(1)(a) of the Law having been triggered.⁴⁶ The Assignment Decision defined the matter triggering the assignment of the Single Judge as “any request for judicial authorisation submitted by the Specialist Prosecutor prior to the filing of an indictment”,⁴⁷ and, in order to ensure expeditiousness and efficiency, it further indicated that the Single Judge would be competent to consider all such future requests and related matters.⁴⁸ In this regard, the Assignment Decision specifically contemplated, *inter alia*, the issuing of arrest warrants, summonses, decisions or other orders, pursuant to Articles 39 and 41 of the Law.⁴⁹ Consequently, the issuing of the arrest warrants against the Suspects as well as the determination of the present challenges to their lawfulness falls under the competence of the Single Judge, as provided in the Assignment Decision.

34. In light of the foregoing, the Single Judge finds the aforementioned challenges regarding the competence of the Single Judge without merit.

D. INFORMATION AND MATERIAL PROVIDED TO THE DEFENCE

35. The Defence submits that all material and evidence relevant to the Suspects should be disclosed in order to (i) supplement insufficient information received upon arrest;⁵⁰ and (ii) allow the Defence to challenge the arrest.⁵¹ The SPO responds that the arrest warrants fully informed the Suspects of the reasons for their arrest and provided

⁴⁶ Assignment Decision, para. 11.

⁴⁷ Assignment Decision, para. 15.

⁴⁸ Assignment Decision, para. 16.

⁴⁹ Assignment Decision, para. 13.

⁵⁰ Request of Defence for Mr Haradinaj, pp. 3-4, 8; Second Request of Defence for Mr Gucati, para. 7.

⁵¹ Request of Defence for Mr Haradinaj, pp. 4-5, 8; Second Request of Defence for Mr Gucati, paras 6, 8-11.

the Defence sufficient information to challenge the lawfulness of the arrest.⁵² The SPO adds that its request for arrest warrants and complete supporting material have been disclosed,⁵³ with further reclassifications being in process.⁵⁴

36. In relation to the information received by the Suspects upon arrest, the Single Judge recalls that, in accordance with Article 41(4)(a) of the Law and Rule 53(2) of the Rules, the arrest warrants contained detailed information of the Suspects' conduct in relation to the offences allegedly committed and the necessity for arrest, including a specific reference to the offences and concise statement of the facts which are alleged to constitute those offences.⁵⁵ Consequently, the arrest warrants were formally in compliance with Article 41(4)(a) of the Law and contained sufficient information to enable the Suspects to challenge their arrest.

37. In relation to the subsequent disclosure of documents relevant to the arrest and detention of the Suspects, the Single Judge notes that both the SPO request for arrest warrants with its annexes containing, *inter alia*, the transcript of the aforementioned press conferences, and the Single Judge's decision on the arrest warrants have been disclosed to the Defence within their respective time-limit for replies.⁵⁶ To date, all filings relevant for the arrest, transfer and detention of the Suspects have been disclosed to the Defence in redacted copies or through reclassification.⁵⁷ Consequently, the Single Judge finds that the Defence has been informed in a timely

⁵² SPO Response to Haradinaj Request, para. 2; SPO Response to Gucati Requests, para. 3.

⁵³ SPO Response to Haradinaj Request, para. 2; SPO Response to Gucati Requests, para. 3.

⁵⁴ SPO Response to Haradinaj Request, para. 2.

⁵⁵ Arrest Warrant Mr Gucati, paras. 1-6; Arrest Warrant Mr Haradinaj, paras 1-6.

⁵⁶ The SPO Request for Arrest Warrants (F00009 with annexes F00009/A01 and F00009/A02) was disclosed to the Defence in a confidential redacted version on 1 October 2020. The Decision on Arrest Warrants (F00012) was reclassified as public on 9 October 2020.

⁵⁷ KSC-BC-2020-07, F00036, Single Judge, *Order for Submissions on the Reclassification of Filings*, 30 September 2020, confidential.

manner of all documents relevant for the arrest and was able to make submissions in this regard.

38. In light of the foregoing, the Single Judge finds the aforementioned challenges regarding the information and material provided to the Defence without merit.

E. VIOLATIONS OF THE CONSTITUTION

39. The Defence for Mr Haradinaj submits that the arrest and detention of Mr Haradinaj infringed his constitutional rights to freedom of expression, freedom of media, freedom of gathering and freedom of association and the principle of proportionality under Article 33(3) of the Constitution.⁵⁸ The SPO responds that the Defence for Mr Haradinaj mistakenly relies on Articles 40-44 of the Constitution and that the freedoms expressed therein are subject to necessary limitations in accordance with the law.⁵⁹

40. The Single Judge notes that, in accordance with Articles 40(2), 41(2), 43, 44(3) and 55 of the Constitution, fundamental rights and freedoms, including those related to freedom of expression, freedom of media, freedom of gathering and freedom of association, may be limited by law. The prohibition of certain conduct by Articles 387, 388 and 392 of the 2019 KCC may limit some of the aforementioned freedoms with a view to protecting the administration of justice, including the security and confidentiality of criminal proceedings and the safety and security of witnesses. The arrest warrant against Mr Haradinaj was issued pursuant to Article 41(6) of the Law in relation to alleged acts criminalised by the aforementioned provisions. The Single

⁵⁸ Request of Defence for Mr Haradinaj, p. 2.

⁵⁹ SPO Response to Haradinaj Request, para. 6.

Judge further notes that Article 33(3) of the Constitution is inapplicable at this stage of proceedings, as no final decision determining punishment has been issued.

41. In light of the foregoing, the Single Judge finds the aforementioned challenges regarding the violation of the rights of Mr Haradinaj without merit.

F. STAGE OF PROCEEDINGS

42. The Defence for Mr Haradinaj submits that the information provided in the arrest warrant does not meet the requirements of Rule 86(3) of the Rules and the Single Judge should therefore dismiss the charges.⁶⁰ The SPO responds that insofar as Defence submissions are premised on inapplicable provisions consequential to submission or confirmation of an indictment, they should be summarily dismissed.⁶¹

43. The Single Judge underlines that, to date, no indictment has been submitted against the Suspects. As noted above, their arrest was ordered pursuant to Article 41(6) of the Law on grounded suspicion of having committed offences under Article 15(2) of the Law. Provisions of the Law and the Rules related to the submission or confirmation of an indictment are not applicable at this stage of the proceedings. Consequently, the Single Judge shall not consider the aforementioned arguments any further.

44. In light of the foregoing, the Single Judge dismisses the submissions of the Defence for Mr Haradinaj regarding the indictment and the charges.

⁶⁰ Request of Defence for Mr Haradinaj, p. 4, 5, 8.

⁶¹ SPO Response to Haradinaj Request, para. 2.

G. REQUEST FOR AN ORAL HEARING

45. The Defence for Mr Gucati requests the President to, *inter alia*, assign a new Judge for a hearing to determine Mr Gucati's motions challenging the lawfulness of his arrest, transfer and detention, and bail.⁶² The SPO responds that convening a further hearing at this stage is unnecessary and would only result in delay and repetition.⁶³

46. In relation to the assignment of a new Judge, the Single Judge refers to his aforementioned findings regarding competence.⁶⁴

47. In relation to the need for an oral hearing, the Single Judge finds that, having issued the present decision, such a hearing is not necessary. The Defence may seek certification of this decision or parts thereof before the Single Judge, pursuant to Article 45(2) of the Law and Rule 77 of the Rules.

V. DISPOSITION

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

DENIES all aforementioned Defence requests.



Judge Nicolas Guillou
Single Judge

Dated this Tuesday, 27 October 2020

At The Hague, the Netherlands.

⁶² See *supra* footnote 15, paras 5-7.

⁶³ See *supra* footnote 16, para. 1.

⁶⁴ See *supra* paras 32-34.