



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: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 18 December 2020

Language: English

Classification: **Public**

Decision Approving the Withdrawal of Counsel

Specialist Prosecutor
Jack Smith

Counsel for Hysni Gucati
Jonathan Elystan Rees
Huw Bowden

Counsel for Nasim Haradinaj
Bastiaan Martens
Hendrik Sytema

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) and (13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Section 16(1) of the Directive on Counsel, hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 2 December 2020, the Registrar notified the Pre-Trial Judge of the appointment of Bastiaan Martens ("Mr Martens") as Counsel to Nasim Haradinaj ("Mr Haradinaj").²

2. On 17 December 2020, the Registrar notified the Pre-Trial Judge of the approval of Co-Counsel for Mr Haradinaj, namely Hendrik Sytema ("Mr Sytema").³

3. On 17 December 2020, the Registrar notified the Pre-Trial Judge that Mr Martens expressed his intention to withdraw from the representation of Mr Haradinaj, further to the latter's request to do so.⁴ The Registrar therefore requests the Pre-Trial Judge to approve the early termination of the services of Mr Martens as Counsel for Mr Haradinaj ("Request").⁵ The Registrar further notes that Mr Haradinaj has requested that Toby Cadman ("Mr Cadman") be appointed as Counsel and that Mr Cadman has already submitted a request for appointment in this regard.⁶ Furthermore, the Registrar submits that, upon notification of the Pre-Trial Judge's approval of Mr Martens' withdrawal, the Registrar intends to appoint immediately Mr Cadman as Counsel for Mr Haradinaj and make a filing to that effect.⁷

¹ KSC-BC-2020-07, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public.

² KSC-BC-2020-07, F00071, Registrar, *Notification of the Appointment of Counsel to Nasim Haradinaj*, 2 December 2020, public, with Annex 1, confidential.

³ KSC-BC-2020-07, F00082, Registrar, *Notification of Approval of Co-Counsel for Nasim Haradinaj*, 17 December 2020, public, with Annex 1, confidential.

⁴ KSC-BC-2020-07, F00083, Registrar, *Notification of Request for Withdrawal by Counsel for Nasim Haradinaj* ("Request"), 17 December 2020, confidential.

⁵ Request, para. 1.

⁶ Request, paras 2-3.

⁷ Request, para. 7.

II. APPLICABLE LAW

4. Pursuant to Article 21(4)(e) of the Law, an Accused has the right to defend himself or herself through Specialist Counsel of his own choosing. Pursuant to Article 21(5)(a) of the Law, an Accused must be represented by Specialist Counsel throughout the time he or she is in detention.

5. Pursuant to Article 39(1) and (13) of the Law, the Pre-Trial Judge may issue any orders or decisions as may be necessary for the preparation of a fair and expeditious trial.

6. Pursuant to Section 16(1) of the Directive on Counsel,⁸ when considering the early termination of representation by Specialist Counsel of an Accused, the Registrar shall have due regard to the importance of continuity of representation and shall obtain the approval of the Panel seized of the matter in which Counsel is acting.

III. DISCUSSION

7. The Pre-Trial Judge takes note of Mr Haradinaj's stated preference no longer to be represented by Mr Martens and to have Mr Cadman appointed to represent him.⁹

8. Mindful of Mr Haradinaj's rights under Article 21(4)(e) and (5)(a) of the Law and the purpose of Section 16(1) of the Directive on Counsel to ensure the continuity of representation, the Pre-Trial Judge considers that a request for the early termination of services of Mr Martens may be approved if it does not interfere with the effective representation of Mr Haradinaj.

⁸ KSC-BD-04, Registrar, *Directive on Counsel*, 6 November 2017.

⁹ Request, para. 2.

9. Taking into account the early stage of proceedings,¹⁰ the recent approval of Co-Counsel for Mr Haradinaj and the Registrar's stated commitment to ensure the continuity of representation by appointing Mr Cadman immediately upon approval of the Request, the Pre-Trial Judge considers that the effective representation of Mr Haradinaj is ensured.

10. For the above reasons, the Pre-Trial Judge approves the Request.

11. Mr Martens is reminded of his continuing obligations under Article 25 of the Code of Professional Conduct.¹¹

12. Finally, the Registrar is ordered to submit a public version of F00083 with the necessary redactions.

IV. DISPOSITION

13. In light of the foregoing, the Pre-Trial Judge hereby:

- a) **APPROVES** the Request for the early termination of the services of Mr Martens;
- b) **DIRECTS** the Registrar to appoint immediately upon the notification of this decision Mr Cadman as Counsel for Mr Haradinaj;
- c) **DIRECTS** the Registrar to submit a notice to the Pre-Trial Judge of the aforementioned appointment by **Friday, 18 December 2020**; and
- d) **ORDERS** the Registrar to submit a public redacted version of F00083 by **Friday, 18 December 2020**.

¹⁰ An indictment against Mr Haradinaj was confirmed on 11 December 2020 and he is due to have his initial appearance on 18 December 2020. See KSC-BC-2020-07, F00074, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 11 December 2020, strictly confidential and *ex parte*; F00075/A02, Specialist Prosecutor, *Redacted Indictment*, 14 December 2020, public; F00081, Pre-Trial Judge, *Second Decision Rescheduling the Initial Appearances of Mr Gucati and Mr Haradinaj*, 17 December 2020, public.

¹¹ KSC-BD-07, Registrar, *Code of Professional Conduct*, 1 March 2019.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 18 December 2020
At The Hague, the Netherlands.