



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

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

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 26 February 2021

**Language:** English

**Classification:** Confidential

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**Prosecution response to the Haradinaj Defence request for information  
concerning diplomatic briefings**

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**Specialist Prosecutor's Office**

Jack Smith

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Jonathan Elystan Rees

**Counsel for Mr Haradinaj**

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1. Pursuant to the Pre-Trial Judge's order,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') hereby responds to the Haradinaj Defence request for information relating to certain diplomatic briefings.<sup>2</sup>
2. The SPO was not represented at the 11 February 2021 briefing at the centre of the Haradinaj Defence disclosure request<sup>3</sup> and is not in possession of any records relevant thereto. Regardless, the Haradinaj Defence fails to provide any valid reason warranting the disclosure of the requested information from any entity, instead basing its request entirely on speculative grounds.
3. The requested information concerns briefings and other activities that fall squarely within the President's administrative functions, as set out in the Law<sup>4</sup> and Rules.<sup>5</sup> The President's exercise of such administrative functions – which are integral to the operation of the Specialist Chambers and are necessarily protected by confidentiality<sup>6</sup> – is distinct from her judicial role and is not capable, in and of itself, of giving rise to any appearance of impartiality,<sup>7</sup> as baselessly asserted by the Haradinaj Defence.<sup>8</sup> Accordingly, as the information requested is irrelevant to the charges against Hysni GUCATI and Nasim HARADINAJ and the integrity of these proceedings, the request should be rejected in its entirety.

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<sup>1</sup> Transcript, Public, 24 February 2021, p.128.

<sup>2</sup> Defence Submissions Following Order Setting the Date for the Second Conference and Related Matters (KSC-BC-2020-07/F00129), KSC-BC-2020-07/F00138, Confidential, 23 February 2021 ('Haradinaj Defence Submissions'), paras 43-54.

<sup>3</sup> Haradinaj Defence Submissions, KSC-BC-2020-07/F00138, paras 44-45.

<sup>4</sup> Article 32(3) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>5</sup> Rule 13 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>6</sup> See, similarly, ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-A, Decision on Motion to Preserve and Provide Evidence, 22 April 1999, p.4.

<sup>7</sup> ICTY, *Prosecutor v. Krajišnik*, IT-00-39-AR73.2, Order on Defence Motion that His Honour Judge Meron Not Sit on an Appeal, 1 September 2006, Annex: Report to the Vice-President Pursuant to Rule 15(B)(ii) Concerning Decision on Defence Motion that Judge Meron Not Sit on an Appeal, pp.4-5; ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-AR11bis.1, Order on Second Motion to Disqualify President and Vice-President from Appointing Judges to Appeal Bench and to Disqualify President and Judge Meron from Sitting on Appeal, 11 May 2007, paras 7-8.

<sup>8</sup> Haradinaj Defence Submissions, KSC-BC-2020-07/F00138, paras 48, 50, 53.

4. Pursuant to Rule 82(4), this response is confidential. The SPO does not object to its reclassification as public.

**Word count: 409**



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**Jack Smith**

**Specialist Prosecutor**

Friday, 26 February 2021

At The Hague, the Netherlands.