



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: 10 June 2021

Language: English

Classification: Public

Order for Submissions on the Reclassification of Filings

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THE PRE-TRIAL JUDGE,¹ in accordance with Articles 21(2) and 39(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following order.

I. PROCEDURAL BACKGROUND

1. On 22 September 2020, the 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,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, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public. Prior to this decision, the President had assigned the same Judge as Single Judge, see 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, *Public Redacted Version of 'Urgent Request for Arrest Warrants and Related Orders' Filing KSC-BC-2020-07-F0009 Dated 22 September 2020*, 1 October 2020, public, para. 35, with Annexes 1-2, public.

³ KSC-BC-2020-07, F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020, public; F00012/A03/COR/RED, Single Judge, *Public Redacted Version of the Corrected Version of Arrest Warrant for Nasim 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, Mr Gucati and Mr Haradinaj 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 and 1 October 2020, Mr Haradinaj and Mr Gucati, respectively, made their first appearances.⁸
5. On 9 June 2021, the Pre-Trial Judge informed the Parties that transmission of the case file to the Trial Panel is anticipated to take place on 2 July 2021.⁹

II. APPLICABLE LAW

6. Pursuant to Articles 21(2) and 39(6) of the Law, hearings shall be public, unless the competent Judge decides otherwise in accordance with the Rules.
7. Pursuant to Rule 82(5) of the Rules, where the basis for reclassification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

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, F00023, Single Judge, *Decision Setting the Date for the First Appearance of Nasim Haradinaj*, 28 September 2020, public; F00029, Single Judge, *Decision Setting the Date for the First Appearance of Hysni Gucati*, 29 September 2020, public.

⁹ KSC-BC-2020-07, F00224, Pre-Trial Judge, *Revised Calendar for the Remainder of the Pre-Trial Proceedings and Order Setting the Date for the Sixth Status Conference*, 9 June 2021, public.

III. DISCUSSION

8. The Pre-Trial Judge considers it is necessary to review the classification of certain filings in the case file, in order to adhere to the principle of publicity of proceedings, which extends beyond hearings in the courtroom to cover filings and any other submissions in the case file.

9. In so doing, regard must be paid, on the one hand, to the principle of publicity, as enshrined under Articles 21(2) and 39(6) of the Law, and the duty of the Pre-Trial Judge to provide for the protection of victims and witnesses, including their safety, physical and psychological well-being, dignity and privacy, as stipulated by Article 23(1) of the Law.

10. Consequently, the Pre-Trial Judge has the responsibility to ensure that any given filing in the case file bears the appropriate classification and may, accordingly, reclassify any filing *proprio motu* or upon request, should the basis for the current classification no longer exist.

11. Given the aforementioned considerations, it is appropriate, at this stage, to request the Specialist Prosecutor to file public redacted versions of the following confidential filings or indicate whether they can be reclassified as public, or whether their current classification must be retained:

- F00180, 9 April 2021;
- F00180/A01, 9 April 2021;
- F00197, 11 May 2021;
- F00202, 18 May 2021;
- F00209/A01, 26 May 2021;
- F00215, 3 June 2021;

- F00218, 4 June 2021; and
- F00223, 8 June 2021.

12. Should the Specialist Prosecutor wish to retain the current classification of some or all the above-mentioned filings, he shall specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed.

13. It is also appropriate, at this stage, to request the Defence for Mr Gucati and the Defence for Mr Haradinaj, as the case may be, to file public redacted versions of the following confidential filings or indicate whether they can be reclassified as public, or whether their current classification must be retained:

- F00186, 21 April 2021;
- F00198, 11 May 2021;
- F00199, 11 May 2021;
- F00200, 11 May 2021;
- F00211, 26 May 2021, including annex;
- F00216, 3 June 2021;
- F00217, 3 June 2021;
- F00219, 4 June 2021; and
- F00220, 7 June 2021.

14. Should the Defence for Mr Gucati or the Defence for Mr Haradinaj wish to retain the current classification of the above-mentioned filings, counsel shall specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed.

IV. DISPOSITION

15. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **REQUESTS** that the Specialist Prosecutor submit public redacted versions, request reclassification as public, or submit reasons for maintaining the current classifications of the documents referenced in paragraph 11, above, by **21 June 2021**; and
- b. **REQUESTS** that the Defence for Mr Gucati and the Defence for Mr Haradinaj, as the case may be, submit public redacted versions, request reclassification as public, or submit reasons for maintaining the current classifications of the documents referenced in paragraph 13, above, by **25 June 2021**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 10 June 2021

At The Hague, the Netherlands.