



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:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 8 February 2022

**Language:** English

**Classification:** Public

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**Decision on the Application for Reclassification of F00500**

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**Specialist Prosecutor**

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**TRIAL PANEL II** ("Panel"), pursuant to Article 40(6)(d) and (f) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 82(5) and 84 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 16 December 2021, the Defence for Nasim Haradinaj ("Haradinaj Defence") filed its submissions for detention review ("F00500").<sup>1</sup>
2. On 21 December 2021, the Panel rendered its decision on the review of detention of Mr Haradinaj ("F00507"). Therein, the Panel *inter alia* ordered the Haradinaj Defence to file, by 24 January 2022, a public redacted version of F00500, taking into consideration the public redacted version of F00507.<sup>2</sup>
3. On 24 January 2022, the Haradinaj Defence failed to submit the public redacted version of F00500 requested by the Panel.
4. On 28 January 2022, the Panel reiterated its order to the Haradinaj Defence to file a public redacted version of F00500 by 31 January 2022.<sup>3</sup>
5. On 31 January 2022, the Haradinaj Defence filed an application for reclassification of F00500 to public ("Application").<sup>4</sup>
6. On 1 February 2022, the Specialist Prosecutor's Office ("SPO") responded to the Application ("Response").<sup>5</sup>

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<sup>1</sup> F00500, Haradinaj Defence, *Defence Submission on Detention* ("F00500"), 16 December 2021, confidential.

<sup>2</sup> F00507, Panel, *Decision on Review of Detention of Nasim Haradinaj* ("F00507"), 21 December 2021, confidential, para. 92[12](d). *See also* F00507/RED.

<sup>3</sup> Transcript, 28 January 2022, p. 3374 (Order for Public Redacted Versions of F00499 and F00500).

<sup>4</sup> F00544, Haradinaj Defence, *Haradinaj Defence Application for Reclassification of F00500* ("Application"), 31 January 2022.

<sup>5</sup> F00545, Specialist Prosecutor, *Prosecution Response to Haradinaj Defence Reclassification Request* ("Response"), 1 February 2022.

7. The Haradinaj Defence submitted no reply.

## II. SUBMISSIONS

8. The Haradinaj Defence submits that the redaction regime applied in F00507 only expunged information related to the mitigating measures that the Kosovo Police proposed to enforce in the event of Mr Haradinaj's provisional release.<sup>6</sup> The Haradinaj Defence argues that F00500 does not refer to any such mitigating measures proposed by the Kosovo Police.<sup>7</sup> On this basis, the Haradinaj Defence requests the Panel to reclassify F00500 as public.<sup>8</sup>

9. The SPO responds that, in requesting reclassification of F00500, the Haradinaj Defence has not complied with the Panel's directions.<sup>9</sup> The SPO submits that, contrary to the assertion of the Haradinaj Defence, F00500 contains non-public matters (such as names of individuals) which have been duly redacted in related filings and not mentioned by the Panel in F00507.<sup>10</sup> On this basis, the SPO requests the Panel to reject the Application and to direct again the Haradinaj Defence to file a public redacted version of F00500.<sup>11</sup>

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<sup>6</sup> Application, para. 4.

<sup>7</sup> Application, para. 5.

<sup>8</sup> Application, para. 5.

<sup>9</sup> Response, para. 1.

<sup>10</sup> Response, para. 2 referring to F00507/RED, para. 80; F00490/RED, Specialist Prosecutor, *Public redacted version of Prosecution consolidated submissions for review of detention* ("F00490/RED"), with one annex, 21 January 2022, para. 24; F00499/RED, Gucati Defence, *Public Redacted Version of Defence Submissions on the Kosovo Police and Registry Reports and on Detention Review* ("F00499/RED"), 31 January 2022, paras 27-30.

<sup>11</sup> Response, para. 3.

### III. APPLICABLE LAW

10. Pursuant to Rule 82(5) of the Rules, where the basis for the classification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification.

11. Pursuant to Rule 84 of the Rules, the Panel shall on an ongoing basis review the classification of records of proceedings and evidence and, where applicable, order their reclassification.

### IV. DISCUSSION

12. As a preliminary remark, the Panel observes that the Haradinaj Defence remains the only Party which, to this date, failed to comply with the Panel's order issued on 21 December 2021, and reiterated on 28 January 2022.<sup>12</sup>

13. As regards the merits of the Application, the Panel notes that F00500 references names and other identifying information of individuals referred to by the SPO in the context of submissions regarding the effective enforcement of certain detention-related measures.<sup>13</sup> While the SPO relies on information from open source materials to make these submissions, the implication it advances regarding these individuals and the enforcement of certain detention-related measures is one which has not been made public in the course of these proceedings. In this regard, the Panel draws the attention of the Haradinaj Defence to the fact that both the Gucati Defence and the SPO redacted, from the public redacted versions of their respective filings, identifying information of the individuals named therein.<sup>14</sup>

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<sup>12</sup> See F00507, para. 92[12](d); Transcript, 28 January 2022, p. 3374 (Order for Public Redacted Versions of F00499 and F00500).

<sup>13</sup> F00490/RED, para. 24.

<sup>14</sup> F00499/RED, paras 28-30; F00490/RED, paras 24, 26, 28.

14. The Panel agrees with the SPO that redacting these names and identifying information would protect these individuals from unnecessary and excessive public scrutiny, and such redaction is therefore necessary and reasonable.

15. On this basis, the Panel denies the Application and orders the Haradinaj Defence to file a public redacted version of F00500, taking into consideration the public redacted versions of F00490, F00499 and F00507 as well as the above findings.

## V. DISPOSITION

16. For these reasons, the Panel:

- a. **DENIES** the Application; and
- b. **ORDERS** the Haradinaj Defence to file a public redacted version of F00500 by 14 February 2022 in compliance with paragraph 15 of the present decision.



**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Tuesday, 8 February 2022

At The Hague, the Netherlands