

In: KSC-CA-2022-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: A Panel of the Court of Appeals Chamber

Judge Michèle Picard

Judge Kai Ambos

Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

Date: 30 December 2022

Language: English

Classification: Public with one Public Redacted Annex and One Confidential Annex

Publicly Redacted Version of Supplement to Haradinaj Request of 11 December 2022 (F00098) with One Public Annex and One Confidential Annex

Specialist Prosecutor

Alex Whiting

Matthew Halling

Counsel for Nasim Haradinaj

Toby Cadman

Almudena Bernabeu

John Cubbon

Counsel for Hysni Gucati

Jonathan Elystan Rees KC

Huw Bowden

Eleanor Stephenson

I. INTRODUCTION

1. On 11 December the Defence for Nasim Haradinaj (“Haradinaj Defence”) filed “Haradinaj Request for Order to the SPO to Release Video Recordings”¹ in which it sought, *inter alia*, an order directing the Specialist Prosecutor’s Office (“SPO”) to confirm whether there were any further contact notes, transcript of interview or other information in its custody, control or actual knowledge, that detailed [REDACTED] having contact with, or making reference to, representatives of the SPO (or the Specialist Chambers) and an order directing, if any such information was in the possession of the SPO, that this information be disclosed upon the defence without further delay.² On 13 December 2022 the Prosecution responded³ and the Haradinaj Defence replied on 16 December 2022.⁴
2. On 16 December 2022 in the case of *Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Kadri Veseli filed “Further Redacted Public Redacted Version of Veseli Defence Supplemental Submissions to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR), With Confidential Annexes 1-2

¹ F00098/RED, 11 December 2022, Public Redacted (“Haradinaj Request”).

² Haradinaj Request, para. 23.

³ F00099, Prosecution Response to Haradinaj Request to Release Video Recordings, 13 December 2022 (confidential).

⁴ F00100, Reply to Prosecution Response to Haradinaj Request for Order to the SPO to Release Video Recordings with Confidential Annex, 19 December 2022 (confidential).

(F01100, dated 14 November 2022)”,⁵ which contains references to disclosures detailing [REDACTED] (and potentially [REDACTED]) contacts with the SPO.⁶

II. SUBMISSIONS

3. On 15 September 2022, the Court of Appeals Panel issued a decision ordering the SPO to disclose to the Defence two interviews of [REDACTED] dated [REDACTED] and [REDACTED] (“First Interview” and “Second Interview”, respectively).⁷
4. In the First Interview [REDACTED] said that [REDACTED] and [REDACTED] arranged the purchase from Serbian authorities of the documents that were delivered at the KLA-WVA in September 2020.⁸ Furthermore, in the first interview reference is made to the ‘observers’ who were present from the outset of the transaction and who were neither with the Serbian or Kosovan parties, but investigating the case, the inference being that they were alleged to have been from the SPO.⁹
5. In the Second Interview he explained that a [REDACTED] who he identified as [REDACTED] had told him to say what he had said in the First Interview and that

⁵ KSC-BC-2020-06/F01100/RED2/2 (“Veseli Defence Supplemental Submissions”). See Public Annex A.

⁶ Veseli Defence Supplemental Submissions, paras. 22, 31.

⁷ F00044/CONF/RED, Confidential Redacted version of Decision on Prosecution Notifications, 26 September 2022 (confidential) (“Decision on Prosecution Notifications”).

⁸ KSC-CA-2022-01-082095-TR-ET Part 1 RED, pp. 13-15, 19-23.

⁹ KSC-CA-2022-01-082095-TR-ET Part 2 RED, p. 2.

this [REDACTED] was collaborating with the then [REDACTED], in order to strengthen the case against [REDACTED].¹⁰

6. The Appeals Panel held that the Second Interview should be disclosed pursuant to Rule 103 of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers (“Rules”) as relevant to the Defence’s claim of entrapment and that the First Interview should also be disclosed to the Defence given that the interviews were inter-related and that the second could not be properly understood without the first.¹¹
7. The Veseli Defence Supplemental Submissions are heavily redacted and therefore cannot be understood in their entirety. However, it is evident that paragraphs 25-30 refer to the First and Second Interviews of [REDACTED]. For example, the content of paragraph 27 and the unredacted page-numbers in the footnotes correspond to Part 3 of the transcript of the First Interview.¹² The content of paragraph 34 implies that paragraphs 30-34 relate to [REDACTED]. It follows that paragraph 22 refers to [REDACTED] retracting the earlier statement which [REDACTED] had fed him. The redaction in footnote 29 (“The material the Defence has received in disclosure shows that [REDACTED] has met with the SPO on at least 15 separate occasions.”) should therefore be understood as referring to [REDACTED]. Paragraph 31 then establishes, that the contacts between [REDACTED] and the SPO go back to 2017.

¹⁰ KSC-CA-2022-01-105694-TR-ET Part 1 RED, pp. 10, 13, 14, 17-18, 21.

¹¹ Decision on Prosecution Notifications, para. 29.

¹² KSC-CA-2022-01-082095-TR-ET Part 3 RED.

8. The Second Interview indicates that the former Specialist Prosecutor in collaboration with [REDACTED] initiated the delivery of the materials that reached the KLA-WVA in September 2020.¹³ The statement of [REDACTED] implies that in addition to the relationship with the SPO, there was a level of coordination with Serbian officials.¹⁴ This supports the defence of entrapment, because the SPO which the former Specialist Prosecutor led is prosecuting the Accused for the actions that he allegedly took on the delivery of the materials. The Haradinaj Defence has argued since the outset of these proceedings that the defence of entrapment relates to not only the actions of persons within the SPO, but equally with persons part of, or connected, to the Serbian State.
9. It should be recalled that in the December 2020 Diplomatic Briefing that the former Specialist Prosecutor held with members of the diplomatic community, alongside the President of the Specialist Chambers, he stated *“that [the accused] have been part of an continuous operation to intimidate the witnesses and that he is convinced both [the accused] acted in coordination with [REDACTED] and [REDACTED] and he is investigating if any link can be proved...”*¹⁵ It is noted that this statement was made less than two months following the first interview in October 2020 in circumstances where [REDACTED] alleges he was instructed by [REDACTED], an intermediary of the SPO who purports to be connected the intelligence services, had instructed him to fabricate the involvement of [REDACTED] and [REDACTED]. It is therefore neither fanciful nor

¹³ KSC-CA-2022-01-105694-TR-ET Part 1 RED, pp. 17, 21.

¹⁴ KSC-CA-2022-01-082095-TR-ET Part 3 RED, pp. 4, 13 and 19.

¹⁵ See Annex 2, p.3.

wholly improbable to suggest that the Accused was entrapped by the very same individuals.

10. Whilst recognising that the charges in the case against Hashim Thaçi et al. are quite different from those faced by the Accused, the Veseli Defence Supplemental Submissions are based on the two interviews with [REDACTED] which together purport to show that [REDACTED] collaborated with the SPO to entrap the Accused in both cases. It is therefore highly implausible that the material regarding [REDACTED] contacts with the SPO should be disclosable in the one case and not the other. Moreover, the numerous contacts which [REDACTED] had with the SPO during a period before and after the delivery of the documents are material in the sense of Rule 102(3) in the Haradinaj case in light of the significance that they have for the defence of entrapment. As a whole, they should indicate the nature of the role that [REDACTED] had in relation to the SPO at all relevant times. This has a bearing on the credibility and feasibility of [REDACTED] claim regarding the collaboration of [REDACTED] with the former Specialist Prosecutor which is central to the defence of entrapment.
11. On the basis of the above submissions, the Veseli Defence Supplemental Submissions in Annex 1 constitute a further ground for the disclosure sought in paragraph 23 of the Haradinaj Request, in particular of the materials which show that [REDACTED] has met with the SPO on at least 15 separate occasions, and which have been disclosed to the Defence in another case at the Kosovo Specialist Chambers.

IV. CLASSIFICATION

12. This filing is classified as confidential because it relates to information in other filings that are classified as confidential.

Word Count: [1,048] words



Toby Cadman
Specialist Counsel for Nasim Haradinaj

Almudena Bernabeu
Specialist Co-Counsel

John Cubbon
Specialist Co-Counsel