

In: KSC-SC-2023-01
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: A Panel of the Supreme Court Chamber
Judge Ekaterina Trendafilova
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

Date: 06 May 2023

Language: English

Classification: Public

**Haradinaj Defence Response to SPO Request to Order Refiling of Requests for
Protection of Legality (KSC-SC-2023-01/F00005)**

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I. INTRODUCTION

1. On 2 May 2023, the Defence for Mr. Nasim Haradinaj (“Applicant”) filed the ‘Haradinaj Defence Request for Protection of Legality’¹ following the decision of the Panel of the Court of Appeals Chamber (“Appeals Panel”) of 2 February 2023 (“Appeal Judgment”).²
2. On 3 May 2023, the Defence for Mr. Hysni Gucati (“Gucati Defence”) filed the ‘Gucati Request for Protection of Legality pursuant to Article 48(6) to (8) of the Law and Rule 193 of the Rules’.³
3. On 4 May 2023, the President of the Kosovo Specialist Chambers, Judge Ekaterina Trendafilova, issued the ‘Decision Assigning a Supreme Court Panel’.⁴
4. On 4 May 2023, the Panel of the Supreme Court Chambers issued the ‘Order for the Time Limits of Submissions’.⁵

¹ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-SC-2023-01/F00001, Haradinaj Defence Request for Protection of Legality, 2 May 2023, public.

² Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CA-2022-01/F00114, Appeal Judgment, 2 February 2023.

³ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-SC-2023-02/F00002, Gucati Request for Protection of Legality pursuant to Article 48(6) to (8) of the Law and Rule 193 of the Rules, 2 May 2023, confidential and a public redacted version KSC-SC-2023-02/F00002/RED

⁴ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-SC-2023-02/F00003, Decision Assigning a Supreme Court Panel, 4 May 2023, public.

⁵ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-SC-2023-02/F00003, Order for the Time Limits of Submissions, 4 May 2023, public.

5. On 4 May 2023, Specialist Counsel for the Applicant contacted the Court Management Unit (“CMU”) notifying that there had been an inadvertent oversight in the filing of the ‘Haradinaj Defence Request for Protection of Legality’. It was noted that the word limit was 9,000 words and not 10,000 words. This was a purely unintentional oversight hence the reason no prior application for an extension had been made. Specialist Counsel sought guidance on how to best approach this with the Panel of the Supreme Court. CMU informed Specialist Counsel that the filing had been processed and registered and that it should await any further ruling by the Panel.

6. On 5 May 2023, the Specialist Prosecutor’s Office filed the ‘Prosecution Request to Order Refiling of Requests for Protection of Legality’⁶ in which it incorrectly asserts that the Haradinaj request exceeds 10,000 words.

II. LAW

7. Article 35 of the Registry Practice Direction on Files and Filings⁷ before the Kosovo Specialist Chamber provides:

⁶ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-SC-2023-02/F00005, Prosecution Request to Order Refiling of Requests for Protection of Legality, 5 May 2023, public.

⁷ KSC-BD-15.

“1. Headings, footnotes and quotations count towards the word limits set out in Article 41 to Article 59, Article 61, Article 63 and Article 64. Cover pages, tables of contents and signatures do not count towards the set limits.

“2. Any annexes, lists of authorities or copies of authorities do not count towards the set limits. Annexes shall only contain supporting material.”

8. Article 36(2) and (3) provides:

“2. Unless otherwise decided by a Panel and where no prejudice is caused to the opposing Party, Victims’ Counsel or other affected Participant, a motion for extension of word limits may be disposed of without giving the opposing Party or Victims’ Counsel, where applicable, the opportunity to be heard.

“3. Where Submissions exceed the prescribed word limits, CMU shall still proceed with the processing and distribution thereof. In such cases, the Panel may, in exceptional cases, proprio motu or upon showing of good cause, vary the word limits under Article 41 to Article 59, Article 61, Article 63 and Article 64 or recognise any Filing exceeding the word limit as validly made.”

9. Article 56(3) provides:

“A request for protection of legality filed pursuant to Rule 193 of the Rules and response thereto shall not exceed 9,000 words. Any reply to such response shall not exceed 3000 words.”

III. SUBMISSIONS

10. It is submitted that the SPO’s calculation of the word count of the Haradinaj Request is incorrect and does not follow the approach of Article 35(1) of the Practice Direction. The word count of the Haradinaj Request is 9,988 words according to the calculation guidelines set out under Article 35(1) of the Practice Direction.

11. It is acknowledged that this is 988 over the prescribed word limit and a prior application in accordance with Article 56(1) of the Practice Direction seeking an extension was not filed. It was not filed on the basis that it was an oversight as to the word limit. This represents a little more than 10% over the word limit.

12. It is respectfully submitted that the moment this oversight was noticed by the Haradinaj Defence it was immediately brought to the attention of CMU in

order for the Panel to be notified. There was no intention to mislead or to take any advantage by the exceeding of the prescribed word limit.

13. In the SPO's submissions it asserts that:

“Allegations of substantial violations of KSC procedure following a final appeals judgment are extremely serious. At the very least, they should themselves be made in accordance with KSC procedure.”⁸

14. The SPO seeks to bolster its argument by arguing that the Haradinaj Defence was ordered during the appeal proceedings to resubmit its notice of appeal.⁹ It is respectfully submitted that that was an entirely separate issue that bears no relation to the present issue. The oversight in the present matter was noted and steps were taken to bring it to the attention of the Panel without delay. The issue is whether there is any prejudice to the SPO.

15. The SPO recognises in its request that the matters being argued are of the utmost seriousness. This is supported and argued by the Haradinaj Defence in its Request for the Protection of Legality. This is the first such matter to come before a Panel of the Supreme Court and therefore the arguments are of critical importance to the interpretation and application of the applicable legal framework.

⁸ KSC-SC-2023-02/F00005, para. 5.

⁹ KSC-SC-2023-02/F00005, f/n 5.

16. In terms of any prejudice suffered, it is submitted that there is none. However, should the Panel recognise that the parties should be on an equal footing, the Panel can grant an equivalent extension to the SPO in its word limit for its response so that there is no prejudice.

IV. CONCLUSION

17. The Panel is invited to refuse the SPO request and exercise its discretion under Article 36(3) of the Practice Direction and if it deems so appropriate to grant the SPO an equivalent extension of 10% of the word limit set forth in Article 56(3) that relates to the SPO response.

Word Count: 1,095 words



Toby Cadman

Specialist Counsel

Saturday, 06 May 2023

At London, United Kingdom