

In: KSC-SC-2023-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

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Classification: Public

**Addendum Submission to Gucati Request for an Oral Hearing before the
Supreme Court on a Request for Protection of Legality**

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I. INTRODUCTION

1. On 2 and 3 May 2022, Haradinaj and Gucati filed Requests for Protection of Legality (“Requests”)¹.
2. On 3 July 2023, the Prosecution filed their consolidated Response² to the Requests (with notification received on 4 July 2023).
3. In accordance with the Order on the Time-Limits for Submissions³, defence replies to the Response, if any, are due by 4 August 2023.
4. On 30 July 2023, Gucati filed a request for an oral hearing (‘Request for an Oral Hearing’) of the Requests to be held before the Supreme Court⁴.
5. On 31 July 2023, the KSC announced that Dritan Goxhaj had been arrested in Tirana, Albania, pursuant to an arrest warrant issued by a KSC judge in relation to offences against the administration of justice involving intimidation and obstructing official persons in performing official duties. The KSC has requested the cooperation and assistance of Albanian authorities in arresting Mr Goxhaj and surrendering him to the KSC. Mr Goxhaj is detained in Albania pending a decision by the Albanian authorities on the transfer of Mr Goxhaj to the detention facilities of the KSC in The Hague.

¹ KSC-SC-2023-01/F00001, *Haradinaj Request for Protection of Legality*, Haradinaj, 2 May 2023, Confidential; KSC-SC-2023-01/F00002, *Gucati Request for Protection of Legality pursuant to Article 48(6) to (8) of the Law and Rule 193 of the Rules*, Gucati, 3 May 2023, Confidential

² KSC-SC-2023-01/F00014, *Prosecution Consolidated Response to Requests for Protection of Legality*, Prosecution, 3 July 2023

³ KSC-SC-2023-01/F00004, *Order on the Time-Limits for Submissions*, Supreme Court, 4 May 2023, Public

⁴ KSC-SC-2023-01/F00018, *Gucati Request for an Oral Hearing before the Supreme Court on a Request for Protection of Legality*, Gucati, 30 July 2023, Public

6. Gucati hereby makes the additional submission by way of addendum to the Request for an Oral Hearing.

II. SUBMISSIONS

7. Haradinaj has already requested an oral hearing in paragraphs 77-80 of the Haradinaj Request for Protection of Legality.
8. At paragraph 11 of the Response, the Prosecution does not object to the request and states that it is available for any such hearing.
9. Gucati adopts the submissions set out in paragraphs 77-80 of the Haradinaj Request regarding an oral hearing.
10. Additionally, Gucati notes that Article 48 of the Law and Rules 193-194 of the Rules, which set out the statutory framework for requests for protection of legality, do not set out any specific procedural approach to requests for protection of legality before the KSC (in contrast to other proceedings before the KSC). For example, as the Supreme Court Panel in the present case has recognised, aside from the general provisions on time limits set forth in Rule 76 of the Rules, the Rules do not establish specific time limits within which the parties are to file responses and replies to requests for protection of legality in accordance with Article 48(6) of the Law.
11. Moreover, in contrast to other appellate proceedings before the KSC⁵, there is no specific provision in the statutory framework of the KSC which

⁵ For example, Rule 170(3) and Rule 180 of the Rules of Procedure and Evidence of the KSC, KSC-BD-03/Rev3/2020

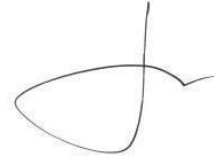
contemplates that a request for protection of legality may be determined other than after an oral hearing. The presumption, in the absence of any specific provision to the contrary, should be that an oral hearing in public is held (see Article 6(1) of the European Convention on Human Rights and Human Rights Practice at §6.136-6.138 and §6.164).

12. The arrest of Mr Goxhaj in Albania adds an additional element of significance to the Requests and the Request for an Oral Hearing thereof. The true scope of the offences of intimidation and obstruction of official persons in the performing official duties will be determined in the course of the Requests. Consequently, the course of the proceedings against Mr Goxhaj, including this early stage where he is detained in Albania pending a decision on transfer (extradition), is likely to be significantly determined by the outcome of the Requests (and the question as to which of the narrower or wider interpretations of those two offences are endorsed as the correct interpretation by the Supreme Court).
13. The importance of the Requests to Mr Goxhaj adds an extra piquancy to the presumption that the Requests should be determined only after oral argument in public, allowing Mr Goxhaj to follow proceedings albeit remotely. Indeed, consideration should be given to inviting Mr Goxhaj (through the medium of legal representation) to intervene in the proceedings before the Supreme Court as an interested party.

VI. CLASSIFICATION

14. This filing is classified as public.

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