



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

File number: KSC-SC-2023-01/CS002

Before: The President of the Specialist Chambers
Judge Ekaterina Trendafilova

Registrar: Fidelma Donlon

Date: 12 October 2023

Language: English

Classification: Public

**Public Redacted Version of the Decision on Commutation,
Modification or Alteration of Sentence**

Acting Deputy Specialist Prosecutor:
Ward Ferdinandusse

Counsel for Nasim Haradinaj:
Toby Cadman

THE PRESIDENT of the Specialist Chambers (“President”), noting Article 51(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), Rules 196 and 197 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) and Articles 3, 6 and 9-10 of the Practice Direction on Commutation of Sentences (“Practice Direction”), having consulted with the Judges of the sentencing Panels, hereby issues this decision on the commutation, modification or alteration of Mr Nasim Haradinaj’s sentence.

I. PROCEDURAL BACKGROUND

1. On 18 May 2022, Trial Panel II issued the “Trial Judgment” in the case against Messrs Hysni Gucati and Nasim Haradinaj.¹ The Trial Panel found both accused guilty of obstructing official persons in performing official duties, intimidation during criminal proceedings and violating the secrecy of proceedings, and sentenced them to four and a half years of imprisonment, with credit for the time served, and a fine of 100 Euros each.²

2. On 2 February 2023, a Court of Appeals Panel rendered the “Appeal Judgment”, wherein it partially affirmed Mr Gucati’s and Mr Haradinaj’s convictions and, by majority, reduced their sentences to four years and three months of imprisonment, with credit for time served.³ The Appeals Panel further affirmed the additional sentence to pay a fine of 100 Euros each.⁴

3. On 5 July 2023, the Registrar notified the President, pursuant to Article 3(3) of the Practice Direction, that Mr Haradinaj will become eligible for commutation of his

¹ KSC-BC-2020-07, F00611/RED, Public Redacted Version of the Trial Judgment, 18 May 2022.

² Trial Judgment, paras 1012-1017.

³ KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 442.

⁴ Appeal Judgment, para. 442.

sentence on 25 July 2023, after having served two-thirds of his sentence.⁵

4. On 26 July 2023, the President requested the Registrar to collect and convey the information set forth in Rule 196(3) of the Rules and to take the steps prescribed in Article 4 of the Practice Direction.⁶

5. On 14 August 2023, the Registrar conveyed to the President the information collected pursuant to Rule 196(3) of the Rules and Article 5(1) of the Practice Direction.⁷ Specifically, the Registrar included: (i) a report from the Detention Management Unit (“DMU” and “DMU Report”), with Annexes A through E; (ii) a report from the Specialist Prosecutor’s Office (“SPO” and “SPO Report”); and (iii) the Registrar’s own submissions (“Registrar’s Submissions”).

6. On 28 August 2023, Mr Haradinaj conveyed his observations to the Registrar’s Submissions and related reports through the Court Management Unit (“Haradinaj’s Submissions”).⁸

7. On 30 August 2023, the President provided all the information received to the Judges of the sentencing Panels in accordance with Article 51(2) of the Law, Rule 196(1) of the Rules and Article 6 of the Practice Direction and sought their views on Mr Haradinaj’s commutation of sentence.

8. On 28 September 2023, the President convened an oral hearing, during which she heard Mr Haradinaj’s views on the commutation, modification or alteration of sentence and the responses to questions she addressed to him.

⁵ KSC/REG/IOR/6207, Notification of Eligibility for Commutation of Sentence, 5 July 2023 (confidential).

⁶ KSC/CHA/PRE/0818, Notice of Commutation of Sentences Messrs Gucati and Haradinaj, File No. KSC-SC-2023-01/CS001, 26 July 2023 (confidential).

⁷ KSC/REG/IOR/6297, Requested Information Related to Article 5 of the Practice Direction on Commutation of Sentence Concerning Mr Nasim Haradinaj, 14 August 2023 (confidential).

⁸ Haradinaj Submission in respect of Commutation of Sentence, 28 August 2023 (confidential), with confidential annexes.

II. ANALYSIS

9. The President emphasises at the outset that persons convicted by the Specialist Chambers become eligible for *consideration* of commutation of sentence upon having served two-thirds of their sentence.⁹ Eligibility denotes consideration and not an inherent right to commutation after having served two-thirds of a sentence.

10. The President further notes that the Law, the Rules and the Practice Direction limit her competence to considering only the eligibility of a convicted person for commutation, modification or alteration of a sentence and *not* the judgments rendered by the competent Panels.

11. Further, the President takes into account the views of the Judges of the sentencing Panels without, however, engaging with their analysis in her decision. The President will examine the factors set forth in Rule 196(3) of the Rules and determine, based on the facts of this case, whether there are sufficient factors present that warrant commutation, modification or alteration of Mr Haradinaj's sentence.

a) Genuine dissociation from the crime

12. The Trial Panel in its judgment found that Mr Haradinaj "expressed no remorse regarding his actions and reiterated his vow to repeat such actions in the future".¹⁰ The President notes the Trial Panel's quotation of Mr Haradinaj in this respect, who stated that:

About the thing that I accepted that I did, I do not feel any remorse. I accept what I've done because I think it's in the interest of transparency and public interest. So, I only fulfilled an obligation that I had -- I felt I had to fulfil, and that was taking those documents and moving them from here to there.¹¹

If you bring them, I will act the same, because I am convinced that I acted rightly and I did it in the interest of informing the public and for the sake of transparency. I

⁹ See Article 51(2) of the Law; Rule 196(2) of the Rules; Article 3(1) of the Practice Direction.

¹⁰ Trial Judgment, paras 35, 1001.

¹¹ Trial Judgment, para. 1001, fn. 2038, *referring to* Transcript of Hearing, 13 January 2022, p. 3021.

think that, I have that conviction, that it was appropriate.¹²

13. The Trial Panel further held that “a suspended sentence in this case is not appropriate, as a reprimand with the threat of punishment would not be sufficient to prevent Mr Haradinaj from committing offences similar to those for which he has been convicted and which he has vowed to repeat”.¹³

14. Mr Haradinaj contends that his objections to the Specialist Chambers are consistent with his “right to freedom of political opinion and association”.¹⁴ Mr Haradinaj argues that the interests of justice will not be served by depriving him of a commutation of his sentence due to his lack of remorse.¹⁵

15. The Registrar confirms that Mr Haradinaj has not made any reported expression of remorse or regret to DMU staff regarding the offences for which he was convicted.¹⁶ The DMU Report however reflects that Mr Haradinaj has not given any indication that he would engage in similar conduct again.¹⁷

16. The SPO contends that, as far as they understand, Mr Haradinaj has not said or done anything while detained that suggests any genuine dissociation from his crimes.¹⁸ The SPO refers in this respect to Mr Haradinaj’s continued engagement in criminal conduct despite judicial orders and SPO requests to desist as well as Mr Haradinaj’s assertion during trial that if he were sentenced to 300 years in prison, he would undertake similar criminal conduct.¹⁹

17. The President recognises that Mr Haradinaj expressed no remorse for his actions during the proceedings, as pointed out by the Trial Panel, and that he declined

¹² Trial Judgment, para. 1001, fn. 2038, *referring to* Transcript of Hearing, 13 January 2022, p. 3024.

¹³ Trial Judgment, para. 1011.

¹⁴ Haradinaj’s submissions, para. 27.

¹⁵ Haradinaj’s Submissions, para. 27. See also DMU Report, para. 8.

¹⁶ Registrar’s Submissions, para. 34. See also DMU Report, para. 8.

¹⁷ DMU Report, para. 8.

¹⁸ SPO Report, para. 3.

¹⁹ SPO Report, para. 4.

to include any remorse in his written submissions to her.

18. However, during the oral hearing Mr Haradinaj stated that he has had time to think things over, that he “never thought of doing somebody any harm”, that it was never his intention “to intimidate anyone” and expressed some regret for his actions, in particular for having intimidated potential witnesses and victims.²⁰ Mr Haradinaj stated that he now sees that what he did “[was] not right”.²¹

19. The President considers Mr Haradinaj’s expression of regret during the oral hearing to have been sincere and finds that this demonstrates that he has used his time in detention to reflect on his behaviour and has started to disassociate himself from his past actions.

20. Accordingly, the President finds that this factor weighs, to some extent, in favour of a possible commutation, modification or alteration of Mr Haradinaj’s sentence.

b) Demonstration of rehabilitation

21. Mr Haradinaj submits that serving the remainder of his sentence in the form of a further 16 months “will add nothing to the purpose of the sentence originally imposed that contains both a punitive and rehabilitative purpose”.²² Mr Haradinaj contends that while serving his sentence, he has “demonstrated a genuine commitment to positive change”.²³

22. The DMU Report reflects that Mr Haradinaj has displayed a friendly, responsible and respectful behaviour towards DMU staff and other detainees since his

²⁰ Transcript of Hearing, 28 September 2023, p. 6. See also Transcript of Hearing, 28 September 2023, pp. 7-8.

²¹ Transcript of Hearing, 28 September 2023, p. 9.

²² Haradinaj’s Submissions, para. 28.

²³ Haradinaj’s Submissions, para. 28.

arrival at the Detention Facilities.²⁴ The DMU states that Mr Haradinaj has complied with the instructions of staff members on day-to-day matters and has assessed his general behaviour as “adequate in terms of day-to-day, routine matters”.²⁵

23. The DMU Report reflects, however, that Mr Haradinaj has a disciplinary record. Mr Haradinaj has been cautioned three times and has received one written warning while detained.²⁶ The first caution was issued on 30 November 2020, when it was found that Mr Haradinaj “knowingly violated Article 4(1) of the Practice Direction on Media Communications” by having provided a statement to a media outlet through his wife without having sought approval therefor.²⁷ On 22 March 2022, Mr Haradinaj violated the same Article 4(1) of the Practice Direction on Media Communications by participating via telephone in a live television interview without seeking prior approval from the Registrar.²⁸ For this violation Mr Haradinaj received a disciplinary sanction in the form of a written warning.²⁹ On 7 February and 15 March 2023, Mr Haradinaj received two further cautions for two additional violations of the DMU rules and regulations.³⁰

24. To that end, the DMU Report states that Mr Haradinaj “does not show a propensity to comply with rules”.³¹

25. According to the SPO, there is no information available suggesting that Mr Haradinaj has done anything that could qualify as rehabilitation.³²

26. During the oral hearing, Mr Haradinaj expressed that he had a lot of time to

²⁴ DMU Report, para. 9. See also DMU Report, paras 10-21.

²⁵ DMU Report, para. 13. See also DMU Report, para. 12.

²⁶ DMU Report, para. 22.

²⁷ DMU Report, para. 23.

²⁸ DMU Report, para. 24.

²⁹ DMU Report, para. 24.

³⁰ DMU Report, paras 25-26.

³¹ DMU Report, para. 28.

³² SPO Report, para. 6.

think about his actions and that he will never do this again in the future.³³ Mr Haradinaj stated that he intends to devote his time to his family and his own life and that he will not do anything else in this regard.³⁴

27. The President notes that Mr Haradinaj has been respectful toward the staff and the management of the DMU on a day-to-day basis. Mr Haradinaj further indicated during the oral hearing that he has spent a lot of time reflecting on his actions and has committed not to engage in any acts that may be characterised as offences against the administration of justice in the future. The President considers Mr Haradinaj's statements made at the hearing, that he will no longer engage in offences against the administration of justice, to have been sincere.

28. However, the President is mindful that some of the information submitted to her suggests that Mr Haradinaj has not shown adequate respect for rules and regulations by which he has to abide. This is demonstrated by Mr Haradinaj's disciplinary record – the latest caution of which was issued in March 2023.

29. On balance, the President therefore considers that Mr Haradinaj has taken some steps towards rehabilitation, but that there is still room for improvement in this respect, particularly in light of his disciplinary record at the DMU. Accordingly, and in light of the totality of his behaviour, the President considers that this factor could weigh, to some extent, in favour of commutation, modification or alteration of Mr Haradinaj's sentence, provided that Mr Haradinaj's behaviour at the DMU will improve.

c) Prospect of resocialisation and successful resettlement

30. Mr Haradinaj contends that, as recognised in the DMU report, he maintains close contacts with his family and has a broad base of social support capable of

³³ Transcript of Hearing, 28 September 2023, pp. 6, 9.

³⁴ Transcript of Hearing, 28 September 2023, p. 9.

facilitating his successful resocialisation.³⁵ Mr Haradinaj explains that he intends to return to his family home in Kosovo and argues that he will therefore “remain within the enforcement reach of the Specialist Chambers”.³⁶

31. The DMU Report confirms that Mr Haradinaj has maintained close ties with his family during his imprisonment.³⁷ The DMU Report reflects the frequency of family visits, his established family connection and his wide social network, which could support Mr Haradinaj upon his return and resocialisation after release.³⁸ According to the DMU, Mr Haradinaj’s positive family relationships and stable living environment may indicate a likelihood of his successful adaptation and integration into normal life upon his release.³⁹

32. The SPO contends that any consideration of Mr Haradinaj’s resocialisation or successful resettlement is contingent on his refusal to further commit any offences “against this court and its witnesses”.⁴⁰ According to the SPO, Mr Haradinaj’s clear and consistent vows to continue to commit offences suggest that he cannot successfully reintegrate into society.⁴¹

33. At the oral hearing, Mr Haradinaj stated how important his family is to him.⁴² He explained what it meant for him to not have been able to attend his brother’s funeral.⁴³ The President is therefore of the view that Mr Haradinaj’s close family ties and social network will likely assist him in adapting and integrating upon his return to Kosovo following his release. The President considers the concerns raised by the SPO to be more relevant to Mr Haradinaj’s rehabilitation and disassociation, rather

³⁵ Haradinaj’s Submissions, para. 20.

³⁶ Haradinaj’s Submissions, para. 39.

³⁷ DMU Report, para. 29.

³⁸ DMU Report, para. 30. See also DMU Report, paras 31-32.

³⁹ DMU Report, para. 32.

⁴⁰ SPO Report, para. 7.

⁴¹ SPO Report, para. 7.

⁴² Transcript of Hearing, 28 September 2023, pp. 9, 12.

⁴³ Transcript of Hearing, 28 September 2023, p. 12.

than his ability to reintegrate into society upon release.

34. The President therefore considers that this factor weighs in favour of a possible commutation, modification or alteration of Mr Haradinaj's sentence.

d) Gravity of the crimes for which the person was convicted

35. Mr Haradinaj contends that while the offences for which he was convicted are serious "and without seeking to trivialise or reduce the severity of administration of justice offences" they do not form part of the core crimes of the KSC.⁴⁴ According to Mr Haradinaj, the gravity of his crimes was already taken into account at the sentencing stage and weighing this factor against commutation once more "would be unwarranted".⁴⁵

36. When rendering its judgment, the Trial Panel stated that:

This case is important, because it reflects the very reason why the Specialist Chambers was created. This case concerns the proper administration of justice, the integrity and security of proceedings and, crucially, the safety, well-being and freedom from fear of hundreds of persons who have come forward to fulfil their civic duty as witnesses. Their protection from intimidation and harm lies at the very foundation of any system of criminal justice, be that domestic or international. Without witnesses, there can be no justice for victims or for society at large. The acts and conduct of the Accused challenged that very foundation.⁴⁶

37. The Trial Panel further found that Mr Haradinaj repeatedly disseminated confidential information after each delivery of documents, notwithstanding having been made aware of orders requiring him to desist.⁴⁷ The Trial Panel noted the "particular zeal with which Mr Haradinaj repeated his conduct and the virulence of some of the comments he directed towards witnesses".⁴⁸ The Trial Panel found that Mr Haradinaj not only publicly named at least five witnesses, but also participated in

⁴⁴ Haradinaj's Submissions, para. 13. See also Haradinaj's Submissions, para. 14.

⁴⁵ Haradinaj's Submissions, para. 15. See also Haradinaj's Submissions, paras 16-18.

⁴⁶ KSC-BC-2020-07, Summary of the Trial Judgment, 18 May 2022.

⁴⁷ Trial Judgment, para. 996.

⁴⁸ Trial Judgment, para. 996.

a high number of media appearances and made sure the documents were widely distributed.⁴⁹

38. The Court of Appeals Panel reflected that:

The nature of the crimes under the jurisdiction of the Specialist Chambers and the context in which they were committed necessitate reliance upon oral evidence. It is fundamental to the fulfilment of the Specialist Chambers' mission that individuals who come to give evidence, often about traumatic or difficult experiences, may do so without fear. The protection of the witnesses from intimidation and harm lies at the very foundation of any system of criminal justice, including the Specialist Chambers. This case concerns therefore the proper administration of justice, the integrity and security of proceedings and the safety of witnesses.⁵⁰

39. The SPO submits that, as reflected by the Trial Panel and the Court of Appeals Panel Judgments, the crimes for which Mr Haradinaj has been convicted are "indisputably grave" and mitigate against commutation of his sentence.⁵¹

40. The President is not persuaded by the comparison Mr Haradinaj makes between the offences for which he was convicted and the "core crimes" of the KSC as he describes them, namely war crimes and crimes against humanity. The President notes in this respect that the sentence handed down reflects the nature of the offences for which Mr Haradinaj was convicted and their particular gravity.

41. The President further does not underestimate that Mr Haradinaj's conduct had a chilling effect on witnesses who may appear before the Specialist Chambers and the ability of the court to undertake its mandate. In that respect, the President notes the findings of both the Trial Panel and the Court of Appeals Panel when it comes to the gravity of the offences.

42. The President therefore finds that this factor weighs against commutation,

⁴⁹ Trial Judgment, para. 996.

⁵⁰ KSC-CA-2022-01, Summary of the Appeal Judgment, 2 February 2023.

⁵¹ SPO Report, para. 10. See also SPO Report, paras 8-9.

modification or alteration of Mr Haradinaj's sentence.

e) Treatment of similarly situated prisoners

43. Mr Haradinaj asserts that while there are no similarly situated prisoners, it would be "in the interests of justice to consider the legal position of persons serving sentences" in Kosovo.⁵² Mr Haradinaj submits that Article 90 of the Kosovo Criminal Code places particular weight on the conduct of prisoners while they serve their sentences.⁵³

44. The DMU Report reflects that Mr Haradinaj and Mr Gucati are the first persons convicted by the KSC to have served two-thirds of their sentences.⁵⁴ Accordingly, there are no other similarly situated prisoners.⁵⁵

45. The SPO submits that the offences committed by Mr Haradinaj "are of a nature and magnitude that they cannot be compared to others who have committed similar offences at other tribunals".⁵⁶ The SPO further contends that Mr Haradinaj, along with Mr Gucati, are the only persons convicted of offences under the Kosovo Criminal Code by the KSC to date, "further complicating any meaningful comparison [with] [similarly-situated prisoners]".⁵⁷

46. The President recalls that Article 3(2)(c) in conjunction with Article 15(2) of the Law do not refer to Article 90 of the Kosovo Criminal Code as being applicable in proceedings before the Specialist Chambers. The President observes, as is reflected in the DMU Report, that this is the first occasion where persons convicted by the KSC have served two-thirds of their sentences.

⁵² Haradinaj's Submissions, para. 5.

⁵³ Haradinaj's Submissions, para. 5.

⁵⁴ DMU Report, para. 33.

⁵⁵ DMU Report, para. 33.

⁵⁶ SPO Report, para. 11.

⁵⁷ SPO Report, para. 11.

47. Accordingly, there are no similarly situated prisoners and the President finds this a neutral factor in assessing whether to commute, modify or alter Mr Haradinaj's sentence.

f) Whether release would give rise to significant social instability

48. Mr Haradinaj contends that the potential for social instability is low and that this factor cannot reasonably be considered a ground upon which to refuse his commutation of sentence.⁵⁸

49. The Registrar submits that, following an assessment undertaken by the Safety and Security Unit ("SSU"), there will be an initial public reaction following Mr Haradinaj's release, likely promoted by the Kosovo War Veterans' Association. However, SSU noted that the probability of Mr Haradinaj's return resulting in a level of civil disorder that could be considered significant social instability is expected to be very low.⁵⁹ The SSU further states that it is not envisioned that the release of Mr Haradinaj will result in any increased threat to his personal security and safety.⁶⁰

50. According to the SPO, there is reason to believe that Mr Haradinaj's release would give rise to significant social instability, "at least within the community of persons who have and/or are perceived to have co-operated with the SPO".⁶¹

51. Having considered the information before her, the President is of the view that the risk for significant social instability in Kosovo upon Mr Haradinaj's release is low. While there may be some fear and discomfort among the victims or potential witnesses who may appear before the Specialist Chambers in the future, this is insufficient to find that Mr Haradinaj's release will cause social instability within the meaning of Rule 196 (3)(f) of the Rules. The SSU did a thorough risk analysis in this

⁵⁸ Haradinaj's Submissions, paras 22-24.

⁵⁹ Registrar's Submissions, para. 16. See also Registrar's Submissions, paras 17-21, 23.

⁶⁰ Registrar's Submissions, para. 22.

⁶¹ SPO Report, para. 12.

respect, to which the President attaches considerable weight.

52. The President therefore considers this a factor that weighs in favour of a commutation, modification or alteration of Mr Haradinaj's sentence.

g) Any substantial cooperation with the SPO

53. Mr Haradinaj submits that his views of the SPO "and associated offices and institutions are intrinsic to his right to freedom of political opinion and association".⁶² Mr Haradinaj further contends that given the SPO's case load, the feasibility of his cooperation with them "is doubtful".⁶³ Finally, Mr Haradinaj asserts that "there has been no indication that any cooperation was ever sought" from him "in relation to this or indeed any other matter under investigation".⁶⁴ Accordingly, Mr Haradinaj argues that little weight should be given to the SPO's submissions in this respect.⁶⁵

54. The SPO contends that there has been no cooperation, let alone substantial cooperation, of Mr Haradinaj with the SPO.⁶⁶

55. The President observes that there is no indication that the SPO has ever sought Mr Haradinaj's cooperation. Accordingly, the President consider this a neutral factor when assessing whether to grant Mr Haradinaj commutation, modification or alteration of his sentence.

h) Voluntary assistance of the convicted person in enabling the enforcement of the judgments and orders of the Specialist Chambers

56. The Registrar notes that the trial judgment against Messrs Gucati and Haradinaj is the first to be issued at the KSC, followed by the issuance of the trial

⁶² Haradinaj's Submissions, para. 32.

⁶³ Haradinaj's Submissions, para. 33.

⁶⁴ Haradinaj's Submissions, para. 33.

⁶⁵ Haradinaj's Submissions, para. 35.

⁶⁶ SPO Report, para. 13.

judgment in the proceedings against Mr Salih Mustafa.⁶⁷ The Registrar further notes that she does not have information regarding any voluntary assistance of Mr Haradinaj in enabling the enforcement of KSC judgments and orders in other cases.⁶⁸

57. The SPO contends that Mr Haradinaj has not provided any voluntary assistance nor can he reasonably have been expected to do so.⁶⁹

58. The President is of the view that Mr Haradinaj cannot reasonably be expected to have provided voluntary assistance with respect to the enforcement of the KSC's decisions and orders, nor was he realistically in a position to do so. Accordingly, the President considers this a neutral factor when considering commutation, modification or alteration of Mr Haradinaj's sentence.

- i) Any significant action taken by the convicted person for the benefit of victims as well as any impact on the victims and their family in case of commutation, modification or alteration of sentence

59. The President observes that there is no information about any actions undertaken by Mr Haradinaj for the benefit of victims. The President further observes that there were no participating victims in the proceedings against Mr Haradinaj. Accordingly, the President considers this a neutral factor in assessing Mr Haradinaj's commutation, modification or alteration of sentence.

- j) The individual circumstances of the convicted person

60. Mr Haradinaj submits that he has always been committed to his family, composed of his wife, five children and four grandchildren and is the primary

⁶⁷ Registrar's Submissions, para. 24.

⁶⁸ Registrar's Submissions, para. 25.

⁶⁹ SPO Report, para. 14.

caregiver.⁷⁰ Mr Haradinaj explains [REDACTED].⁷¹ [REDACTED].⁷² Mr Haradinaj submits that he has close ties with his broader family, a number of whom have also suffered from a variety of serious health conditions.⁷³

61. Mr Haradinaj contends that while he thinks that “restrictive release conditions” are unnecessary, “such conditions are suitable to mitigate against any concerns the President has as regards commutation of sentence”.⁷⁴

62. The President recalls Mr Haradinaj’s close family ties and acknowledges the difficulties he faces in being separated from his wife and other family members [REDACTED].

63. The President considers this a factor that weighs in favour of Mr Haradinaj’s commutation, modification or alteration of sentence.

k) Other factors establishing a clear and significant change of circumstances sufficient to justify commutation, modification or alteration of sentence

64. The SPO contends that since the Appeal Judgment in this case, the trials against *Pjetër Shala* and *Hashim Thaçi et al.* commenced, with several SPO witnesses having testified in both cases.⁷⁵ The SPO submits that numerous other witnesses are scheduled to testify in the *Thaçi et al.* case, which is added reason to ensure that Mr Haradinaj serve his full sentence “as this would mean that [he] continue[s] to be imprisoned while important evidence is heard by the court”.⁷⁶

⁷⁰ Haradinaj’s Submissions, para. 36.

⁷¹ Haradinaj’s Submissions, para. 37.

⁷² Haradinaj’s Submissions, para. 37.

⁷³ Haradinaj’s Submissions, para. 38. See also Haradinaj’s Submissions, para. 40.

⁷⁴ Haradinaj’s Submissions, para. 45.

⁷⁵ SPO Report, para. 15.

⁷⁶ SPO Report, para. 15.

65. The President is not persuaded by the SPO's submissions that Mr Haradinaj's commutation, modification or alteration of sentence should depend on the evidence that is being heard in other cases. The President notes that the SPO does not explain why Mr Haradinaj should remain in detention while evidence is presented in other cases and observes that the case against *Hashim Thaçi et al.* will continue well after Mr Haradinaj will have served his sentence. Insofar as the SPO's submission may be construed as a fear that Mr Haradinaj would reoffend while the relevant Trial Panel is hearing important evidence in other cases, the President notes that she has already considered Mr Haradinaj's statements to this effect when assessing the extent to which he may be rehabilitated.⁷⁷ Accordingly, the President shall not consider this factor anew.

III. COMMUTATION OF SENTENCE

66. The President notes that Article 51(2) of the Law provides that a convicted person will become eligible for commutation of sentence upon having served two-thirds of his or her sentence.

67. The President recalls her analysis of the factors set forth in Rule 196(3) of the Rules and the weight she accorded to each of these factors, including factors that were in favour, neutral or against a possible commutation, modification or alteration of Mr Haradinaj's sentence.

68. The President further recalls that the offences for which Mr Haradinaj was convicted are indisputably grave and that Mr Haradinaj has not always been willing to disassociate himself in the past from the offences for which he was convicted.

69. The President notes that commutation of sentence entails the immediate release of a convicted person, which would not allow for the imposition of conditions on this

⁷⁷ See *supra*, paras 21, 26.

release. Given the nature of the offences for which Mr Haradinaj was convicted and the chilling effect his actions had on potential future witnesses and victims, and having considered the interests of justice and general principles of law in light of the facts of his case, the President does not consider commutation of sentence appropriate. Accordingly, the President shall not grant Mr Haradinaj a commutation of his sentence.

70. Since the President has determined that commutation of Mr Haradinaj's sentence is not appropriate, she will therefore decide whether to modify or alter his sentence in accordance with Article 51(2) of the Law and Article 10 of the Practice Direction.

IV. MODIFICATION OR ALTERATION OF THE SENTENCE

71. According to Article 51(2) of the Law in conjunction with Articles 3(1) and 10 of the Practice Direction, the President may decide to modify or alter the sentence imposed on a convicted person once two-thirds of the sentence has been served, where she finds that commutation of sentence is not appropriate.

72. To that end, the President may modify or alter the sentence by ordering the release of the convicted person under certain specific conditions. Such conditions shall apply for the duration of the term of imprisonment imposed on the convicted person or any other earlier specified date.⁷⁸ In accordance with Article 11(2) of the Practice Direction, the President may decide to revoke or modify her decision if the convicted person breaches one or more of the conditions imposed.

73. The President recalls that Mr Haradinaj has demonstrated on three occasions that he does not fully respect the DMU's regulatory framework, which raises questions as to the extent of his rehabilitation.

⁷⁸ See Article 11(1) of the Practice Direction.

74. The President, however, finds that there are a number of factors that weigh in favour of modification of Mr Haradinaj's sentence by way of release, albeit with conditions. In particular, the President recalls that: (i) Mr Haradinaj has shown signs of disassociation from the offences for which he was convicted at the oral hearing; (ii) Mr Haradinaj has also demonstrated some signs of rehabilitation; (iii) the likelihood that Mr Haradinaj's release would give rise to significant social instability in Kosovo is low; (iv) Mr Haradinaj has strong familial and social ties, which would help him reintegrate back into Kosovo; and (v) Mr Haradinaj has struggled with being away from his family, [REDACTED].

75. Based on the above, the President considers that Mr Haradinaj has had the opportunity to reflect on his actions while serving over two-thirds of his sentence and finds that his comportment has changed over time. On balance, the President considers that Mr Haradinaj's expressions of regret during the oral hearing and his confirmation that he will no longer engage in conduct that may be characterised as offences against the administration of justice were sincere. Mr Haradinaj further indicated that he will abide by any conditions imposed on his release.⁷⁹

V. CONCLUSION

76. Having carefully considered the totality of the information before her, including the views of the Judges of the sentencing Panels, as well as the interests of justice and general principles of law in light of the facts of this case, the President finds that commutation of sentence is not appropriate. Instead, the President is of the view that while the sentence of Mr Haradinaj stands as pronounced by the Court of Appeals Panel, it could be modified to provide for release with conditions.

77. However, the President is of the view that the immediate release of Mr Haradinaj, albeit with conditions, is not appropriate at this time, given his

⁷⁹ Transcript of Hearing, 28 September 2023, pp. 11-12.

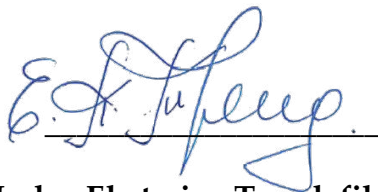
apparent lack of respect for rules and regulations as evidenced by his disciplinary record at the DMU. Accordingly, the President will consider a possible modification of Mr Haradinaj's sentence once she has received a report from the Registrar, to be submitted [REDACTED], on Mr Haradinaj's conduct at the DMU during this period.

VI. DISPOSITION

78. In view of the above, the President hereby:

DECIDES that commutation of Mr Haradinaj's sentence is not appropriate and is therefore not granted; and

ORDERS the Registrar to provide a report on Mr Haradinaj's behaviour at the DMU by [REDACTED].



**Judge Ekaterina Trendafilova,
President of the Specialist Chambers**

Dated this Thursday, 12 October 2023
At The Hague,
The Netherlands