

In: KSC-CC-2023-22

Before: **The Specialist Chamber of the Constitutional Court**
Judge Vidar Stensland, Presiding
Judge Roumen Nenkov
Judge Romina Incutti

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

Date: 4 December 2023

Language: English

Classification: **Public**

**Reclassification of Haradinaj Defence Referral to the Specialist Chamber of the
Constitutional Court**

Specialist Prosecutor's Office

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1. On 20 November 2023, the Defence for Mr. Nasim Haradinaj (“Applicant”) filed confidentially a referral to the Specialist Chamber of the Constitutional Court.¹
2. On 22 November 2023, the President of the Specialist Chambers assigned the above Panel of the Specialist Chamber of the Constitutional Court to rule on the Referral.²
3. On 27 November 2023, the Constitutional Court Panel issued the “Decision on the Working Language, Written Submissions and Public Redacted Version of the Referral”³ (“Decision”). In its decision, the Panel stated: “Having regard to the principle of publicity, and having carefully considered the need for redactions, the Panel finds that a public redacted version of the Referral, in particular, but not limited to specific names provided for in paragraphs 71, 77 and 78 being redacted should be filed.”⁴ It ordered that the Applicant file a public redacted version of the Referral within one week of its decision.
4. Paragraph 71 of the Referral gives reasons for requesting that the evidence of two named persons be adduced. It is in essence taken from paragraphs 73-75

¹ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CC-2023-22, F00001, Haradinaj Defence Referral to the Specialist Chamber of the Constitutional Court, 20 November 2023, confidential (“Referral”).

² Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CC-2023-22, F00002, Decision to Assign Judges to a Constitutional Court Panel, 22 November 2023, confidential.

³ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CC-2023-22, F00003.

⁴ *Ibid.*, para. 6.

of the “Further Corrected Version of Defence Appeal Brief on Behalf of Mr. Nasim Haradinaj”⁵ (“Appeal Brief”) in which both are referred to by name. The Appeal Brief was filed confidentially but it was subsequently reclassified as public.⁶

5. Paragraph 77 concerns the decision to limit the evidence of a named witness. It is based on a public decision of the Trial Panel in which the witness is referred to by name.⁷
6. Paragraph 78 presents testimony which another publicly named witness gave in a public session.⁸
7. The Haradinaj Defence submits, therefore, that there are no grounds for the redaction of the specific names provided for in paragraphs 71, 77 and 78 of the Referral. It further submits that the remainder of the Referral contains nothing that would justify its classification as confidential, unless the Panel rules otherwise.

⁵ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CA-2022-01, F00035/COR2, 2 September 2022, Public

⁶ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CA-2022-01, F00035, 2 September 2022.

⁷ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-BC-2020-07, F00407, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, paras. 98-99.

⁸ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-BC-2020-07, Transcript 27 October 2021, pp.1603, ll.13-1604 l.6.

8. In conclusion, having due regard for the need for proceedings to be public in nature, for confidential filings to be properly justified and for any redactions to be strictly necessary, the Haradinaj Defence would very respectfully request that the Constitutional Court Panel order that the Referral be re-classified as public without any redactions.

Word Count: [493 words]



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Monday, 4 December 2023

At the Hague, the Netherlands