



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

Before: The President of the Specialist Chambers
Judge Ekaterina Trendafilova

Registrar: Fidelma Donlon

Date: 12 December 2023

Language: English

Classification: Confidential

Decision on Modification of Sentence

With Confidential and *Ex Parte* Annexes

Specialist Prosecutor:

Kimberly P. West

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 received the Registrar’s report on Mr Nasim Haradinaj’s conduct at the Detention Facilities, hereby issues this decision on the modification of Mr 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”), with Annexes A through E; (ii) a report from the Specialist Prosecutor’s Office (“SPO”); and (iii) the Registrar’s own 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.

9. On 12 October 2023, the President issued the “Decision on Commutation,

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 of 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.

Modification or Alteration of Sentence” (“First Decision”), in which she found, *inter alia*, that modification of Mr Haradinaj’s sentence to provide for his release with conditions was not appropriate at that time because Mr Haradinaj demonstrated on three occasions that he did not fully respect the regulatory framework of the DMU.⁹ Accordingly, the President ordered the Registrar to provide a report in two months’ time, reflecting whether Mr Haradinaj had abided by the DMU’s rules and regulations during that time.¹⁰

10. The President considered a number of factors that could weigh in favour of modification of Mr Haradinaj’s sentence by way of release with conditions.¹¹ In particular, the President noted that: (i) Mr Haradinaj had shown signs of disassociation from the offences for which he was convicted at the oral hearing; (ii) Mr Haradinaj had 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 had strong familial and social ties, which would help him reintegrate back into Kosovo; and (v) Mr Haradinaj had struggled with being away from his family, especially his wife and brothers, who have suffered from difficult medical conditions.

11. On 22 November 2023, the President rendered a decision in which she formally warned Counsel for Mr Haradinaj, Mr Toby Cadman, to adhere to his obligations under Articles 6, 12 and 13 of the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers.¹² The warning was issued following an interview Mr Cadman had with a Kosovo media outlet, wherein he disclosed redacted information in the First Decision.

12. On 11 December 2023, the Registrar conveyed submissions (“Submissions”)

⁹ First Decision, para. 73.

¹⁰ First Decision, paras 77-78.

¹¹ First Decision, para. 74.

¹² F00004/RED, Public Version of the Decision on a Formal Warning, 22 November 2022.

and the report on Mr Haradinaj's behaviour at the Detention Facilities ("Report").¹³

II. SUBMISSIONS

13. The Registrar submits that although the public version of the First Decision was not issued until 17 October 2023, it was widely reported on in the media on 13 October 2023.¹⁴ The Registrar asserts that the "unauthorized dissemination of confidential information regarding Mr Haradinaj's transfer to Kosovo, [if granted], is likely to create an unacceptable situation in terms of operational security that may well lead to public disorder, and could compromise multiple entities involved in the transfer operation".¹⁵ Noting previous reminders and warnings,¹⁶ the Registrar submits that it would be better to delay notification to Mr Haradinaj and his Counsel of any decision on the modification of his sentence, if granted, to facilitate Mr Haradinaj's safe and secure transfer to Kosovo.¹⁷

14. With respect to Mr Haradinaj's behaviour at the DMU, the Report reflects, *inter alia*, that he has not had any caution or disciplinary sanction issued against him since 14 August 2023.¹⁸

III. ANALYSIS

15. The President recalls that she previously found that commutation of Mr Haradinaj's sentence is not appropriate, and "while [his] sentence stands as pronounced by the Court of Appeals Panel, it could be modified to provide release with conditions", upon receipt of a report from the Registrar, "on [his] conduct at the

¹³ See Memorandum from the Registrar to the President, re "Requested Report of the Detention Management Unit Related to Article 5 of the Practice Direction on Commutation of Sentences Concerning Mr Nasim Haradinaj", with confidential Annex I, 11 December 2023 (confidential and *ex parte*).

¹⁴ Submissions, para. 16. See also Submissions, para. 18.

¹⁵ Submissions, para. 28.

¹⁶ Submissions, paras 22-23. See also Submission, para. 24.

¹⁷ Submissions, para. 28.

¹⁸ Report, paras 10, 18. See also Report, paras 4-9, 11-14, 19.

DMU".¹⁹

16. The President received the Report, which reflects that Mr Haradinaj has had no further incidents at the DMU and that he has complied with all rules and regulations since the issuance of the First Decision.²⁰

17. The President is mindful that Mr Haradinaj has not always been willing to disassociate himself from the offences for which he was convicted.²¹ However, on balance, the President recalls Mr Haradinaj's expressions of regret during the oral hearing, his confirmation no longer to engage in conduct that may be characterised as offences against the administration of justice and that he will abide by any conditions imposed on his release.²²

18. The President further notes that the offences for which Mr Haradinaj has been convicted are grave and that while he has shown genuine signs of disassociation from his offences and some positive signs of rehabilitation, it is important to ensure that by way of abiding by the conditions specified in paragraph IV.21 below, Mr Haradinaj continues down the road to full rehabilitation and disassociation from his conduct for which Mr Haradinaj has been convicted.

19. To that end, the President is of the view that the sentence of Mr Haradinaj may be modified by ordering his release, albeit with certain specific conditions.²³ Such conditions shall apply for the duration of the term of imprisonment imposed on Mr Haradinaj or any other earlier specified date.²⁴

20. Lastly, in accordance with Article 11(2) of the Practice Direction, the President

¹⁹ See First Decision, paras 66-69, 76, 78.

²⁰ Report, paras 10, 18.

²¹ First Decision, para. 68.

²² Transcript of Hearing, 28 September 2023, pp. 11-12.

²³ See Article 51(2) of the Law in conjunction with Articles 3(1) and 10 of the Practice Direction.

²⁴ See Article 11(1) of the Practice Direction.

may decide to revoke or modify her decision if the convicted person breaches one or more of the conditions imposed.

IV. CONCLUSION

21. In view of the foregoing, and having considered the totality of the information before her, including the Report, the President determines that the following conditions shall apply to Mr Haradinaj's release in accordance with Rule 196(4) of the Rules and Article 11(1) of the Practice Direction, for the remainder of the duration of the sentence pronounced by the Court of Appeals Panel:

- a) assurance of permanent residency at the home address set forth in Haradinaj's Submissions;²⁵
- b) notification to the Registrar and to the police station identified by the Registrar of any relocation of the permanent residence, subject to permission thereof granted by the President;
- c) weekly reporting to the police station identified by the Registrar;
- d) surrender of Mr Haradinaj's passport or travel documents to the Registrar;
- e) to remain in Kosovo and to notify the Registrar of any wish to travel outside Kosovo and request for permission thereof to be granted by the President;
- f) refraining from any contact or communication with (potential) witnesses or victims before the Specialist Chambers and SPO;
- g) refraining from making any direct or indirect (himself or through others) public statements about the Specialist Chambers and SPO;
- h) requesting permission and approval from the Registrar in the event of

²⁵ Haradinaj's Submissions, para. 39.

conducting an interview or any other contact with the media as provided for in the Practice Direction on Detainees (Media Communications);

- i) abiding by any decision or order of the Specialist Chambers; and
- j) refraining from making negative, violent, intimidating, threatening or coercive comments towards or about (potential) witnesses or other persons who are at risk on the account of their cooperation with the Specialist Chambers, officials of the Specialist Chambers or the SPO.

22. The President emphasises that the conditions, set forth above, on Mr Haradinaj's release remain in place for the remaining duration of the four year and three month sentence imposed on him by the Court of Appeals Panel, namely until 24 December 2024. The President further emphasises that failure by Mr Haradinaj to comply with any of the conditions set forth in paragraph 21 shall result in the revocation or modification of the present decision in accordance with Article 11(2) of the Practice Direction.

23. The President notes the operational security concerns expressed by the Registrar should Mr Haradinaj and his Counsel be notified of this decision in advance of Mr Haradinaj's transfer to Kosovo. Accordingly, the President considers that Mr Haradinaj and his Counsel only be served with this decision upon confirmation of Mr Haradinaj's arrival at his designated location of release on or around 14 December 2023.

24. Given that the sentence is herewith modified, any consideration for an alteration of the sentence is moot.

V. DISPOSITION

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

DECIDES to modify Mr Haradinaj's sentence by releasing him with the

conditions set forth in paragraph IV.21 above;

DECIDES that, subject to the transfer arrangements by the Registrar, Mr Haradinaj be released on or around 14 December 2023 to his permanent residence at the home address set forth in Haradinaj's Submissions;

ORDERS Mr Haradinaj to abide by the conditions set forth in paragraph IV.21 above;

ORDERS the Registrar to take all necessary measures to ensure the transfer of Mr Haradinaj to the home address set forth in Haradinaj's Submissions and the conditions set forth in paragraph IV.21 above;

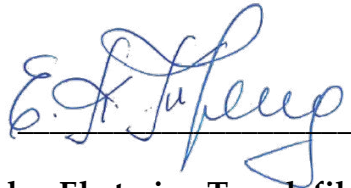
ORDERS the Kosovo police or any other authority of Kosovo to cooperate pursuant to Article 51(1) of the Law with the Registrar on the enforcement of the conditions set forth in paragraph IV.21 above and to provide a monthly report to the Registrar on the adherence by Mr Haradinaj to the condition set forth in paragraph IV.21(c) above;

ORDERS the Registrar to report to the President on a monthly basis on the adherence of Mr Haradinaj to the conditions set forth in paragraph IV.21 above until the conclusion of his sentence of four years and three months, namely on 24 December 2024, or sooner if a breach of the conditions has occurred;

ORDERS the Court Management Unit ("CMU") to reclassify this decision as public upon confirmation from the Registrar of Mr Haradinaj's arrival at his designated location of release;

ORDERS the CMU to serve this decision on Mr Haradinaj, his Counsel and the Specialist Prosecutor only upon confirmation of Mr Haradinaj's arrival in Kosovo; and

ORDERS the CMU to ensure that the Annexes to this decision remain confidential and *ex parte* as reflected on their respective cover pages.

A handwritten signature in blue ink, appearing to read 'E. Trendafilova', written over a horizontal line.

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

Dated this Tuesday, 12 December 2023
At The Hague,
The Netherlands