

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: 22 December 2023

Language: English

Classification: **Public**

**Public Redacted Request for Admission of Whistleblower Complaint and One
Confidential Annex**

Specialist Prosecutor's Office

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1. The Defence for Mr. Nasim Haradinaj (“Applicant”) seeks admission of a letter dated 28 November 2023 from Compass Law Partners to the United States Department of Justice containing a Whistleblower Complaint by John F. Moynihan (“Whistleblower Complaint”) which is given in a Confidential Annex. Whilst the Whistleblower Complaint is publicly available it contains confidential information, and this Request is therefore filed confidentially.
2. On 21 November 2023, the Applicant filed confidentially a Referral to the Specialist Chamber of the Constitutional Court.¹
3. On 22 November 2023, the President of the Specialist Chambers assigned the above Panel of the Constitutional Court Panel to rule on the Referral.²
4. On 27 November 2023, the Constitutional Court Panel issued the “Decision on the Working Language, Written Submissions and Public Redacted Version of the Referral” and directed the Applicant to file a public redacted version of the Referral.³ In the Decision, the Constitutional Court Panel directed the SPO to file, should they wish to do so, written submissions by 22 January 2024,⁴

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 (reclassified as public on 11 December 2023) (“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 (reclassified as public on 28 November 2023).

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

⁴KSC-CC-2023-22, F00003, para. 5 and Direction no. 2.

and the Applicant, should he wish to do so, written submissions in response 21 days thereafter.⁵

5. On 4 December 2023, the Applicant filed the request for “Reclassification of Haradinaj Referral to the Specialist Chamber of the Constitutional Court” on the basis that it contained no confidential information.⁶
6. On 11 December 2023, the Constitutional Court Panel reclassified the Referral as public following the application by the Applicant.⁷
7. On 18 December 2023, the Specialist Prosecutor’s Office (“SPO”) sent the Haradinaj Defence a publicly available link⁸ to the Whistleblower Complaint, which includes allegations of gross interference in the administration of justice on the part of former Specialist Prosecutor Jack Smith. The communication from the SPO made it clear that the information disclosed to the defence was in the public domain.
8. The Whistleblower Complaint presents evidence of egregious criminal conduct by the former Specialist Prosecutor. Specifically, he is said to have been involved in schemes to charge former President Hashim Thaçi in order

⁵ KSC-CC-2023-22, F00003, para. 5 and Direction no. 3.

⁶ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CC-2023-22, F00004.

⁷ See f/n 2.

⁸ [REDACTED]

to sabotage a meeting in the White House,⁹ to extort money from [REDACTED] by threatening him with criminal proceedings¹⁰ and to coach [REDACTED] to make statements to the SPO¹¹ and to leak dossiers on war crimes so as to obtain money from those named in them.¹²

9. It is important to stress at this stage that these are allegations that have recently surfaced in the public domain and that they will need to be properly investigated by the SPO. To this point, the SPO did not indicate in its communication of 18 December 2023 to the defence whether these matters are currently being investigated by the SPO.

10. These alleged activities of the former Specialist Prosecutor reinforce the position taken by the Applicant in the Referral (and at trial and on appeal) that the *modus operandi* of the SPO was discriminatory, politically motivated, and non-independent.¹³ Secondly, the Whistleblower Complaint provides evidence of the circumstances in which three sets of documents were delivered to the Kosovo Liberation Army War Veterans' Association in

⁹ Whistleblower Complaint, Annex A, p. 3.

¹⁰ Whistleblower Complaint, Annex A, p. 5, Annex B, pp. 1-2.

¹¹ Whistleblower Complaint, Annex C, pp. 3-4, 8-9, Annex E.

¹² Whistleblower Complaint, Annex C, p.3.

¹³ Referral, para. 71.

September 2020.¹⁴ It thereby strengthens the evidence referenced in the Referral¹⁵ in support of the Applicant's submission that entrapment/incitement was not wholly improbable.¹⁶

11. The Constitutional Court Panel is the only specialist chamber currently seized of the case. Rule 23(1) of the Rules of Procedure and Evidence of the Specialist Chamber of the Constitutional Court provides: "The Constitutional Court Panel may admit evidence and give such directions as it considers necessary for the proper determination of the referral."
12. For the foregoing reasons the Constitutional Court Panel is requested to admit the Whistleblower Complaint as evidence.

Word Count: [759 words]



¹⁴ Whistleblower Complaint, Exhibit A, p. 4; Exhibit C, p. 3. See Trial Judgment, KSC-BC-2020-07, F00611/RED, 18 May 2022, para. 204

¹⁵ Referral, n. 71.

¹⁶ Referral, paras. 51-62.

Toby Cadman

Specialist Counsel

Friday, 22 December 2023

At the Hague, the Netherlands