

In: KSC-CC-2023-22
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

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: 08 January 2024

Language: English

Classification: **Public**

Request Regarding Notification Concerning KSC-CC-2023-22/F00005

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Defence for Mr. Nasim Haradinaj (“Applicant”) seeks a finding that the Prosecution ‘Notification concerning KSC-CC-2023-22/F00005’ filed by the Specialist Prosecutor on 5 January 2024 (“Notification”)¹ is of no legal effect.

II. PROCEDURAL HISTORY

2. On 20 November 2023, the Applicant filed a Referral to the Specialist Chamber of the Constitutional Court.²
3. On 22 November 2023, the President of the Specialist Chambers assigned the above Panel of the Constitutional Court to rule on the Referral.³
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,⁴ in which, *inter alia*, it directed the Specialist Prosecutor’s Office

¹ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CC-2023-22/F00006.

² 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”).

³ 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).

⁴ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CC-2023-22, F00003.

("SPO") to file, should they wish to do so, written submissions by 22 January 2024.⁵

5. On 28 December 2023 the Applicant filed the Public Redacted Request for Admission of Whistleblower Complaint⁶ ("Request") in which it sought 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 which was given in a Confidential Annex.⁷
6. In the Notification the SPO stated that noting that the Request was filed after the briefing schedule set by the Specialist Chamber of the Constitutional Court Panel and in the absence of a statutory deadline to respond, the SPO intended to respond to the Request within its allotted submission on the Referral.⁸

III. APPLICABLE LAW

7. Rule 1(2) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court⁹ ("RPSCCC") provides that subject to the Law on

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

⁶ Prosecutor v. Hysni Gucati and Nasim Haradinaj, KSC-CC-2023-22/F00005/RED, (with confidential annex).

⁷ Request, para. 1.

⁸ Notification, para. 1.

⁹ KSC-BD-03/Rev3/2020.

Specialist Chambers and Specialist Prosecutor's Office¹⁰ and relevant provisions of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers¹¹ ("RPE"), the RPSCCC shall apply as the *lex specialis* to the functioning of the Specialist Chamber of the Constitutional Court.

8. Pursuant to Rule 23(1) of the RPSCCC, the Constitutional Court Panel "may admit evidence and give such directions as it considers necessary for the proper determination of the referral."
9. Rule 76 of the RPE provides, *inter alia*: "Unless otherwise provided in the [RPE], any response to a motion shall be filed within ten (10) days of the motion. [...] Applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit."

IV. SUBMISSIONS

10. The RPSCCC sets forth no procedure relating to requests for admission of evidence. Therefore, pursuant to Rule 1(2) of the RPSCCC and Rule 76 of the RPE, a response to a motion regarding admission of evidence in the instant

¹⁰ Law No.05/L-053.

¹¹ KSC-BD-03/Rev3/2020.

proceedings shall be filed within ten days of the motion unless otherwise provided in the RPE. Accordingly, the premise of the Notification that there is no “statutory deadline to respond” is incorrect.

11. Pursuant to Rule 75 of the RPE, the SPO was entitled either to file a response within 10 days of the Request or to file an application for extension of time sufficiently in advance to enable the Constitutional Court Panel to rule on the application before the expiry of the time limit. The SPO has taken neither of these actions. The Notification does not purport to be either a motion or a response: it is an assertion of what the SPO intends to do.

V. CONCLUSIONS

12. The Notification is in violation of the procedural framework established by RPSCCC and the RPE. Therefore, the Applicant requests that the Constitutional Court Panel find the Notification to be of no legal effect.

Word Count: [697 words]



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Monday, 08 January 2024

At the Hague, the Netherlands