

1 Tuesday, 29 September 2020

2 [First Appearance]

3 [Open session]

4 [The suspect Haradinaj entered the court]

5 --- Upon commencing at 3.00 p.m.

6 JUDGE GUILLOU: Good afternoon and welcome everyone in and  
7 outside the courtroom.

8 Before we start, pursuant to my decision setting the date for  
9 this First Appearance, the court photographer is permitted to take a  
10 few photos for one and a half minutes.

11 Please proceed.

12 Thank you. You may now leave the courtroom.

13 Madam Court Officer, can you please call the case.

14 THE COURT OFFICER: Good afternoon, Your Honour. This is  
15 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and  
16 Nasim Haradinaj.

17 JUDGE GUILLOU: Thank you very much, Madam Court Officer.

18 Before asking those present in the courtroom to introduce  
19 themselves, I would like to remind everyone of a few rules that must  
20 be observed at all times in order to make the courtroom proceedings  
21 smooth.

22 Please make sure you activate your microphone before speaking  
23 and you switch it off as soon as you finish. Talk slowly and  
24 clearly, as we have interpretation from and into Albanian and  
25 Serbian. Wait five seconds before responding to me or to a party or

1 a participant in order to allow the interpreters to finish the  
2 interpretation.

3 What is said in this hearing is transcribed in realtime and will  
4 be reflected in a transcript available to the parties and to the  
5 public after this hearing.

6 I would also like to remind the parties that certain information  
7 in this case is subject to protective measures and confidentiality  
8 orders. Confidential information shall not be disclosed in open  
9 session. If any party or participant must go into private session  
10 and refer to any confidential information, please indicate the  
11 reasons.

12 Now, I would kindly ask the parties and participants to  
13 introduce themselves, starting with the Specialist Prosecutor's  
14 Office please.

15 MS. BOLICI: Good afternoon, Your Honour. For the Specialist  
16 Prosecutor's Office are present Mr. Jack Smith, the  
17 Specialist Prosecutor; Mr. Alex Whiting, the Deputy  
18 Specialist Prosecutor; Mr. James Pace, Associate Prosecutor;  
19 Ms. Line Pedersen, Evidence and Case Manager; and I am  
20 Valeria Bolici, Prosecutor with the SPO.

21 JUDGE GUILLOU: Thank you very much, Madam Prosecutor.

22 Now I turn to the Defence. Please, counsel.

23 MR. MARTENS: Thank you, Your Honour. For the Defence is  
24 present Bas Martens, Attorney at Law, at The Hague, list attorney of  
25 the Specialist Chambers. Thank you.

1 JUDGE GUILLOU: Thank you very much, counsel.

2 Your client, Mr. Haradinaj, is also present in the courtroom,  
3 for the record.

4 Now I turn to the Registrar. Madam Registrar, please.

5 THE REGISTRAR: Good afternoon, Your Honour. Registrar  
6 Fidelma Donlon.

7 JUDGE GUILLOU: Thank you very much, Madam Registrar.

8 And for the record, I am Nicolas Guillou, Single Judge for this  
9 case.

10 The suspect is appearing today for the first time before the  
11 Specialist Chambers following his arrest and transfer.

12 Mr. Haradinaj, would you please rise. Can you please tell us  
13 your full name.

14 THE INTERPRETER: No microphone for the speaker.

15 JUDGE GUILLOU: If you could put the microphone on. It's the  
16 button on the right. Yes, thank you very much.

17 THE SUSPECT HARADINAJ: [Interpretation] Nasim Smajl Haradinaj.

18 JUDGE GUILLOU: What is your date and place of birth?

19 THE SUSPECT HARADINAJ: [Interpretation] 21 May 1963, Gllogjan.

20 JUDGE GUILLOU: What is your citizenship?

21 THE SUSPECT HARADINAJ: [Interpretation] You've called me here as  
22 a citizen of Kosovo, and I am a citizen of Kosovo, a national of  
23 Kosovo.

24 JUDGE GUILLOU: And finally, what is your current profession?

25 THE SUSPECT HARADINAJ: [Interpretation] You mean my education?

1 JUDGE GUILLOU: No, if you have a profession. Do you have a job  
2 at the moment or an occupation, a professional occupation?

3 THE SUSPECT HARADINAJ: [Interpretation] I am a lawyer and I  
4 manage the watering system in Gllogjan, Decan municipality. And I am  
5 deputy head of the war veterans organisation of the KLA, and I do  
6 this job part-time.

7 JUDGE GUILLOU: Thank you very much, Mr. Haradinaj. You may be  
8 seated.

9 Let me now move to the procedural history of the case.

10 On 24 September 2020, I issued an arrest warrant against the  
11 suspect, having found grounded suspicion that Mr. Haradinaj is  
12 criminally responsible for the following offences:

13 Intimidation during criminal proceedings, pursuant to Article  
14 387 of the Kosovo Criminal Code;

15 Retaliation, pursuant to Article 388 of the Kosovo Criminal  
16 Code; and

17 Violation of the secrecy of proceedings, pursuant to Article 392  
18 of the Kosovo Criminal Code.

19 The Specialist Chambers have jurisdiction to prosecute these  
20 offences by virtue of Article 15 of the Law on the Specialist  
21 Chambers.

22 The suspect was arrested in Kosovo on 25 September 2020, at  
23 which point he was served with the arrest warrant and informed of his  
24 rights. He was transferred to the detention facilities of the Kosovo  
25 Specialist Chambers in The Hague on 26 September 2020.

1           Mr. Haradinaj, before we proceed any further, I have to make  
2           sure that you can follow the proceedings in a language that you  
3           understand and speak. Can you confirm that you understand and speak  
4           Albanian, please?

5           THE SUSPECT HARADINAJ: [Interpretation] Yes, I understand and  
6           speak Albanian, and I follow everything perfectly well up until now.

7           JUDGE GUILLOU: Thank you very much, Mr. Haradinaj.

8           By this I am satisfied that you can follow the proceedings in  
9           Albanian, a language that you understand and speak, in accordance  
10          with Article 41 of the Law. If at any moment in the course of the  
11          proceedings, whether today or another day, you are not receiving  
12          interpretation, or if there is a technical problem with the  
13          interpretation, please draw my attention to it immediately.

14          THE SUSPECT HARADINAJ: [Interpretation] This is not only a  
15          language that I speak and understand; it is my mother tongue. I  
16          speak other foreign languages as well.

17          JUDGE GUILLOU: Absolutely. Thank you, Mr. Haradinaj.

18          Now allow me to explain the specific purpose of this  
19          First Appearance for the benefit of the suspect but also for those  
20          joining us in the public gallery and following the proceedings  
21          online.

22          Today's hearing is not a trial. The suspect has not been  
23          charged yet in the sense that no indictment has yet been submitted by  
24          the Specialist Prosecutor.

25          No evidence will be presented or debated, and the guilt or

1 innocence of the suspect will not be discussed or decided.

2 The purpose of this First Appearance is regulated by Article 41  
3 of the Law and Rule 55 of the Rules. According to these provisions,  
4 as Single Judge, I shall ascertain:

5 Whether the suspect has been informed of the reasons of his  
6 arrest, namely, the crimes allegedly committed and the reasons for  
7 keeping the suspect in detention; and

8 Whether the suspect has been informed of his rights under the  
9 Law and the Rules, including his right to legal assistance.

10 I expect the parties to limit their submissions to these  
11 matters, which I will address in turn. Should either party wish to  
12 discuss any other matter not expressly foreseen in the context of a  
13 First Appearance, they are invited to do so in writing by making a  
14 filing before me. And I can already take note of the submission of  
15 the counsel of Mr. Haradinaj, who filed submissions just before this  
16 hearing that I received.

17 So, first of all, Mr. Haradinaj, may I ask you to confirm that  
18 you have received the arrest warrant dated 24 September 2020 in a  
19 language that you understand and speak?

20 THE SUSPECT HARADINAJ: [Interpretation] Yes.

21 JUDGE GUILLOU: Thank you, Mr. Haradinaj.

22 For the benefit of the suspect and those joining in the public  
23 gallery, I will now ask the Court Officer to read the reasons for  
24 Mr. Haradinaj's arrest as indicated in the arrest warrant.

25 Please proceed, Madam Court Officer.

1 THE COURT OFFICER: Thank you, Your Honour.

2 According to the arrest warrant:

3 First, there is a grounded suspicion that Mr. Haradinaj is  
4 criminally responsible for attempting to commit the offence of  
5 intimidation during criminal proceedings, pursuant to Article 387 of  
6 the Criminal Code. Specifically, there is a grounded suspicion that  
7 Mr. Haradinaj held three press conferences on 7, 16, and 22 September  
8 2020, where he distributed or otherwise made available to the media  
9 confidential and non-public information and documents relating to the  
10 work of the Specialist Prosecutor's Office and mentioned by name  
11 certain potential witnesses and gave information regarding their  
12 place of residence and other personal details.

13 This conduct amounts to a serious threat or other means of  
14 compulsion to induce another person from making a statement or to  
15 make a false statement or to otherwise fail to state true information  
16 to the Specialist Prosecutor's Office and/or the Specialist Chambers.

17 Secondly, there is a grounded suspicion that Mr. Haradinaj is  
18 criminally responsible for committing the offence of retaliation,  
19 pursuant to Article 388 of the Criminal Code. Specifically, there is  
20 a grounded suspicion that Mr. Haradinaj held three press conferences  
21 on 7, 16, and 22 September 2020, where he distributed or otherwise  
22 made available to the media confidential and non-public information  
23 and documents relating to the work of the Specialist Prosecutor's  
24 Office, including the names and personal details of potential  
25 witnesses, thus exposing these individuals to potential threats to

1     their safety.

2             This conduct amounts to a harmful act with the intent to  
3     retaliate for providing truthful information to the Special  
4     Investigative Task Force and/or the Specialist Prosecutor's Office  
5     relating to the alleged commission of criminal offences.

6             Thirdly, there is a grounded suspicion that Mr. Haradinaj is  
7     criminally responsible for committing the offence of violating the  
8     secrecy of proceedings, pursuant to Article 392 of the Criminal Code.  
9     Specifically, there is a grounded suspicion that Mr. Haradinaj held  
10    three press conferences on 7, 16, and 22 September 2020, where he  
11    distributed or otherwise made available to the media confidential and  
12    non-public information and documents relating to the work of the  
13    Specialist Prosecutor's Office, including the names and personal  
14    details of potential witnesses.

15            Furthermore, there are articulable grounds to believe that  
16    Mr. Haradinaj's arrest is necessary because specific circumstances  
17    indicate that he:

18            (i) is a risk of flight;

19            (ii) has the incentive, means and opportunity to obstruct the  
20    progress of criminal proceedings; and

21            (iii) will repeat or attempt to repeat the criminal offences.

22            Thank you, Your Honour.

23            JUDGE GUILLOU: Thank you, Madam Court Officer.

24            Mr. Haradinaj, I wish to remind you that it is not the time to  
25    contest the reasons for your arrest but simply to acknowledge that



1 you have been informed of these reasons. You will have the  
2 opportunity to challenge your arrest in writing with the assistance  
3 of your counsel.

4 Mr. Haradinaj, can you please confirm that you have been  
5 informed of the reasons for your arrest?

6 THE SUSPECT HARADINAJ: [Interpretation] Yes, I was informed in  
7 writing and I read the reasons myself.

8 JUDGE GUILLOU: Thank you very much.

9 And can you confirm, in this context, that you were given the  
10 opportunity to contact a family member or another appropriate person  
11 about your arrest?

12 THE SUSPECT HARADINAJ: [Interpretation] No, this was very late.  
13 About three or four days after my arrest, they learned about my  
14 arrest through the media, but I only was able to inform them later  
15 on. It was only last night I was able to contact my family. That's  
16 how the circumstances were. That's why.

17 JUDGE GUILLOU: And have you been given the possibility to  
18 contact them before?

19 THE SUSPECT HARADINAJ: [Interpretation] No, I wasn't given the  
20 opportunity to contact them earlier because my phone numbers were on  
21 my phone, and I'd asked them to extract those phone numbers from my  
22 phone. And that's how the things went. However, I don't think that  
23 was on purpose, but that's how things stand.

24 JUDGE GUILLOU: So if I understand correctly, in fact, you  
25 didn't have the numbers to be able to contact them because they were

1 in the phone that you didn't have with you at the time?

2 THE SUSPECT HARADINAJ: [Interpretation] Yes, they were on my  
3 phone, the one that they seized. But they had opened the bag and  
4 they had the possibility to view them, but they didn't want to.

5 JUDGE GUILLOU: Thank you, Mr. Haradinaj.

6 Now let me inform you about your rights before the Court.

7 The Law on the Specialist Chambers and the Rules of Procedure  
8 and Evidence guarantee detained suspects a number of rights. I will  
9 read out the most important ones.

10 First, you shall be presumed innocent until proven guilty beyond  
11 reasonable doubt.

12 You are entitled to a fair and public hearing, subject to any  
13 measures ordered for the protection of victims and witnesses.

14 You are entitled to challenge the lawfulness of your arrest and  
15 to request review of decisions on your detention, and to appeal such  
16 decisions directly before the Court of Appeals.

17 You have the right not to be detained for an unreasonable period  
18 prior to the opening of the case, and you have the right to be  
19 released if the Prosecutor does not submit an indictment against you  
20 within one year.

21 You are entitled to a trial within a reasonable time or to be  
22 released pending trial if the relevant conditions are met.

23 You have the right to have counsel assigned to you and without  
24 payment by you if you do not have sufficient means to pay for it.

25 You have the right to have adequate time and facilities for the

1 preparation of your defence, and to communicate with the counsel of  
2 your own choosing.

3 You have the right to have the free assistance of an interpreter  
4 if you cannot understand or speak the language used in the court.

5 You have the right not to be compelled to testify against  
6 yourself or to admit guilt.

7 And you also have the right to remain silent and no adverse  
8 inference shall be drawn from your silence.

9 Mr. Haradinaj, you heard the most important rights that you  
10 enjoyed as a detained suspect in accordance with the applicable legal  
11 framework of the Specialist Chambers. Do you understand these  
12 rights?

13 THE SUSPECT HARADINAJ: [Interpretation] Yes, I understood them.

14 JUDGE GUILLOU: Thank you very much.

15 I also wish to inform you that, according to Article 21(5) of  
16 the Law, you may not represent yourself because you are currently in  
17 detention, so representation by a Specialist Counsel is mandatory.  
18 It is my duty, as Single Judge, to ensure that your right to counsel  
19 is respected.

20 To this end, I have noted the Registrar's filing informing me of  
21 the assignment of duty counsel for the purpose of this  
22 First Appearance. I hereby inform you that you have the right to be  
23 represented by a counsel appointed for the entire duration of the  
24 proceedings. And if you do not have sufficient means to pay for your  
25 counsel, you may apply to be declared indigent and in such case you

1 have the right to have a counsel assigned to you.

2 Appointments and assignments of counsel are done by the  
3 Registrar, so I invite you and your duty counsel to submit all  
4 relevant requests to her office. I also request the Registrar to  
5 make a filing in the case of record informing me of any relevant  
6 decisions in this regard.

7 Now, at this point, I would like to invite the  
8 Specialist Prosecutor to give any indications on the next procedural  
9 steps, in particular, what he intends to submit or when he intends to  
10 submit an indictment.

11 I am aware that there might not be a clear timeline at this  
12 stage, but I would like to remind the Prosecutor that there are two  
13 suspects currently in detention and I expect the judicial process to  
14 be fair and expeditious.

15 You have the floor.

16 MS. BOLICI: Yes. Thank you, Your Honour.

17 First, if I might, I would like to clarify for the record that  
18 as soon as Mr. Haradinaj was brought to the detention facility in  
19 Prishtina, he asked to contact a lawyer of his choice and he was  
20 allowed this possibility. And, in fact, he did contact a lawyer.

21 In relation to Your Honour's request, I would like to convey  
22 that the Specialist Prosecutor's Office is working expeditiously to  
23 make sure that an indictment against Mr. Haradinaj is filed in the  
24 shortest period of time.

25 There are a number of investigative steps that our office is

1 undertaking at the moment in order to ensure that an indictment is  
2 filed together with all the relevant supporting material in order to  
3 establish a detailed and complete and exhaustive record.

4 Among other things, our office is in the process of collecting  
5 information from numerous witnesses who have conveyed to our office  
6 to feel threatened and frightened by the acts that underline the  
7 reasons why Mr. Haradinaj has been arrested. Other indispensable  
8 investigative steps include the analysis of seized items, including  
9 computers, surveillance cameras, and other electronic devices.

10 In addition to that, there are records that need to be requested  
11 by third parties and steps to be undertaken in order to ensure  
12 transcription and translation of all the relevant audio and video  
13 evidence.

14 The public appearances of the suspects in the last few weeks  
15 will also have to be collected, processed, in order to establish an  
16 exhaustive record.

17 Notwithstanding the volume of work that our office is carrying  
18 out, we anticipate that we'll be able to file an indictment shortly,  
19 and we assure Your Honour that we are committed to a speedy,  
20 throughout, process. Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 I would like to ask the parties if they have any urgent issues  
23 that they would like to raise which cannot be addressed through  
24 written submissions. And I also remind the parties that should this  
25 require disclosure of confidential information, please let me know so

1 that appropriate measures may be taken.

2 I will start with the Defence.

3 And let me just add, if you want to raise the issues that you  
4 have already raised in the submissions, please just take a minute  
5 either to sum up or to add anything else, but we already have them in  
6 writing. Thank you.

7 MR. MARTENS: Thank you, Your Honour. Some short remarks.

8 In fact, the Defence has filed preliminary motions to dismiss  
9 these charges and also a motion for immediate release of my client.

10 The Prosecutor, the Specialist Prosecutor's Office, just stated  
11 that there will be a speedy process and an indictment will be  
12 processed shortly. At the same time, I haven't heard a date. And  
13 also, the Specialist Prosecutor's Office chose the date of the arrest  
14 itself, which now ends up in the situation that we are waiting for  
15 due process but with my client in custody.

16 The work that has to be done, what was just mentioned by the  
17 Prosecutor, is a lot of work which will take, as we can expect in  
18 criminal proceedings, many weeks up till many months. We really have  
19 to review the charges against my client.

20 And as I've laid down in my motion, and to be clear for everyone  
21 in this courtroom and outside, my client is not charged with war  
22 crimes. This is a war crime tribunal. My client is not charged with  
23 that. And that's also why, in my submission that I've filed with the  
24 Court, I have said that there is no jurisdiction over these  
25 accusations they have put forward to my client, especially Article

1 387 is not even covered by jurisdiction, as I've said, which is, of  
2 course, one of the gravest concerns and accusations that have been  
3 made to my client.

4 Furthermore, and I don't want to repeat everything I've put down  
5 in my submission, but what I concluded there is that I would ask the  
6 Pre-Trial Judge, Your Honour, to determine that the accusations are  
7 not within the jurisdiction of the Kosovo Specialist Chambers, to  
8 dismiss the charges on the grounds that I've put forward, to  
9 immediately release my client from pre-trial detention, to release  
10 him from pre-trial detention under probational conditions to be set  
11 by you, to provide Mr. Haradinaj and counsel with all documents and  
12 materials supporting the indictment in Kosovo and English language,  
13 especially in Kosovo language that he understands or in Albanian  
14 language that he understands, because up till now we only have  
15 received the arrest warrant and the transfer document next to the  
16 COVID-19 protocols of the detention centre.

17 For this moment, thank you very much, Your Honour.

18 JUDGE GUILLOU: Thank you very much, counsel. And I take note  
19 of the filing that you made today.

20 In this respect, I order the Specialist Prosecutor to file her  
21 response to the request of the counsel of Mr. Haradinaj by Friday,  
22 2 October, given the urgency of the request. This is an oral order.

23 If you want to respond very, very briefly to Mr. Martens, but  
24 very briefly, please, because this will be done by written means.

25 MS. BOLICI: Yes, Your Honour, just a few words.

1 In relation to the challenge to jurisdiction, I note that the  
2 Defence counsel omits to acknowledge the existence of two crucial  
3 provisions in the Law establishing the Kosovo Specialist Chambers and  
4 the Specialist Prosecutor's Office, that ground the jurisdiction of  
5 this Chamber for the crimes Mr. Haradinaj has been arrested for.

6 As for the response to the filings that Your Honour has  
7 indicated, we'll comply within the deadline. Thank you.

8 JUDGE GUILLOU: Thank you, Madam Prosecutor.

9 Mr. Martens? Okay.

10 Mr. Haradinaj, please would you have any issues you would like  
11 to raise specifically in relation to your arrest, transfer, or  
12 detention please?

13 THE SUSPECT HARADINAJ: [Interpretation] Do you mean I need to  
14 tell you how I was arrested, how I came over here, how I was  
15 transferred, or my opinion on what happened?

16 JUDGE GUILLOU: You don't need to tell me how everything  
17 happened. It's an opportunity for you to raise any issues,  
18 especially if there's been any problem during the transfer, the  
19 arrest, or if you have any issues in your detention currently.

20 THE SUSPECT HARADINAJ: [Interpretation] No, everything was done  
21 in conformity with the orders that you have issued. They behaved  
22 politely. I, of course, do not accept the arrest and the transfer.  
23 But if I am allowed to speak, I have certain conclusions that I have  
24 made, and I think if you allow me to say them now, I will say them  
25 now. But maybe I will be given the opportunity later. If you allow



1 me, I have written something on paper. I don't think it will take  
2 long. About three minutes.

3 JUDGE GUILLOU: Usually, this First Appearance is mainly for me  
4 to inform you of your rights. This is what we've done. It is not  
5 the moment to discuss the substance of the case. So I think it's not  
6 the moment for this presentation.

7 But if there is something you absolutely want to say now, you  
8 have the floor, Mr. Haradinaj.

9 THE SUSPECT HARADINAJ: [Interpretation] Well, I think I'm  
10 entitled to the free expression of my opinion. But if you want to  
11 prohibit me from that, you can do so, as you have done so up until  
12 now.

13 As a matter of fact, I've already told out loud that I do not  
14 recognise these Chambers, I do not recognise your work, and I believe  
15 that the term that has been assigned to you has already been expired  
16 because the five years that were allocated to you are over within  
17 August. And that's it. That's what I wanted to say.

18 And this is something that I've made public time and again, so  
19 this is not something that I'm just telling you out loud today. So  
20 we have over 10.000 signatures that we've collected by the citizens  
21 that we are against these Chambers. So the politicians of my country  
22 have to be blamed for it, because for their own interests, for their  
23 own pockets, they have decided to establish these Chambers, and  
24 they -- and you are continuing with your work, although the term, the  
25 deadline for the establishment of the Chambers are over with.

1           So you have violated the constitution of my country, you have  
2           violated every human law, the right to expression. And even if you  
3           condemn me with 500.000 years, I think you can do nothing to change  
4           my opinion and the opinion of the people about the existence of these  
5           Chambers.

6           So I was sentenced when I was 15 for the right of my expression,  
7           so it was a violation of that right that I went to prison with, and  
8           this is the situation today as well. So we have fought for the  
9           minimum human right that is free expression of your own opinion, of  
10          one's own opinion.

11          So that is all I wanted to say. Thank you very much, Your  
12          Honour. I don't want to discuss any further, because I see that you  
13          do not have any predisposition to give me the time to read out  
14          whatever I have prepared for this session today.

15          Thank you.

16          JUDGE GUILLLOU: Mr. Haradinaj, thank you for your remarks, and  
17          you will have ample time with your counsel to raise any issue you  
18          will want, especially in the next steps. So, really, don't feel  
19          frustrated. You will really have the time to express any arguments  
20          you may wish.

21          Finally, I inform you that in the coming days I intend to issue  
22          some decisions with a view to organising the subsequent phase or  
23          phases of the proceedings efficiently. I will notably issue a  
24          decision on the reclassification of documents and an order on the  
25          working language of the proceedings.

1           Mr. Haradinaj, I also inform you that you may challenge your  
2           detention in accordance with Rule 57, and this will be dealt with in  
3           written submissions and rulings.

4           Furthermore, pursuant to Article 41 and Rule 57, I shall review  
5           your detention at least every two months upon your counsel's or the  
6           Prosecutor's request or at my own initiative.

7           Taking into consideration the type of offences and mindful of  
8           Rule 57(1), I also invite the Specialist Prosecutor to submit an  
9           indictment for confirmation as soon as possible.

10          This concludes today's hearing. I thank the parties and the  
11          Registry for their attendance. I also wish to thank the  
12          interpreters, stenographers, audio-visual technicians, and security  
13          personnel for their assistance.

14          The hearing is adjourned. Thank you.

15                       --- Whereupon the hearing adjourned at 3.38 p.m.