

# THE INDICTMENT FILED FOR CRIMINAL OFFENSES AGAINST PUBLIC ORDER AND OBSTRUCTION OF THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION

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The Humanitarian Law Center in Kosovo (HLCK) monitors the court proceedings in front of the Kosovo Specialist Chambers. HLCK will publish newsletters and analyses related to the work of the Specialist Chambers in order to inform the public on the progress of cases.

**BY JUNE 2021, FOUR INDICTMENTS HAD BEEN FILED AT THE KOSOVO SPECIALIST CHAMBERS (KSC).**

Three indictments have been filed for war crimes against six (6) persons and one indictment has been filed regarding obstruction of the administration of justice in the case of the Specialist Prosecutor vs. Hysni Gucati and Nasim Haradinaj.



## SUBJECT MATTER AND TEMPORAL JURISDICTION OF THE SPECIALIST CHAMBERS AND THE SPECIALIST PROSECUTOR'S OFFICE

The Specialist Prosecutor's Office and the Specialist Chambers are mandated to investigate and prosecute persons for war crimes and crimes against humanity committed in Kosovo during the period from January 1, 1998 to December 31, 2000.

In addition to the criminal offenses of war crimes and crimes against humanity that occurred during the period 1998-2000, the SPO and KSC have also a mandate for criminal offenses provided under the Criminal Code of the Republic of Kosovo (2012) which may be committed from the moment of establishment of KSC and SPO until the end of their mandate:

- Criminal offenses against the administration of justice and public administration (Articles 384-386, 388, 390-407).
- Criminal offenses against public order (Articles 409-411, 415, 417, 419, 421).
- Public corruption and criminal malfeasance (Articles 423-424).

# THE SPECIALIST PROSECUTOR VS. HYSNI GUCATI AND NASIM HARADINAJ

The indictment in the case of the Specialist Prosecutor vs. Hysni Gucati and Nasim Haradinaj was confirmed on December 11, 2020 and was made public three days later, while on July 5, 2021, the indictment was amended.

According to the indictment, between 7 and 25 September 2020, in three press conferences and other broadcasting activities, as well as through other acts, Gucati and Haradinaj without authorization disclosed certain information that was protected by the Law on Specialist Chambers, among which identification data of some potential witnesses. Gucati and Haradinaj also made derogatory accusations and comments against potential witnesses and repeatedly expressed their intention to undermine the work of the Specialist Chambers.

The indictment against them contains two (2) charges for criminal offenses against public order:

- Obstruction of official persons in the performance of official duties (counts 1 and 2).

Four (4) charges of criminal offenses against the administration of justice and public administration:

- Intimidation during criminal proceedings (count 3);
- Retaliation (count 4); and
- Violation of the Confidentiality of Proceedings (counts 5 and 6).

During the period when this indictment was filed, Hysni Gucati was chairman, while Nasim Haradinaj was deputy chairman of the Organization of War Veterans of the Kosovo Liberation Army (OWV-KLA).

During the period in question, several packages of documentation from an unidentified person were sent at the OWV-KLA's office. Those packages contained confidential documentation of the Kosovo Specialist Chambers. Upon their receipt, Hysni Gucati and Nasim Haradinaj disclosed information protected by the Law on Specialist Chambers, during three press conferences, on September 7, 16 and 22, 2020. According to the indictment, they also distributed identifying data of several potential witnesses with the intention of undermining the work of the Specialist Chambers, and among other things, promised to publish any further confidential and non-public information provided to the OWV-KLA regarding the Specialist Chambers and the Specialist Prosecutor's Office (SPO).

# FIRST COURT APPEARANCES, STATUS CONFERENCES AND TRIAL PREPARATION CONFERENCES

The defendants Hysni Gucati and Nasim Haradinaj were arrested on September 25, 2020 and transferred to the detention facility in The Hague-Netherlands. Prior to the publication of the first version of the indictment, the defendants appeared only as suspects before the Specialist Chambers a few days after their detention. On December 11, 2020, the indictment against them was confirmed, and they appeared before the pre-trial judge. Gucati pleaded not guilty to all counts of the indictment, while Haradinaj decided to make a plea within 30 days. However, in the following court appearance/conference Haradinaj decided not to enter a plea, therefore in such circumstances, according to the Rules of Procedure, it is considered that he pleaded not guilty.

For a one-year period, from September 2020 to September 2021, a total of thirteen (13) hearings were held on this case. Of these, the first four (4) appearances were held, initially the first two (2) appearances in the capacity of suspects and then two (2) in the capacity of Accused as well as six (6) other status conferences in front of the pre-trial judge. After transfer of the case file from the pre-trial judge to the trial panel, three (3) pre-trial conferences were held.

The trial panel in this case was established on July 15, 2021, headed by Judge Charles Smith III.

## **FAILURE OF THE DEFENDANT TO ENTER A PLEA UPON READING THE INDICTMENT**

**ACCORDING TO THE RULES OF  
PROCEDURE AND EVIDENCE, IF  
THE ACCUSED FAILS TO ADMIT  
GUILT OR PLEAD NOT GUILTY AT  
THE INITIAL OR ANY FURTHER  
APPEARANCE, ENTER A PLEA OF  
NOT GUILTY ON HIS OR HER  
BEHALF.**

**NO ADVERSE INFERENCE MAY  
BE DRAWN FROM THE  
ACCUSED'S REFUSAL TO ADMIT  
GUILT OR PLEAD NOT GUILTY.**

# DEFENSE REQUESTS RELATED TO RESIGNATION OR RECUSE OF JUDGES

On July 26, 2021, shortly after the case was referred to the court, Nasim Haradinaj's defense filed a request for the resignation of KSC President Ekaterina Trendafilova and the recusing of KSC Deputy President Charles Smith III, who is also the presiding judge in this court case. This request was joined two days later by the defense of Hysni Gucati.

This, among other things, contained a request for resignation of the KSC President, Ekatarina Trendafilova, from fulfilling any judicial, administrative or managerial role in the respective case, including the appointment of judges to various panels.

The defense has presented several reasons on the basis of which it supported their request, such as: the participation of the President in two informative meetings with diplomats, where the Specialist Prosecutor's Office also participated. According to the defense, this participation implies that she agreed with the allegations of the SPO made at that meeting and that there is a risk of abuse of office, distorted description of the defendants and support for the cause of another party. In addition to the President, the defense also requested the recuse of the Deputy President of the Specialist Chambers, Charles Smith III, who is also the presiding judge in the case of the Special Prosecutor vs. Hysni Gucati and Nasim Haradinaj, to resign from all judicial, administrative and management duties in this court case. The defense rationale for the resignation of Judge Charles Smith III is based on several statements made by a former EULEX judge, the same statements he made about this judge during his time as President of the Assembly of EULEX Judges.

## **The requests were rejected by the President of the Specialist Chambers on the grounds that:**

Regarding the first request that has to do with the information meetings which were held on December 8, 2020 and February 11, 2021, the President assessed that the deadline of ten (10) days for submitting the request had passed, from the moment the party was aware of the reasons on which the request is based. The defense submissions are based entirely on misinterpretations of comments from an unidentified source, made during an ordinary meeting. For this reason, **the President refuses to resign from the exercise of administrative functions in this matter**, which she is assigned according to the legal framework. Regarding the judicial function, the President currently does not perform any judicial function in this case, therefore the request of the defense is rejected.

-In relation to Deputy President Smith III, who is also the presiding judge in this case, the request was submitted within the deadlines. The request for his recuse from the presiding judge position, according to the President, was not grounded on facts but rather on general allegations made by a former EULEX judge regarding Judge Smith III, when he was President of the Assembly of EULEX Judges. According to the Rules of Procedure and Evidence of the KSC, when the President of the KSC deems that such a request is "malicious, erroneous, worthless or unfounded", the President rejects the request by expedited procedure, whereas in other circumstances a panel of three judges should be established to make a decision regarding the recuse of the judge.

The main hearings in this case has started on 7th October 2021.

## HLCK FINDINGS:

- A considerable number of public documentation which is available on the official website of this judicial institution has not been entirely translated into Albanian and Serbian, but it is published mainly in English.