



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-07**
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 11 December 2020

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**Public Redacted Version of the
Decision on the Confirmation of the Indictment**

Specialist Prosecutor
Jack Smith

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 86 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 30 October 2020, the Specialist Prosecutor's Office ("SPO") submitted for confirmation a strictly confidential and *ex parte* indictment ("Indictment") against Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") (collectively, the "Suspects"), together with evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation ("SPO Submission of the Indictment").²

2. On 3 December 2020, the Pre-Trial Judge set the target date for the issuance of this decision to 11 December 2020.³

II. SUBMISSIONS

3. In the Indictment, the SPO charges the Suspects with offences under Article 15(2) of the Law and Articles 387, 388(1), 392(1)-(3) and 401(1)-(3) and (5) of the Criminal Code of Kosovo, Law No. 06/L-074 (2019) ("KCC"), relating to the official proceedings of the Specialist Chambers ("SC"), including investigations of

¹ KSC-BC-2020-07, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public.

² KSC-BC-2020-07, F00063, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests* ("SPO Submission of the Indictment"), 30 October 2020, strictly confidential and *ex parte*, with Annexes 1 ("Indictment") and 2 ("Detailed Outline"), strictly confidential and *ex parte*.

³ KSC-BC-2020-07, F00072, Pre-Trial Judge, *Decision on Proceedings Concerning the Review of Detention and Setting a Target Date for a Decision Pursuant to Article 39(2)*, 3 December 2020, confidential, para. 20.

the SPO.⁴ More specifically, the SPO alleges that the Suspects' acts and omissions between at least 7 and 25 September 2020 render them criminally responsible for:

- (i) obstructing official persons in performing official duties, by force and/or serious threat, punishable under Article 15(2) of the Law and Article 401(1) and (5) of the KCC (Count 1);
- (ii) obstructing official persons in performing official duties, by participating in the common action of a group, punishable under Article 15(2) of the Law and Article 401(2)-(3) and (5) of the KCC (Count 2);
- (iii) intimidation during criminal proceedings, punishable under Article 15(2) of the Law and Article 387 of the KCC (Count 3);
- (iv) retaliation, punishable under Article 15(2) of the Law and Article 388(1) of the KCC (Count 4);
- (v) violating the secrecy of proceedings, through unauthorised revelation of secret information disclosed in official proceedings, punishable under Article 15(2) of the Law and Article 392(1) of the KCC (Count 5); and
- (vi) violating the secrecy of proceedings, through unauthorised revelation of the identities and personal data of protected witnesses, punishable under Article 15(2) of the Law and Article 392(2)-(3) of the KCC (Count 6).⁵

4. According to the SPO, the Suspects incur individual criminal responsibility under Article 16(3) of the Law by having:

- (i) committed, alone or in co-perpetration, the offences under Counts 1-6, within the meaning of Articles 17 and 31 of the KCC;⁶

⁴ Indictment, preamble, paras 4, 48.

⁵ Indictment, para. 48.

⁶ Indictment, paras 37, 39, 47(i).

- (ii) attempted to commit the offences under Counts 1-4 and 6, within the meaning of Article 28 of the KCC;⁷
- (iii) agreed to commit and took substantial acts towards the commission of the offences under Counts 1-6 as co-perpetrators, within the meaning of Article 35 of the KCC;⁸
- (iv) incited the commission of the offences under Counts 1-6, within the meaning of Article 32(1) of the KCC;⁹
- (v) incited the commission of the offences under Counts 1-6, and such offences were attempted, within the meaning of Article 32(2) of the KCC;¹⁰
- (vi) incited the commission of the offences under Counts 1-3 and 6, and such offences were neither committed, nor attempted, within the meaning of Article 32(3) of the KCC;¹¹ and/or
- (vii) assisted in the commission of the offences under Counts 1-6, within the meaning of Article 33 of the KCC.¹²

5. The SPO further submits that the Suspects intended to commit and/or incite or assist the (attempted) commission of the offences under Counts 1-6.¹³ In the alternative, the SPO submits that the Suspects: (i) were aware that the offences under Counts 1-6 could occur as a result of their acts and omissions and/or that their acts or omissions could incite or assist in the commission of the offences; and (ii) acceded to their occurrence.¹⁴

⁷ Indictment, paras 38, 47(ii).

⁸ Indictment, paras 39-40, 47(iii).

⁹ Indictment, paras 41, 47(iv).

¹⁰ Indictment, paras 42, 47(v).

¹¹ Indictment, paras 43, 47(vi).

¹² Indictment, paras 44, 47(iv).

¹³ Indictment, para. 45.

¹⁴ Indictment, para. 46.

6. The SPO requests the Pre-Trial Judge to confirm the Indictment.¹⁵

7. In addition, the SPO requests: (i) the temporary non-disclosure of the Indictment, related documents, and information to the public and Suspects until further order of the Pre-Trial Judge on application of the SPO or after hearing the SPO; and (ii) authorisation to apply redactions to any identifying information of witnesses and victims or confidential information prior to disclosure to, as applicable, the Suspects or public.¹⁶ The SPO submits that the requested measures are justified in light of the Suspects and certain others having repeatedly, without authorisation, disseminated confidential and non-public information, [REDACTED], and having taken measures to intimidate and retaliate against witnesses, and obstruct the work of the SPO and SC proceedings.¹⁷

III. APPLICABLE LAW

A. REVIEW OF INDICTMENT

8. Article 39(1) and (2) of the Law and Rule 86(4) of the Rules provide that the Pre-Trial Judge shall have the power to review an indictment. Pursuant to Article 39(2) of the Law and Rule 86(4) and (5) of the Rules, if satisfied that a well-grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment. If the Pre-Trial Judge is not so satisfied, the indictment or charges therein shall be dismissed. Rule 86(5) of the Rules provides that the Pre-Trial Judge must render a reasoned decision.

9. Pursuant to Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of

¹⁵ SPO Submission of the Indictment, para. 9(a).

¹⁶ SPO Submission of the Indictment, paras 5, 9(b).

¹⁷ SPO Submission of the Indictment, para. 6.

liability in relation to the crimes charged. The indictment shall be filed together with supporting material, i.e. evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

10. Upon confirmation of any charge(s) of the indictment, Rule 86(6) of the Rules provides that the suspect shall have the status of an Accused and the Pre-Trial Judge may issue any other decisions or orders provided for in Article 39(3) of the Law.

11. Rule 86(8) and (10) of the Rules provides that the Registrar shall retain and prepare certified copies of the confirmed indictment bearing the seal of the Specialist Chambers, and notify the President of the confirmed indictment.

B. OFFENCES UNDER ARTICLE 15(2) OF THE LAW AND MODES OF LIABILITY

12. As provided in Article 3(2) of the Law, the Specialist Chambers adjudicate in accordance with, *inter alia*, the Constitution of Kosovo, the Law, provisions of Kosovo law expressly incorporated in the Law, and international human rights law.

13. Pursuant to Articles 6(2) and 15(2) of the Law, the Specialist Chambers has jurisdiction over specific offences against the administration of justice, as set out in the 2012 Criminal Code of Kosovo, Law No. 04/L-082 ("2012 KCC"), when they relate to the official proceedings and officials of the SC and the SPO. The KCC, which entered into force on 14 April 2019,¹⁸ renumbered the provisions listed in Articles 6(2) and 15(2) of the Law. Accordingly, the current proceedings rest on

¹⁸ See Article 434 of the KCC, published in the *Official Gazette of the Republic of Kosovo*, No. 2, 14 January 2019, Prishtinë/Priština.

Articles 387, 388, 392 and 401 of the KCC, corresponding to Articles 395, 396, 400 and 409 of the 2012 KCC.¹⁹

14. For offences in Article 15(2) of the Law, Article 16(3) provides that the individual criminal responsibility provisions contained in the 2012 KCC, Articles 8-10, 17, 21-24, 27-40 shall apply. These provisions have been renumbered in the KCC as Articles 8-10, 17, 21-24, 27-37.

C. MAINTAINING CONFIDENTIALITY

15. Article 39(11) of the Law stipulates that the Pre-Trial Judge may, where necessary, provide for the protection of victims and witnesses.

16. Rule 85(4) of the Rules provides that all documents and information submitted by the SPO to the Pre-Trial Judge during investigation shall remain at the least confidential and *ex parte*, subject to Rule 102 of the Rules.

17. Rule 88 of the Rules provides that the indictment shall be made public upon confirmation by the Pre-Trial Judge. However, in exceptional circumstances, upon a showing of good cause, the Pre-Trial Judge may order the temporary non-disclosure of the indictment, related documents or information to the public until further order. The indictment shall in any case be made public, with redactions, where necessary, no later than the Accused's initial appearance. The SPO may disclose an indictment or part thereof to the authorities of a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

18. Rule 102(1)(a) of the Rules provides that the SPO shall make available to the Accused, as soon as possible, but at least within 30 days of the initial appearance

¹⁹ See also KSC-BC-2020-07, F00057, Single Judge, *Decision on Defence Challenges* ("Defence Challenges Decision"), 27 October 2020, public, para. 24.

of the Accused, the supporting material to the indictment submitted for confirmation, as well as all statements obtained from the Accused.

19. Rule 105(1) of the Rules provides that the SPO may apply to the Panel for interim non-disclosure of the identity of a witness or victim participating in the proceedings until appropriate protective measures have been ordered.

IV. JURISDICTION

20. In order to be confirmed, an indictment must fulfil the subject matter and temporal requirements, and must have either a territorial or personal basis for jurisdiction.

A. SUBJECT MATTER JURISDICTION

21. Articles 6(2) and 15(2) of the Law provide that the SC shall have jurisdiction over the offences of intimidation during criminal proceedings, retaliation, violating the secrecy of proceedings and obstructing official persons in performing official duties, with respective reference to Articles 395, 396, 400 and 409 of the 2012 KCC, corresponding to Articles 387, 388, 392 and 401 of the KCC. Therefore, these offences fall within the subject matter jurisdiction of the Specialist Chambers.²⁰

B. TEMPORAL JURISDICTION

22. Offences listed in Articles 6(2) and 15(2) of the Law relate to officials or official proceedings of the SC or SPO, institutions created by law in 2015.²¹ Such offences

²⁰ See also Defence Challenges Decision, paras 23-24.

²¹ See Article 162(1) of the Constitution; Article 1(1) of the Law.

must therefore concern events subsequent to the creation of these institutions. The offences under Counts 1-6 concern events allegedly taking place between at least 7 and 25 September 2020 and, hence, fall within SC temporal jurisdiction.²²

C. TERRITORIAL OR PERSONAL JURISDICTION

23. Pursuant to Article 8 of the Law, the SC shall have jurisdiction over offences within its subject matter jurisdiction, which were either commenced or committed in Kosovo. Pursuant to Article 9(2) of the Law, the SC shall have personal jurisdiction where the suspect is a person having Kosovo/Federal Republic of Yugoslavia (“FRY”) citizenship (active personality principle) or offences are committed against persons of Kosovo/FRY citizenship (passive personality principle), wherever those offences were committed. The territorial and personal jurisdictional bases are thus alternative to one another. Satisfying one of these requirements is sufficient to reach an affirmative finding on jurisdiction.

24. In the present case, the Suspects are Kosovo citizens and have possessed that citizenship at all times relevant to the Indictment.²³ The Pre-Trial Judge therefore finds that the active personal jurisdiction requirement of Article 9(2) of the Law has been met.

25. In light of the foregoing, the Pre-Trial Judge finds that the case falls within the jurisdiction of the SC.

²² See also Defence Challenges Decision, paras 25-26.

²³ Indictment, paras 1-2. KSC-BC-2020-07, Transcript, 29 September 2020, public, p. 3, lines 20-23; Transcript, 1 October 2020, public, p. 5, lines 22-23.

V. LEGAL REQUIREMENTS

A. NATURE AND SCOPE OF THE REVIEW

1. Nature of the Review

26. The confirmation of the indictment is an *ex parte* process without the involvement of the Defence. Judicial review ensures that only those charges are considered at trial for which sufficient evidence has been presented. It also ensures that the indictment provides the Accused with sufficient information to understand clearly and fully the nature and cause of the charges against him or her, with a view to preparing an adequate defence.²⁴

27. Pursuant to Article 38(4) of the Law and Rule 86(1) of the Rules, the Specialist Prosecutor submits the indictment, together with supporting material, for review by the Pre-Trial Judge. During the review process, the Pre-Trial Judge determines whether the indictment meets the requirements under Rule 86(3) of the Rules and may, if need be, revert to the Specialist Prosecutor under Rule 86(4) of the Rules. Subsequently, pursuant to Article 39(2) of the Law and the chapeau of Rule 86(4) of the Rules, the Pre-Trial Judge examines the supporting material in relation to each charge in the indictment, to determine whether the SPO has established a well-grounded suspicion that the suspect committed or participated in the commission of an offence under the jurisdiction of the SC.

28. While neither the Law nor the Rules define well-grounded suspicion, the threshold is clearly differentiated from other evidentiary standards provided in the SC's legal framework. The Law establishes four progressively higher evidentiary thresholds: (i) grounds to believe (in Article 38(3)(a) of the Law and Rule 43(1) of the Rules, regarding the status of suspects); (ii) grounded suspicion (in Article 41(6) of the Law, regarding arrest warrants by the SC or arrest orders

²⁴ KSC-BC-2020-05, F00003, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 28 February 2020, public, para. 9.

by the SPO); (iii) well-grounded suspicion (in Article 39(3) of the Law and Rule 86(4) of the Rules, regarding the confirmation of an indictment); and (iv) beyond reasonable doubt (in Article 21(3) of the Law and Rule 158(3) of the Rules, regarding convictions). As the threshold for triggering proceedings against an Accused, well-grounded suspicion is necessarily more onerous than those required for ascertaining suspects and ordering arrests, and is evidently less demanding than the standard for conviction following trial.

29. The Pre-Trial Judge notes that, according to Article 19.1.12 of the Kosovo Criminal Procedure Code of 2012, No. 04/L-123 (“KCPC”), well-grounded suspicion is reached when the evidence “would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence”.²⁵ Notably, it is not sufficient, as required for grounded suspicion under Article 19.1.9 KCPC, that the objective observer be satisfied that “the person concerned is more likely than not to have committed the offence”.

30. Therefore, while falling short of the certainty of a proven fact, determining the existence of well-grounded suspicion nevertheless requires a conviction on the part of the Pre-Trial Judge, beyond mere theory or suspicion, that: (i) the offences have indeed occurred; and (ii) the suspect committed or participated in the commission of the offence(s) through the alleged mode(s) of liability. The Pre-Trial Judge bases such findings on concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment. In so doing, the Pre-Trial Judge evaluates the supporting material holistically, without scrutinising each item of evidentiary material in isolation.²⁶

²⁵ “Objective” is defined as “not influenced by personal feelings or opinions in considering and representing facts; impartial, detached”, *see OED Online* (Oxford University Press, September 2020) <<https://www.oed.com/view/Entry/129634?redirectedFrom=objective&>> accessed 3 December 2020.

²⁶ KSC-BC-2020-05, F00008/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Salih Mustafa* (“Mustafa Confirmation Decision”), 5 October 2020, public, para. 37. Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-803-tEN, Pre-Trial Chamber I, [Decision](#)

2. Scope of the Review

31. Pursuant to Rule 86(4) of the Rules, to determine whether a well-grounded suspicion exists, the Pre-Trial Judge examines the indictment, the detailed outline and the supporting material only, without regard to any extraneous information or material, albeit publicly available. Accordingly, the Pre-Trial Judge may confirm or dismiss the indictment based solely on the information and evidentiary material submitted by the SPO.²⁷

32. As part of the review process, the Pre-Trial Judge conducts a preliminary assessment of the supporting material, without encroaching on the prerogatives of the Trial Panel in determining the admissibility and weight of the evidence, as set out in Rules 137-139 of the Rules.²⁸ That being said, the Pre-Trial Judge shall not rely on material that is manifestly (i) non-authentic or (ii) obtained by means of a violation of the Law, the Rules, or standards of international human rights law, or under torture or any other inhumane or degrading treatment, as provided in Rule 138(2)-(3) of the Rules.

[on the Confirmation of Charges](#), 29 January 2007, para. 39; *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Pre-Trial Chamber I, [Decision on the Confirmation of Charges Against Laurent Gbagbo](#), 12 June 2014, para. 22.

²⁷ *Mustafa* Confirmation Decision, para. 38. Similarly, STL, STL-17-07/I/AC/R176bis, Appeals Chamber, [Interlocutory Decision on the Applicable Law: Criminal Association and Review of the Indictment](#), 18 October 2017, para. 111.

²⁸ *Mustafa* Confirmation Decision, para. 39. Similarly, STL, *Prosecutor v. Ayyash et al.*, STL-11-01/I, Pre-Trial Judge, [Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra](#), 28 June 2011, para. 26.

B. ELEMENTS OF OFFENCES

1. Violating the Secrecy of Proceedings

33. The offence of violating the secrecy of proceedings, within the meaning of Article 392 of the KCC, has several forms. The SPO charges the Suspects under Article 392(1) of the KCC (Count 5) and Article 392(2)-(3) of the KCC (Count 6), the elements of which are set out below.

(a) Unauthorised revelation of protected information

Material elements

34. The offence of violating the secrecy of proceedings, within the meaning of Article 392(1) of the KCC, is committed (i) through the unauthorised revelation of (ii) information disclosed in any official proceeding (iii) which must not be revealed according to the law or has been declared to be secret by a decision of the court or a competent authority (“Protected Information”).

35. Article 392(1) of the KCC does not limit the manner in which information is revealed. Accordingly, revelation may include displaying, broadcasting or distributing material, in original or copied/recorded form, citing or referring to the content of the material, as well as allowing others to read, copy or record the material or its content. Such revelation is considered “unauthorised” if not permitted by law or the decision of the court or a competent authority.

36. In accordance with the KCC and the KCPC, prosecutorial investigations are included within the scope of “official proceedings”.²⁹ Accordingly, SPO

²⁹ Article 376 of the KCC defines “official proceedings” as including criminal proceedings defined in the KCPC. Article 6(2) of the KCPC provides that “[c]riminal proceedings shall only be initiated upon the decision of a state prosecutor that reasonable suspicion exists that a criminal offence has been

investigations qualify as “official proceedings” for the purposes of Article 392(1) of the KCC.³⁰

37. For the purpose of Article 392(1) of the KCC within the SC legal framework, “Protected Information” means any information or material in relation to which:

- a) the Law, the Rules or any other law applicable before the SC requires protection. In particular, Article 62 of the Law provides that the documents, papers, records and archives of the SC, including the Registry, and of the SPO shall not be considered public documents in Kosovo and that there shall be no general right of access thereto;
- b) any SC Panel³¹ has ordered measures of protection pursuant to, *inter alia*, Articles 23, 39(11), 40(6)(d), 54(8), 58, 61(3), 62(2) of the Law, Rules 82, 105, 108 of the Rules or any other applicable law. This includes any court records marked as “strictly confidential”, “confidential” or “limité”;³²
- c) the SPO has adopted, on its own motion, measures of protection pursuant to, *inter alia*, Articles 35(2)(f), 54(8), 61(4) of the Law, Rules 30(2)(a), 82, 106, 107(1) of the Rules or any other applicable law. This includes any material pertaining to SPO investigations, including cooperation with other entities, as well as any documents marked or referred to as “confidential” or “internal”.³³

committed”. Article 101 of the KCPC regulates the “Initiation of Criminal Proceedings by Investigative Stage, or Indictment”.

³⁰ See also KSC-BC-2020-07, F00012, Single Judge, *Decision on Request for Arrest Warrants and Transfer Orders*, 24 September 2020, public, paras 17, 26, fn. 44; *Defence Challenges Decision*, para. 26, fn. 36.

³¹ Rule 2 of the Rules defines “Panel” as “[a]ny panel or individual judge assigned in accordance with Articles 25(1) and 33 of the Law, unless otherwise specified”.

³² Rule 82(1) of the Rules; KSC-AD-13-v2.2, *Administrative Directive on Information Asset Management*, 22 July 2020.

³³ 084015-084026, paras 29, 35 (084019, 084021).

Mental element

38. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.

39. For direct intent, the perpetrator must have acted with awareness of, and desire for, revealing without authorisation Protected Information disclosed in official proceedings.

40. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, Protected Information disclosed in official proceedings might be revealed without authorisation, and the perpetrator acceded to the occurrence of that result.

(b) Unauthorised revelation of the identity or personal data of protected persons

Material elements

41. The offence of violating the secrecy of proceedings, within the meaning of Article 392(2) of the KCC, is committed (i) through the unauthorised revelation of (ii) the identity or personal data of (iii) a person under protection in the criminal proceedings or in a special program of protection (“Protected Person”).

42. This offence is a sub-category of unauthorised revelation of protected information and is punishable by a more severe sentence.

43. Regarding the unauthorised revelation of information, reference is made to the findings above.³⁴

44. For the purpose of Article 392(2) of the KCC within the SC legal framework, “Protected Person” means any person in relation to whom:

³⁴ See *supra* para. 35 (Unauthorised revelation of protected information).

- a) any SC Panel has ordered measures of protection pursuant to, *inter alia*, Articles 23, 39(11), 40(6)(f), 58 of the Law, Rules 80, 81, 105, 108 of the Rules or any other applicable law. This includes any witness, victim or other person interacting with the SC whose identity and personal data is protected by virtue of such measures;
- b) the SPO has adopted, on its own motion, measures of protection pursuant to, *inter alia*, Article 35(2)(f) of the Law, Rule 30(2)(a) of the Rules or any other applicable law. This includes any person interacting with the SPO whose identity and personal data is protected by virtue of such measures;
- c) by virtue of Article 62 of the Law and despite the absence of protective measures ordered by the SC or adopted by the SPO, a general obligation of non-disclosure applies. This includes any person who has provided information to the SPO, as part of its investigations, or whose identity and/or personal data appear in material provided to the SPO by third parties.

45. Article 392(2) of the KCC stipulates that the information not to be revealed must relate to the Protected Persons. "Identity" includes information such as: family name(s), including maiden or previous name(s), first name(s) and any prior or current pseudonyms. "Personal data" includes information such as: personal identification number; date and place of birth; prior or current address or residence; nature, location, time and/or duration of prior or current employment; identities of family members; description or location of significant possessions (house, car); and any other detail that may lead to the identification of the person.

46. The basic form of this offence, as provided in Article 392(2) of the KCC, does not require that the unauthorised revelation result in any harm or other prohibited consequence. Article 392(3) of the KCC penalises an aggravated form of this

offence, where the unauthorised revelation results in: (i) serious consequences for the Protected Person; or (ii) the criminal proceedings being severely hindered or made impossible. Serious consequences may include substantial interference with the safety, security, well-being, privacy or dignity of Protected Persons or their families. Severe hindrance or impossibility of criminal proceedings may include the ensuing inability or difficulty to collect evidence, preserve the security of proceedings or ensure the safety of witnesses, as well as the significant diversion of resources to address such consequences.

Mental element

47. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.

48. For direct intent, the perpetrator must have acted with awareness of, and desire for, revealing without authorisation the identity or personal data of Protected Persons.

49. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, the identity or personal data of Protected Persons might be revealed without authorisation, and the perpetrator acceded to the occurrence of that result.

50. For both forms of intent, the perpetrator must have known or had reason to know that he or she was revealing the identity or personal data of Protected Persons.³⁵

³⁵ Similarly, Kosovo, Court of Appeal, M.Z., PAKR 336/16, [Judgment](#), 13 December 2016, pp. 7-9.

2. Retaliation

51. The offence of retaliation, within the meaning of Article 388 of the KCC, has several forms. The SPO charges the Suspects under Article 388(1) of the KCC, the elements of which are set out below.

Material elements

52. The offence of retaliation, within the meaning of Article 388(1) of the KCC, is committed (i) through any harmful action (ii) against a person providing truthful information relating to the commission or possible commission of any criminal offence to police, an authorised investigator, a prosecutor or a judge (“Information Provider”).

53. Article 388(1) of the KCC does not delimit the scope of harmful action, but indicates that one form of such action is interference with lawful employment or livelihood. Harmful action may also include violence, serious threats, interference with individual safety, security, well-being, privacy, dignity or any other interference harmful to the person or his or her immediate family.

54. For the purpose of Article 388(1) of the KCC within the SC legal framework, “Information Provider” means any person providing information to the Special Investigative Task Force (“SITF”) and/or SPO about any crimes or offences falling under SC jurisdiction.

Mental element

55. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.

56. For direct intent, the perpetrator must have acted with awareness of, and desire for, taking harmful action to retaliate against a person for providing truthful information relating to the commission or possible commission of any criminal offence to police, an authorised investigator, a prosecutor or a judge.

57. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, a person might suffer retaliation for providing truthful information relating to the commission or possible commission of any criminal offence to police, an authorised investigator, a prosecutor or a judge, and the perpetrator acceded to the occurrence of that result.

3. Intimidation During Criminal Proceedings

Material elements

58. The offence of intimidation during criminal proceedings, within the meaning of Article 387 of the KCC, is committed (i) through the use of force, serious threat, any other means of compulsion, a promise of a gift or any other form of benefit (ii) directed at any person making or likely to make a statement or provide information to the police, a prosecutor or a judge (“Potential Information Provider”).

59. Article 387 of the KCC proscribes any conduct that may have (or is expected by the perpetrator to have) an impact or influence on the statement or information to be given by the person.

60. Article 387 of the KCC does not delimit what constitutes force, serious threat, compulsion or other means of commission. Accordingly, force may include any

form of physical violence or intoxication³⁶ exerted upon a person.³⁷ A serious threat may include threats to use force or to inflict serious harm on the health, well-being, safety, security or privacy of a person. Compulsion refers to any act of constraining or coercing a person.³⁸

61. Article 387 of the KCC covers any witness or potential witness, or other information provider to police or prosecutorial and judicial authorities. Within the SC legal framework, “Potential Information Provider” means any person likely to provide information to the SITF, the SPO and/or to any SC Panel about any crimes or offences falling under SC jurisdiction.

62. By its wording— “[w]hoever uses force or serious threat [...] to induce” —, Article 387 of the KCC does not require proof that the aforementioned acts have any particular effect on the person, namely actually refraining from making a statement, making a false statement or failing to state true information to the police, a prosecutor or a judge.³⁹ To require otherwise would mean conflating the material elements of this offence with those under Article 386 of the KCC.⁴⁰ This interpretation also comports best with the purpose of the provision to protect the information of witnesses and other information providers and, more generally, the

³⁶ See Article 113(15) of the KCC.

³⁷ See *OED Online* (Oxford University Press, September 2020) <<https://www.oed.com/view/Entry/72847?rskey=1Dwx9g&result=1#eid>> accessed 3 December 2020.

³⁸ See *OED Online* (Oxford University Press, September 2020) <<https://www.oed.com/view/Entry/37937?redirectedFrom=compulsion#eid>> accessed 3 December 2020.

³⁹ *Per a contrario*, Kosovo, Court of Appeals, *E.H. and I.H.*, PAKR.nr. 390/2019, *Judgment*, 15 August 2019.

⁴⁰ Article 386 of the KCC stipulates that whoever, by any means of compulsion or bribe, with intent, *inter alia* (i) causes any person to make a false statement, provide a false document or conceal a material fact in an official proceeding (paragraph 1.1) or (ii) induces a witness or an expert to decline to give or to give a false statement in court proceedings (paragraph 1.7) is guilty of the offence of obstruction of evidence or official proceedings. The wording in said provision (“causes”, “induces”) makes it clear that it applies to situations where the perpetrator actually causes or induces a person to make a false statement, conceal a material fact or decline to give a statement.

integrity of criminal proceedings by penalising the perpetrator who intends to influence a witness.⁴¹

Mental element

63. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.

64. For direct intent, the perpetrator must have acted with awareness of, and desire for, using force, serious threat, any other means of compulsion, a promise of a gift or any other form of benefit in order to induce a person to refrain from making a statement, provide a false statement or fail to state true information to the police, a prosecutor or a judge.

65. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, a person might refrain from making a statement, provide a false statement or fail to state true information to the police, a prosecutor or a judge, and the perpetrator acceded to the occurrence of that result.

4. Obstructing Official Persons in Performing Official Duties

66. The offence of obstructing official persons in performing official duties, within the meaning of Article 401 of the KCC, has several forms. The SPO charges the

⁴¹ Similarly, ICTY, *Prosecutor v. Beqaj*, IT-03-66-T-R77, Trial Chamber I, [Judgement on Contempt Allegations](#), 27 May 2005, para. 21; *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4, Trial Chamber I, [Judgement on Contempt Allegations](#), 17 December 2008, para. 18; ICC, *Prosecutor v. Bemba et al.*, Trial Chamber VII, [Public Redacted Version of Judgment pursuant to Article 74 of the Statute](#), ICC-01/05-01/13-1989-Red, 19 October 2016, paras 43, 48; *Prosecutor v. Bemba et al.*, Appeals Chamber, [Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"](#), ICC-01/05-01/13-2275-Red, 8 March 2018, para. 737.

Suspects under Article 401(1) and (5) of the KCC (Count 1) and Article 401(2)-(3) and (5) of the KCC (Count 2), the elements of which are set out below.

(a) Obstruction of official persons by force or serious threat

Material elements

67. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(1) of the KCC, is committed (i) through the use of force or serious threat resulting in the (ii) obstruction or attempted obstruction of an official person in performing official duties, or the compelling of that person to perform official duties.

68. Article 401(1) of the KCC does not define what constitutes force or a serious threat. Their meaning is comparable to that under Article 387 of the KCC.⁴² Notably, Article 401(1) of the KCC does not require that the force or the serious threat is directed against the official person. Rather, the force or serious threat may be directed against one or more other persons, as long as it results in the (attempted) obstruction of an official person in performing official duties.

69. Article 113(2) of the KCC defines an “official person” as, *inter alia*, any person who is entrusted with the actual performance of certain official duties or works. Within the SC legal framework, such an “official person” would be any person authorised to act on behalf of the SC or SPO, including a judge, a prosecutor, an investigator or any other SC or SPO official (“SC/SPO Official”). By virtue of Article 401(5) of the KCC, the offence is committed in an aggravated form where it is directed against, *inter alia*, a judge, a prosecutor, an official of a court, prosecution officer or a person authorised by the court and prosecution office. Accordingly, where the offence under Article 401(1) of the KCC is committed

⁴² See *supra* para. 60 (Intimidation During Criminal Proceedings).

against an SC/SPO Official, the requirements of the aggravated form are met. For the purposes of Article 401(1) of the KCC and within the SC legal framework, the “official duties” of an SC/SPO Official relate to any responsibility or work within the context of official proceedings of the Specialist Chambers, including SPO investigations (“SC Proceedings”).

70. The term “obstruct” means to prevent, impede, hinder, or delay the motion, passage, or progress of something.⁴³ In the context of SC Proceedings, obstruction would entail impeding, hindering or delaying the work of SC/SPO Officials.

Mental element

71. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.

72. For direct intent, the perpetrator must have acted with awareness of, and desire for, using force or serious threat in order to obstruct an official person in performing official duties.

73. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, the official person might be obstructed in the performance of official duties, and the perpetrator acceded to the occurrence of that result.

⁴³ See *OED Online* (Oxford University Press, September 2020) <<https://www.oed.com/view/Entry/129983?rskey=vIH75t&result=2#eid>> accessed 3 December 2020.

(b) Obstruction of official persons by participation in a group

Material elements

74. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(2) of the KCC, is committed (i) through participation in a group of persons which by common action (ii) obstructs or attempts to obstruct an official person in performing official duties.

75. Article 113(12) of the KCC clarifies that a “group” consists of three or more persons. As to the group’s common action, Article 401(2) of the KCC does not delimit its contours. Accordingly, common action may include any activity jointly undertaken by the group members.

76. All other material elements of this offence are identical with those discussed above under Article 401(1) of the KCC.⁴⁴

77. Article 402(3) of the KCC provides for a more severe punishment when the perpetrator is the leader or organiser of the group.

Mental element

78. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.

79. For direct intent, the perpetrator must have acted with awareness of, and desire for, participating in a group in order to obstruct by common action an official person in performing official duties.

80. For eventual intent, the perpetrator must have acted with the awareness that, as a result of participation in a group, the official person might be obstructed by

⁴⁴ See *supra* paras 69-70 (Obstructing Official Persons by Force or Serious Threat).

common action in the performance of official duties, and the perpetrator acceded to the occurrence of that result.

C. MODES OF LIABILITY

81. In accordance with Article 16(3) of the Law and Articles 17, 28, 31, 32, 33 and 35 of the KCC, the Specialist Prosecutor pleads the following modes of liability: commission, attempt, co-perpetration, agreement to commit a criminal offence, incitement and assistance.⁴⁵

82. The objective elements of these modes of liability are set out below. As regards their respective subjective element, all of these modes of liability require direct or eventual intent, within the meaning of Article 21 of the KCC.

1. Commission

83. Commission, within the meaning of Article 17(1) of the KCC, requires that the perpetrator physically carries out the objective elements of an offence, or omits to act when required to do so under the law.⁴⁶

2. Co-Perpetration

84. Co-perpetration, within the meaning of Article 31 of the KCC, requires that (i) two or more persons jointly (ii) participate in or substantially contribute in any other way to the commission of an offence.

⁴⁵ Indictment, paras 36-44, 47-48.

⁴⁶ *Similarly*, Kosovo, Basic Court of Prishtinë/Priština, *AK et al.*, P766/12, [Judgment](#), 17 September 2013, p. 199.

85. Joint commission does not require a previous agreement on the commission of the offence.⁴⁷ To infer the existence of an agreement it suffices that the actions of the co-perpetrators are concerted in the course of committing the offence.⁴⁸

86. Article 31 of the KCC does not delimit what constitutes participation in or substantial contribution to the commission of the offence. In any event, each person participating in or substantially contributing to the offence must fulfil one or more of the required material elements of that offence.⁴⁹

87. Co-perpetration cannot be applied in relation to the offence under Count 2 (Article 401(2) of the KCC), as the material elements of that offence—obstructing an official person in performing official duties *by common action of a group of persons*—already entail joint commission. Each participant in such a group acts as an individual perpetrator.

3. Incitement

88. Incitement, within the meaning of Article 32 of the KCC, requires that the perpetrator exerts psychological influence on another person with a view to creating or strengthening the decision of that other person to commit a criminal offence. Such influence may take the form of, *inter alia*, encouraging, urging or pressuring the person to commit the offence, as well as guiding or instructing him or her in the commission thereof.⁵⁰

89. Pursuant to Article 32(1) of the KCC, incitement requires that the perpetrator incites another person to commit a criminal offence and penalises the inciter if the criminal offence is committed. Pursuant to Article 32(2) of the KCC, the inciter also

⁴⁷ *Similarly*, Kosovo, Supreme Court, *S.H.*, PAII-KZII-2/2016, [Judgment](#), 20 September 2016, para. 58.

⁴⁸ *Similarly*, Kosovo, Court of Appeals, *S.G. et al.*, PAKR 966/2012, [Judgment](#), 11 September 2013, para. 74.

⁴⁹ *Similarly*, Kosovo, Supreme Court, *S.H.*, PAII-KŽII-2/2016, [Judgment](#) (“*S.H. Judgment*”), 20 September 2016, para. 58.

⁵⁰ *Similarly*, [S.H. Judgment](#), pp. 16-17.

incurs responsibility if the criminal offence is attempted, but not committed. Pursuant to Article 32(3) of the KCC, the inciter also incurs responsibility for inciting an offence punishable by imprisonment of at least five (5) years, even if this offence is not attempted.

90. Accordingly, incitement under Article 32(3) of the KCC may only be punishable in relation to the offences under Counts 1-3 and 6, as they provide respective imprisonment sentences of one to five years (Article 401(1) and (5) or 401(2)-(3) and (5) of the KCC), two to ten years (Article 387 of the KCC) and six months to five years (Article 392(2)-(3) of the KCC).

4. Assistance

91. Assistance, within the meaning of Article 33(1) of the KCC, requires that the person assists the perpetrator in the commission of a criminal offence.

92. Pursuant to Article 33(2) of the KCC, such assistance includes, but is not limited to: giving advice or instruction on how to commit a criminal offence; making available the means to commit a criminal offence; creating conditions or removing the impediments to the commission of a criminal offence; or promising in advance to conceal evidence of the commission of a criminal offence, the perpetrator or identity of the perpetrator, the means used for the commission of a criminal offence, or the profits or gains which result from the commission of a criminal offence.

5. Agreement to Commit a Criminal Offence

93. An agreement to commit a criminal offence, within the meaning of Article 35 of the KCC, requires that (i) the perpetrator agrees with one or more other persons

to commit a criminal offence and (ii) one or more of these persons undertakes any substantial act towards the commission of the criminal offence.

94. Pursuant to Article 35(2) of the KCC, a “substantial act towards the commission of a crime” need not be a criminal act, but must amount to a substantial preparatory step towards the commission of the criminal offence which the persons have agreed to commit.

6. Attempt

95. Attempt, within the meaning of Article 28 of the KCC, requires that the perpetrator takes action towards the commission of an offence, but the action is not completed or the elements of the intended offence are not fulfilled.

96. Article 28 of the KCC does not further delimit what constitutes taking action towards the commission of the offence. In any case, such action must amount to more than preparatory acts, which are separately provided for in Article 27 of the KCC. Accordingly, a perpetrator attempts the commission of an offence when he or she has intentionally begun to execute the offence by fulfilling one or more of the material elements of the offence.⁵¹

97. Pursuant to Article 28(2) of the KCC, an attempt to commit a criminal offence is penalised only if (i) the punishment for the committed offence is three or more years or (ii) it is expressly so provided for by law. Accordingly, attempt may only be punishable in relation to the offences under Counts 1-4 and 6, as the offence under Count 5 provides for an imprisonment sentence of up to one year and does not expressly provide for the penalisation of attempted commission.

⁵¹ Similarly, Kosovo, Basic Court of Prizren, *A.Ç. et al.*, 410/13, [Judgment](#), 14 April 2016, pp. 150-152.

VI. CHARGES

98. Before examining the supporting material in relation to each charge and determining whether a well-grounded suspicion has been established against the Suspects, the Pre-Trial Judge notes that the SPO has complied with the requirements under Rule 86(3) of the Rules by submitting: (i) an indictment; (ii) evidentiary material supporting the facts underpinning the charges; and (iii) a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

A. THE OFFENCES CHARGED

1. Violating the Secrecy of Proceedings – Protected Information (Count 5)

99. In the Indictment, the SPO alleges that between at least 7 and 25 September 2020, the Suspects and certain others revealed, without authorisation, confidential and non-public documents pertaining to SPO investigations.⁵²

100. Regarding the material elements of the offence, the Pre-Trial Judge finds that the supporting material indicates that, on the occasion of press conferences held on 7,⁵³ 16⁵⁴ and 22⁵⁵ September 2020 (the “Three Press Conferences”) and other

⁵² Indictment, paras 23, 33, 48.

⁵³ 081344-01-TR-ET (7 September 2020 Kosovo Liberation Army War Veterans’ Association (“KLA WVA”) Press Conference).

⁵⁴ 081344-02-TR-ET (16 September 2020 KLA WVA Press Conference).

⁵⁵ 081344-03-TR-ET (22 September 2020 KLA WVA Press Conference).

broadcasted events aired on 7,⁵⁶ 8,⁵⁷ 9,⁵⁸ 11,⁵⁹ 17,⁶⁰ 20,⁶¹ 22⁶² and 25⁶³ September 2020, as well as through further dissemination between at least 7 and 25 September 2020, including by social media statements,⁶⁴ the Suspects and others, including Faton Klinaku ("Mr Klinaku") and other Kosovo Liberation Army War Veterans' Association ("KLA WVA") members (collectively, "Associates"),⁶⁵ directly revealed and/or referred to the prior or envisaged revelation of Protected Information. Such information was contained in three batches, seized by the SPO on 8, 17 and 22 September 2020 from the KLA WVA premises,⁶⁶ and it included: (i) SITF requests for assistance addressed to the competent Serbian authorities between 2013 and 2015, with confidential annexes (Batches 1 and 2);⁶⁷

⁵⁶ 081358-01-TR-ET (7 September 2020 RTK1 television programme with Mr Gucati).

⁵⁷ 081931-02-TR-ET (8 September 2020 RTK television programme with Mr Klinaku).

⁵⁸ 081991-01-TR-ET (9 September 2020 RTK television programme with Mr Haradinaj).

⁵⁹ 081358-02-TR-ET (11 September 2020 RTK1 television programme with Mr Haradinaj).

⁶⁰ 081347-01-TR-ET (17 September 2020 Kanal10 television programme with Mr Gucati and Tomë Gashi ("Mr Gashi")); 081355-02-TR-ET (17 September 2020 T7 television programme with Mr Haradinaj); 082106-06-TR-ET and 082106-07-TR-ET (17 September 2020 interviews with Mr Haradinaj).

⁶¹ 081355-04-TR-ET Revised (20 September 2020 First Channel television programme with Mr Haradinaj).

⁶² 082106-01-TR-ET (22 September 2020 KTV interview with Mr Gucati); 082106-03-TR-ET (22 September 2020 RTK television programme with Mr Haradinaj); 081358-03-TR-ET Revised (22 September 2020 T7 television programme with Mr Haradinaj).

⁶³ 081991-03-TR-ET Revised (25 September 2020 interview with Mr Haradinaj).

⁶⁴ SPOE00220800-00220800-ET (8 September 2020, Facebook post of Mr Haradinaj); 081987-081988-ET (21 September 2020, Facebook post of Mr Gucati).

⁶⁵ 081344-01-TR-ET, pp. 1, 8-9; 081355-04-TR-ET Revised, p. 4; 081358-01-TR-ET, pp. 5-6, 8-9; 081931-02-TR-ET, p. 1; 081991-01-TR-ET, p. 5; 081344-03-TR-ET Revised, p. 9; 082106-01-TR-ET, p. 2; 082106-03-TR-ET, pp. 3-4; 081355-02-TR-ET, p. 29; 082106-07-TR-ET, p. 1; 081347-01-TR-ET, p. 14; 081358-03-TR-ET Revised, p. 3; 081991-03-TR-ET Revised.

⁶⁶ KSC-BC-2020-07, SPO reports: F00008/RED, Specialist Prosecutor, *Public Redacted Version of Prosecution Report Pursuant to Decision KSC-BC-2018-01/F00121* ("F00008/RED"), 14 October 2020, public (regarding the documents seized on 8 September 2020); F00028/RED, Specialist Prosecutor, *Public Redacted Version of Prosecution Report Pursuant to Decision KSC-BC-2018-01/F00123* ("F00028/RED"), 14 October 2020, public (regarding the documents seized on 17 September 2020); and F00010/RED, Specialist Prosecutor, *Public Redacted Version of Prosecution Notice and Related Request* ("F00010/RED"), 14 October 2020, public (regarding the documents seized on 22 September 2020); 084015-084026, paras 5-12 (identifying as "Batch 1" the documents seized on 8 September 2020), 19-27 (identifying as "Batch 2" the documents seized on 17 September 2020) and 28-35 (identifying as "Batch 3" the documents seized on 22 September 2020) (084015-084016, 084018-084021).

⁶⁷ 084015-084026, paras 7-8, 22-25 (084015-084016, 084018-084019).

(ii) confidential [REDACTED] containing an analysis of available evidence and applicable law [REDACTED] (Batch 3);⁶⁸ and (iii) references to documents and information provided to the SPO by international organisations and other entities subject to confidentiality and use restrictions (Batch 3).⁶⁹ The revealed information pertains to SPO investigations, including cooperation with a Third State, and [REDACTED], all of which had been marked or referred to as confidential by the SPO.⁷⁰

101. The supporting material further indicates that the Suspects and Associates revealed Protected Information in the following manner. First, at the Three Press Conferences, the Suspects and Associates displayed and/or showed copies of the Protected Information to the members of the press who were present,⁷¹ allowed them to read, film or photograph their content,⁷² and invited them to take as many copies as they wanted with them.⁷³ Secondly, the Suspects and Associates disseminated further copies of the Protected Information to members of the press and others.⁷⁴ Thirdly, the Suspects and Associates referred to the content of some of the Protected Information during the Three Press Conferences,⁷⁵ during other broadcasted events⁷⁶ and through social media.⁷⁷ The Suspects and Associates took these actions without any authorisation to reveal Protected Information and

⁶⁸ 084015-084026, para. 29 (084019-084020).

⁶⁹ 084015-084026, para. 34 (084020).

⁷⁰ 084015-084026, paras 8, 23-25, 35 (084016, 084018-084019, 084021).

⁷¹ 081344-01-TR-ET, pp. 1-2, 11-12; Video 081344-01, 01:12-01:30; 081344-02-TR-ET, pp. 1-2, 11; Video 081344-02, 00:01-01:11; 081344-03-TR-ET Revised pp. 2, 22; Video 081344-03, 00:22-01:59.

⁷² 081344-01-TR-ET, p. 10; 081344-02-TR-ET, p. 11; 081344-03-TR-ET Revised pp. 2, 9, 12, 22; Video 081344-03, 00:22-01:59; 082136-01, 26:45-27:18.

⁷³ 081344-01-TR-ET, p. 11; 081344-02-TR-ET, p. 8; 081344-03-TR-ET Revised, pp. 8, 12; 081931-02-TR-ET, p. 1.

⁷⁴ 081344-03-TR-ET Revised, p. 10; 081355-04-TR-ET Revised, p. 3; 081358-01-TR-ET, pp. 5-6, 8-9; SPOE00220800-SPOE00220800-ET, p. 1 (SPOE00220800); 081991-01-TR-ET, pp. 5-6.

⁷⁵ 081344-01-TR-ET, pp. 3-5; 081344-02-TR-ET, pp. 2, 4-5; 081344-03-TR-ET, pp. 2-4.

⁷⁶ 081358-01-TR-ET, pp. 5, 7, 9-12; 081358-03-TR-ET, p. 30; 082106-01-TR-ET, pp. 9-10; 082106-06-TR-ET Revised, p. 2.

⁷⁷ 081987-081988-ET, pp. 1-2 (081987-081988).

despite being repeatedly ordered to refrain from copying, in whatever form, and further disseminating, by whatever means of communication, such information.⁷⁸

102. Regarding the mental element of the offence, the supporting material indicates the deliberate manner in which the Suspects and Associates revealed the aforementioned information. In particular, the Suspects and Associates: (i) reviewed the documents received and had an opportunity to observe the confidential markings;⁷⁹ (ii) publicly acknowledged the confidential nature of the documents;⁸⁰ (iii) publicly defended their own actions,⁸¹ while acknowledging that the revelation was legally forbidden and/or may lead to criminal responsibility;⁸² and (iv) continued to pledge to reveal documents received in the future,⁸³ even after having been served with the Single Judge's and the SPO's orders not to do so.⁸⁴ This demonstrates that the Suspects and Associates acted with awareness of, and desire for, revealing without authorisation the aforementioned information

⁷⁸ KSC-BC-2020-07, F00005, Single Judge, *Urgent Decision Authorising a Seizure* ("F00005"), 7 September 2020, public, paras 22(c), 25; F00007, Single Judge, *Decision Authorising a Seizure* ("F00007"), 17 September 2020, public, paras 22(c), 25; F00010/RED, para. 4.

⁷⁹ 081344-01-TR-ET, pp. 1 (Mr Gucati referring to the review conducted by Mr Haradinaj, Mr Klinaku and others), 5-6, 10 (Mr Haradinaj referring to the "confidential" and "top secret" markings); 081344-02-TR-ET, pp. 5-7 (Mr Haradinaj referring to "top secret" markings and other "secret" information contained in the documents); 081355-04-TR-ET Revised, pp. 3-4, 8, 12 (Mr Haradinaj referring to his review of the documents).

⁸⁰ 081344-01-TR-ET, pp. 5-6, 10 (Mr Haradinaj); 081344-02-TR-ET, pp. 5-7 (Mr Haradinaj); 081355-02-TR-ET, pp. 19, 21 (Mr Haradinaj); 082106-07-TR-ET, p. 1 (Mr Haradinaj); 081987-081988-ET, pp. 1-2 (Mr Gucati); 081931-02-TR-ET, p. 1 (Mr Klinaku); 081355-03-TR-ET, p. 2 (Mr Gashi).

⁸¹ 081358-01-TR-ET, p. 8 (Mr Gucati); 082106-07-TR-ET, p. 1 (Mr Haradinaj); 081355-04-TR-ET Revised, pp. 1, 13 (Mr Haradinaj); SPOE00220800-SPOE00220800-ET, p. 1 (Mr Haradinaj).

⁸² 081347-01-TR-ET, pp. 14 (Mr Gucati), 16 (Mr Gashi); 082106-01-TR-ET, pp. 1-2, 12 (Mr Gucati); 081987-081988-ET, p. 2 (Mr Gucati); 081344-03-TR-ET, pp. 19-21 (Mr Haradinaj); 081991-01-TR-ET, pp. 7-8 (Mr Haradinaj); 081991-02-TR-ET, pp. 1-2 (Mr Haradinaj); 082106-03-TR-ET, p. 21 (Mr Haradinaj); 081931-02-TR-ET, p. 1 (Mr Klinaku); 081355-03-TR-ET, p. 3 (Mr Gashi).

⁸³ 081347-01-TR-ET, p. 3 (Mr Gucati); 082106-01-TR-ET, p. 11 (Mr Gucati); 081344-02-TR-ET, p. 9 (Mr Haradinaj); 081344-03-TR-ET Revised, p. 6 (Mr Haradinaj); 081355-02-TR-ET, p. 15 (Mr Haradinaj); 081358-02-TR-ET, pp. 1, 4 (Mr Haradinaj); 081991-01-TR-ET, p. 7 (Mr Haradinaj); 081991-03-TR-ET Revised, pp. 4-5 (Mr Haradinaj); 082106-07-TR-ET, p. 2 (Mr Haradinaj).

⁸⁴ KSC-BC-2020-07, F00008/RED, paras 2-3; F00028/RED, paras 2, 5; F00010/RED, para. 4. *See also* 081347-01-TR-ET, p. 14 (Mr Gucati); SPOE00222202-SPOE00222202 (9 September 2020, Facebook post of Mr Haradinaj).

or, at a minimum, they acted with the awareness that, as a result of their actions, the aforementioned information might be revealed without authorisation, and they acceded to the occurrence of that result.

103. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of violating the secrecy of proceedings within the meaning of Article 392(1) of the KCC and Article 15(2) of the Law was committed by the Suspects and Associates between at least 7 and 25 September 2020.

2. Violating the Secrecy of Proceedings – Protected Persons (Count 6)

104. In the Indictment, the SPO alleges that between at least 7 and 25 September 2020, the Suspects and Associates revealed or attempted to reveal, without authorisation, the identities and personal data of witnesses protected by the SC/SPO or by orders in prior criminal proceedings in Kosovo.⁸⁵ The SPO further alleges that such unauthorised revelation resulted in serious consequences for the witnesses and severely hindered SPO investigations.⁸⁶

105. Regarding the material elements of the offence, the Pre-Trial Judge finds that the supporting material indicates that, on the occasion of the Three Press Conferences and other broadcasted events aired on 7,⁸⁷ 17⁸⁸ and 22⁸⁹ September 2020, as well as through further dissemination between at least 7 and 25 September 2020, including by social media statements, the Suspects and Associates revealed the identity and/or personal data of Protected Persons. In particular, the following

⁸⁵ Indictment, paras 34, 48; Detailed Outline, pp. 45-46.

⁸⁶ Indictment, paras 35, 48.

⁸⁷ 081358-01-TR-ET (7 September 2020 RTK1 television programme with Mr Gucati).

⁸⁸ 082106-06-TR-ET (17 September 2020 interview with Mr Haradinaj).

⁸⁹ 081358-03-TR-ET Revised (22 September 2020 T7 television programme with Mr Haradinaj).

information was revealed: (i) names and/or personal details [REDACTED] (Batches 1-3);⁹⁰ (ii) identities [REDACTED] (Batch 3);⁹¹ (iii) names [REDACTED] (Batch 3);⁹² and (iv) references [REDACTED] provided to the SPO by international organisations and other entities subject to confidentiality and use restrictions (Batch 3).⁹³

106. Regarding the manner in which the identity and/or personal data of Protected Persons were revealed, the Pre-Trial Judge makes reference to the above findings concerning the unauthorised revelation of Protected Information.⁹⁴ In particular, the supporting material indicates that the Suspects and Associates referred to the name, function or other potentially identifying details of Protected Persons, or alerted others as to the availability of such information in the revealed documents during the Three Press Conferences,⁹⁵ during other broadcasted events⁹⁶ and through social media.⁹⁷ The Suspects and Associates took these actions without any authorisation to reveal the identity and/or personal data of Protected Persons and despite being repeatedly ordered to refrain from copying, in whatever form, and further disseminating, by whatever means of communication, such information.⁹⁸

107. Regarding the aggravated form of the offence under Article 392(3) of the KCC, the supporting material indicates that the revelation of the identity and/or personal data of Protected Persons resulted in serious consequences therefor and severely hindered SPO investigations. In particular, tens of Protected Persons felt

⁹⁰ 084015-084026, paras 9-12, 23, 25-27, 30-31 (084016, 084018-084020).

⁹¹ 084015-084026, para. 32 (084020).

⁹² 084015-084026, para. 33 (084020).

⁹³ 084015-084026, para. 34 (084020).

⁹⁴ *See supra* paras 100-101 (Count 5).

⁹⁵ 081344-01-TR-ET, pp. 3-5; 081344-02-TR-ET, pp. 2, 4-5; 081344-03-TR-ET, p. 4.

⁹⁶ 081358-01-TR-ET, pp. 6-7, 9-10; 082106-06-TR-ET Revised, p. 2; 081358-03-TR-ET, p. 30.

⁹⁷ 081987-081988-ET, pp. 1-2 (081987-081988).

⁹⁸ KSC-BC-2020-07, F00005, paras 22(c), 25; F00007, paras 22(c), 25; F00010/RED, para. 4.

worried, stressed, unsafe, threatened and/or intimidated as a result of the unauthorised revelation.⁹⁹ One such person moved out of his house and then left Kosovo.¹⁰⁰ Another Protected Person hid in his house fearing for his security.¹⁰¹ One person took measures to enhance his children's safety after learning that his name had been revealed.¹⁰² Another Protected Person felt that, after the revelation of his name, people were looking at his family differently and his business lost customers.¹⁰³ Several Protected Persons felt that the revelation of names endangered their family and led to their isolation.¹⁰⁴ Moreover, and as a consequence of the aforementioned, SPO investigations were severely hindered and/or delayed, given that: (i) the SPO had to divert and devote a significant amount of additional resources to communications with Protected Persons and related security matters after each of the unauthorised revelations in September 2020;¹⁰⁵ and (ii) the SPO's ability to effectively investigate and prosecute crimes, including by collecting relevant evidence, was significantly affected.

108. Regarding the mental element of the offence, the Pre-Trial Judge makes reference to the above findings concerning the deliberate manner in which the Suspects and Associates revealed Protected Information.¹⁰⁶ Furthermore, the supporting material indicates that the Suspects and Associates repeatedly invited members of the press to read the names of Protected Persons in the revealed documents,¹⁰⁷ and they knew and publicly acknowledged that the publication of

⁹⁹ 084008-084010, para. 6 (084008).

¹⁰⁰ 084008-084010, para. 7 (084009).

¹⁰¹ 084008-084010, para. 8 (084009).

¹⁰² 084008-084010, para. 11 (084009).

¹⁰³ 084008-084010, para. 12 (084009).

¹⁰⁴ 084008-084010, paras 9-12 (084009).

¹⁰⁵ 084008-084010, para. 13 (084009).

¹⁰⁶ *See supra* para. 102 (Count 5).

¹⁰⁷ 081344-01-TR-ET, p. 10; 081344-03-TR-ET, p. 22.

the identity of Protected Persons was prohibited by law.¹⁰⁸ This demonstrates that the Suspects and Associates acted with awareness of, and desire for, revealing without authorisation the identity and/or personal data of Protected Persons or, at a minimum, they acted with the awareness that, as a result of their actions, such information might be revealed without authorisation, and they acceded to the occurrence of that result.

109. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of violating the secrecy of proceedings within the meaning of Article 392(2)-(3) of the KCC and Article 15(2) of the Law was committed by the Suspects and Associates between at least 7 and 25 September 2020.

3. Retaliation (Count 4)

110. In the Indictment, the SPO alleges that between at least 7 and 25 September 2020, the Suspects and Associates took or attempted to take actions harmful to witnesses with the intent to retaliate against them for providing truthful information to the SPO relating to the commission or possible commission of criminal offences.¹⁰⁹

111. Regarding the material elements of the offence, the Pre-Trial Judge finds that the supporting material indicates that, between at least 7 and 25 September 2020, the Suspects and Associates took harmful action against Information Providers in the following manner. First, they revealed the identity and/or personal data

¹⁰⁸ 081344-03-TR-ET, p. 1 (Mr Gucati); 081987-081988-ET, p. 1 (081987) (Mr Gucati); 082106-01-TR-ET, pp. 1-2 (Mr Gucati); 081344-01-TR-ET, p. 3 (Mr Haradinaj); 081344-02-TR-ET, p. 7 (Mr Haradinaj); 081931-02-TR-ET, p. 1 (Mr Klinaku); 081347-01-TR-ET, pp. 4-5, 7-8, 12 (Mr Gashi in the presence of Mr Gucati).

¹⁰⁹ Indictment, paras 31, 48.

[REDACTED] of Protected Persons, including those who provided information to the SPO, in the ways set out in Count 6.¹¹⁰ Secondly, they made disparaging remarks and accusations against Information Providers. In particular, Mr Gucati accused such persons of having provided information to obtain asylum entitlements abroad,¹¹¹ and further characterised them as “Albanian-speaker[s]”¹¹² and as “traitor[s]” who lie.¹¹³ Mr Haradinaj referred to Information Providers as “criminals, bloodsuckers”¹¹⁴ and spies who had betrayed their people.¹¹⁵ He said:

The first batch was only intended to [say] you morons, you fools, you born spies, you spies, do not think there will be protection for you. You have been only exploited, because no one in the world has ever protected a spy after exploiting him. On the contrary, he has been either killed, discredited, or derided. How can you have such expectations, betray your people, your army, lie, concoct with evidence provided by the enemy?¹¹⁶

These actions were harmful as the Suspects and Associates interfered with, as the case may be, the safety, security, livelihood, well-being and privacy of Information Providers and their immediate families.¹¹⁷ In particular, as indicated above, Protected Persons left Kosovo,¹¹⁸ were hiding in their home,¹¹⁹ lost customers in their business,¹²⁰ or felt isolated or endangered.¹²¹

112. Regarding the mental element of the offence, the supporting material indicates the deliberate manner in which the Suspects and Associates took harmful action against Information Providers. In particular, the aforementioned remarks¹²²

¹¹⁰ See *supra* para. 106 (Count 6).

¹¹¹ 081358-01-TR-ET, pp. 10-11.

¹¹² 081358-01-TR-ET, pp. 11-12.

¹¹³ 081358-01-TR-ET, p. 12.

¹¹⁴ 081355-04-TR-ET Revised, p. 2.

¹¹⁵ 081355-04-TR-ET Revised, p. 10.

¹¹⁶ 081355-04-TR-ET Revised, p. 10.

¹¹⁷ See *supra* para. 107 (Count 6); 084008-084010, paras 6-12 (084008-084009); 081344-01-TR-ET, pp. 8-9.

¹¹⁸ 084008-084010, para. 7 (084009).

¹¹⁹ 084008-084010, para. 8 (084009).

¹²⁰ 084008-084010, para. 12 (084009).

¹²¹ 084008-084010, paras 9-12 (084009).

¹²² See *supra* para. 111 (Count 4).

and the dissemination of numerous copies of the Protected Information,¹²³ coupled with statements reflecting the Suspects' wish that the identity of such persons be widely known,¹²⁴ demonstrate that the Suspects and Associates took harmful action with awareness of, and desire for, specifically retaliating against Information Providers or, at a minimum, they took harmful action with the awareness that, as its result, such persons might suffer retaliation because they provided information to the SPO, and they acceded to the occurrence of that result.

113. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of retaliation within the meaning of Article 388(1) of the KCC and Article 15(2) of the Law was committed by the Suspects and Associates between at least 7 and 25 September 2020.

4. Intimidation During Criminal Proceedings (Count 3)

114. In the Indictment, the SPO alleges that between at least 7 and 25 September 2020, the Suspects and Associates used force, serious threats, and/or other means of compulsion to induce or attempt to induce witnesses to refrain from making a statement or to make a false statement or otherwise fail to state true information to the SPO and/or the SC.¹²⁵

115. Regarding the material elements of the offence, the Pre-Trial Judge finds that the supporting material indicates that, between at least 7 and 25 September 2020, the Suspects and Associates resorted to serious threats to induce Potential Information Providers to refrain from providing information or to give false information to the SPO and/or the SC. First, they revealed the identity and/or

¹²³ See *supra* paras 101 (Count 5) and 106 (Count 6).

¹²⁴ 081344-01-TR-ET, pp. 8-9 (Mr Haradinaj); 081358-01-TR-ET, p. 8 (Mr Gucati).

¹²⁵ Indictment, paras 29-30, 48.

personal data [REDACTED] of Protected Persons, including those who had already provided information to the SPO, in the ways set out in Count 6.¹²⁶ Secondly, they sought to ensure wide dissemination of the Protected Information, by distributing numerous copies thereof¹²⁷ and repeatedly pressuring the media to publish such information,¹²⁸ while acknowledging that such revelation was legally forbidden.¹²⁹ Thirdly, they made disparaging remarks and accusations against Information Providers,¹³⁰ clearly signalling that any Potential Information Provider doing the same would be uncovered and would face consequences. In particular, Mr Gucati stated that he was surprised to see that many persons, whom he and others had trusted and respected, had “collaborat[ed]” with the SC.¹³¹ He also accepted that “things could happen” because of the revelation of names, while rejecting responsibility for having revealed the documents.¹³² Mr Haradinaj noted that he recognised all persons mentioned in the documents,¹³³ and that he and others were revealing the names and other details of witnesses “so [that] it is known”.¹³⁴ Mr Haradinaj also stated that the revelation of the first batch of documents was intended to make it clear that witnesses cannot expect to be protected, also noting that some of these persons had been killed, discredited or derided.¹³⁵ Fourthly, by interfering with the safety, security, livelihood, well-being and privacy of Information Providers and their families,¹³⁶ the Suspects and Associates clearly signalled that any Potential Information Provider would suffer

¹²⁶ See *supra* para. 106 (Count 6).

¹²⁷ See *supra* paras 101 (Count 5) and 106 (Count 6).

¹²⁸ 081344-01-TR-ET, pp. 11, 13; 081344-02-TR-ET, p. 1; 081344-03-TR-ET Revised, pp. 2, 4, 9, 12; 082106-06-TR-ET, p. 3; 082106-03-TR-ET, p. 20; 081355-02-TR-ET, pp. 7, 16; 081355-04-TR-ET Revised, pp. 8-9; 081358-03-TR-ET Revised, p. 4.

¹²⁹ See *supra* fn. 82 (Count 5).

¹³⁰ See *supra* para. 111 (Count 4).

¹³¹ 081358-01-TR-ET, pp. 9-11.

¹³² 081358-01-TR-ET, p. 8.

¹³³ 081355-04-TR-ET, p. 4.

¹³⁴ 081344-01-TR-ET, p. 9.

¹³⁵ 081355-04-TR-ET Revised, p. 10.

¹³⁶ See *supra* paras 107 (Count 6) and 111 (Count 4).

similar consequences. That being said, the supporting material does not suggest that the Suspects and Associates used physical force or any other form of compulsion, aside from serious threats, to commit the offence.

116. Regarding the mental element of the offence, the supporting material indicates the deliberate manner in which the Suspects and Associates resorted to serious threats to induce Potential Information Providers to refrain from providing information or to give false information to the SPO and/or the SC. In particular, their efforts to ensure wide dissemination of Protected Information,¹³⁷ coupled with their aforementioned statements and remarks¹³⁸ and their repeated announcements that more revelations would be expected¹³⁹ demonstrate that the Suspects and Associates resorted to intimidation through serious threats with awareness of, and desire for, committing this offence, or, at a minimum, that they acted with the awareness that, as a result of their actions, any such Potential Information Provider might be induced to refrain from providing information or give false information, and they acceded to the occurrence of that result.

117. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of intimidation during criminal proceedings within the meaning of Article 387 of the KCC and Article 15(2) of the Law was

¹³⁷ See *supra* paras 101 (Count 5), 106 (Count 6), 112 (Count 4) and 115 (Count 3).

¹³⁸ See *supra* paras 111 (Count 4) and 115 (Count 3).

¹³⁹ 081347-01-TR-ET, p. 11 (Mr Gucati: "When he handed the materials package he said only 'in the following days I will bring other materials'."); 082106-01-TR-ET, p. 12 (Mr Gucati: "Today, we told [the SPO], as we have said to them before that, if that gentleman that brought the files today said that, I am going to bring you material on CD. CD. I told them today, you had better stop him before he gets up the stairs because, if he brings the CDs, I will publicise them."); 081344-02-TR-ET, pp. 14-15 (Mr Haradinaj: "He has said that he will bring again. [...] Even today he said 'I will bring again'."); 081344-03-TR-ET, p. 3 (Mr Haradinaj: "he left a message saying that 'he will from now on bring CDs as the files are not needed anymore'."); 081355-04-TR-ET-Revised, p. 10 (Mr Haradinaj: "I am one hundred per cent sure that he will bring something that will be even more extra.").

committed by the Suspects and Associates by serious threat between at least 7 and 25 September 2020.

5. Obstructing Official Persons – by Serious Threat (Count 1)

118. In the Indictment, the SPO alleges that between at least 7 and 25 September 2020, the Suspects and Associates by force or serious threat obstructed or attempted to obstruct official proceedings of the Specialist Chambers, including SPO investigations.¹⁴⁰

119. Regarding the material elements of the offence, the Pre-Trial Judge finds that the supporting material indicates that, between at least 7 and 25 September 2020, the Suspects and Associates obstructed, by serious threat, the work of SC/SPO Officials within the context of SC Proceedings. First, they revealed Protected Information, as well as the identity and/or personal data [REDACTED] of Protected Persons, including those who had provided information to the SPO, in the ways set out in Counts 5-6.¹⁴¹ Secondly, they retaliated against Information Providers, in the ways set out in Count 4.¹⁴² Thirdly, they intimidated Potential Information Providers, in the ways set out in Count 3.¹⁴³ As a result of the aforementioned acts, in particular due to the (potential) impact on witnesses and others cooperating with the SPO and/or the SC, they hindered and/or delayed the work of SC/SPO Officials, in particular SPO prosecutors, investigators and SC staff members, within the context of SC Proceedings. This was achieved in the following ways: (i) increasingly, after each of the unauthorised revelations in September 2020, the SPO had to divert and devote a significant amount of additional resources to communications with Protected Persons and related

¹⁴⁰ Indictment, paras 4, 25-28, 48.

¹⁴¹ See *supra* paras 100-103 (Count 5) and 105-109 (Count 6).

¹⁴² See *supra* paras 111-113 (Count 4).

¹⁴³ See *supra* paras 115-117 (Count 3).

security matters,¹⁴⁴ and (ii) the SPO's ability to effectively investigate and prosecute crimes, including by collecting relevant evidence, was substantially affected. That being said, the supporting material does not suggest that the Suspects and Associates used physical force, directly or indirectly, aside from serious threats, to commit the offence.

120. Regarding the mental element of the offence, the supporting material indicates the deliberate manner in which the Suspects and Associates resorted to serious threat in order to obstruct the work of SC/SPO Officials in the context of SC Proceedings. In particular, the Suspects and Associates revealed Protected Information, including the identity and/or personal data [REDACTED] of Protected Persons,¹⁴⁵ and they continued to pledge to reveal such information received in the future,¹⁴⁶ even after having been served with the Single Judge's and the SPO's orders not to do so.¹⁴⁷ Furthermore, before and during the period relevant to the charges, the Suspects and Associates repeatedly stated their resolve to discredit the Specialist Chambers, impede its work and/or bring about its dissolution. On 26 December 2017, Mr Haradinaj stated that the Specialist Chambers should fall and it would fall.¹⁴⁸ In April 2020, both Suspects made disparaging comments in relation to a public figure who expressed support for SPO investigations,¹⁴⁹ and in June 2020 they denounced witnesses as collaborators

¹⁴⁴ 084008-084010, para. 13 (084009).

¹⁴⁵ See *supra* paras 100-101 (Count 5), 106 (Count 6).

¹⁴⁶ 081347-01-TR-ET, p. 3 (Mr Gucati); 082106-01-TR-ET, p. 11 (Mr Gucati); 081344-02-TR-ET, p. 9 (Mr Haradinaj); 081344-03-TR-ET Revised, p. 6 (Mr Haradinaj); 081355-02-TR-ET, p. 15 (Mr Haradinaj); 081358-02-TR-ET, pp. 1, 4 (Mr Haradinaj); 081991-01-TR-ET, p. 7 (Mr Haradinaj); 081991-03-TR-ET Revised, pp. 4-5 (Mr Haradinaj); 082106-07-TR-ET, p. 2 (Mr Haradinaj).

¹⁴⁷ KSC-BC-2020-07, F00008/RED, paras 2-3; F00028/RED, paras 2, 5; F00010/RED, para. 4. See also 081347-01-TR-ET, p. 14 (Mr Gucati); SPOE00222202-SPOE00222202 (9 September 2020, Facebook post of Mr Haradinaj).

¹⁴⁸ SPOE00222243-00222244-ET, p. 1 (SPOE00222243).

¹⁴⁹ SPOE00222219-00222219-ET (Mr Haradinaj); SPOE00222268-00222268-ET (Mr Gucati); SPOE00222217-00222217-ET (Mr Haradinaj); SPOE00222264-00222267-ET (Mr Gucati).

or liars.¹⁵⁰ At the first two of the Three Press Conferences, Mr Haradinaj stated that the SC should pay the price for the revelation of documents and that its existence was no longer viable,¹⁵¹ and that the KLA WVA's reason for revealing the documents was to discredit the SC.¹⁵² On 17 September 2020, Mr Haradinaj stated that "we are doing this to deny [the SC's] so-called professionalism" and indicated his expectation that the indictments would not be filed.¹⁵³ On the same day, Mr Gucati stated that his and others' interest was to unmask the SC and that they had revealed the documents because the SC was unacceptable to them.¹⁵⁴ On 20 September 2020, Mr Haradinaj conveyed his expectation that, as a result of the revelation of documents and because witnesses now knew that their identity had been revealed, the SC would dissolve and collapse.¹⁵⁵ On the same day, at another broadcasted event, Mr Haradinaj stated that he and others would publish anything that undermined the SPO.¹⁵⁶ On 22 September 2020, Mr Haradinaj repeated previous accusations in broadcasted events and his resolve to embarrass

¹⁵⁰ 082733-02-TR-ET, p. 2 (Mr Haradinaj); 082733-01-TR-ET, p. 1 (Mr Gucati).

¹⁵¹ 081344-01-TR-ET, p. 6.

¹⁵² 081344-02-TR-ET, p. 8.

¹⁵³ 082106-07-TR-ET, p. 1 ("[s]ome discussions are sowing even the filing of those indictments, even if he will never bring any documents even though he promised us that he would get more" [...] "I am saying they will drop those indictments [...] that is why I think they will not file those indictments that they have mentioned, they couldn't file them, and I hope they will never file them").

¹⁵⁴ 081347-01-TR-ET, pp. 14-15 ("they told me clearly that these documents cannot be multiplied, distributed or the names of witnesses be published [...]. We told them that we are not interested in multiplying them. We are not interested in keeping them at all. We are interested in unmasking the Special Chambers. And in informing you [the media] about any material that comes to us here, we will show you because we are against the Specialist Chambers." [...] "this Court is racist, it is biased. It is unacceptable for us and therefore this is the reason why we publish all these documents." [...] "It is in our interest to distribute them as much as possible in the media and to convince both the public and the media that this Court is unacceptable, and we have always been against it.").

¹⁵⁵ 081355-04-TR-ET Revised, pp. 2-3, 10-11 ("these files are doing two good things. Firstly, they expose the court". [...] "So what have [the files] achieved? They denounce their [tribunal's] direct cooperation with the executioners." [...] "the whole court will dissolve since, as we are told, there will be a third one coming to bring [documents] again. He will bring new material to us again." [...] "This [court] will totally collapse. It will totally collapse. From what I read ... the testimony on which it has been built. It will totally collapse, because the witnesses, too, know now that others know who they are").

¹⁵⁶ 081991-02-TR-ET, p. 10 ("This is our cause and anything that undermines this Prosecutor's Office, we are going to get it out there.").

and undermine the work of the SC.¹⁵⁷ On the same day, Mr Gucati stated that it was essential to convince Kosovo citizens that the SC was worthless and that he hoped that the SC would be abolished as soon as possible.¹⁵⁸ During another interview that day, Mr Gucati stated that it was his responsibility to undermine the SC and that, if he and others could, they would “get rid of” and disband the SC “in five minutes”.¹⁵⁹ On 25 September 2020, Mr Haradinaj stated that it was his and others’ duty to work against the SC.¹⁶⁰ Associates also made similar comments.¹⁶¹ These statements demonstrate that the intention of the Suspects and Associates went well beyond mere criticism against the SPO and/or the SC. In fact, they resorted to serious threats with awareness of, and desire for, obstructing the work of SC/SPO Officials in the context of SC Proceedings, or at a minimum, they acted with the awareness that, as a result of their actions, the work of SC/SPO Officials might be obstructed, and they acceded to the occurrence of that result.

121. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of obstructing official persons in performing official duties within the meaning of Article 401(1) and (5) of the KCC and Article 15(2) of the Law was committed by serious threat by the Suspects and Associates between at least 7 and 25 September 2020.

¹⁵⁷ 082106-03-TR-ET, pp. 15, 18; 081358-03-TR-ET Revised, p. 3.

¹⁵⁸ 082106-02-TR-ET Revised, pp. 1-2.

¹⁵⁹ 082106-01-TR-ET, pp. 9, 11 (“What interests me is the fact that [the documents] made it to my office and my responsibility is [...] to undermine the Special Court. [...] If we could, we would get rid of this Special Court in five minutes. We will disband this Special Court...”).

¹⁶⁰ 081991-03-TR-ET Revised, p. 2 (“It is our duty to work against this Court, it is our duty to protect our members, this is our duty.”).

¹⁶¹ 081931-02-TR-ET, p. 1 (Mr Klinaku: “I told [the investigators], [...] that we told [the media] that they could make multiple copies in order that everybody got [the documents], because, as far as we are concerned, I say it openly, for us the Specialist Chambers does not exist, and we never accepted it, and we do not accept it today.”); 081355-03-TR-ET, p. 11 (Mr Gashi: “the very publication of the arrival of thousands of documents in the Organization of the KLA Veterans, that judge before deciding whether to confirm the indictment against President Thaçi and the others must think once again. He has to think twice about confirming something or not.”).

6. Obstructing Official Persons—by Common Action of a Group (Count 2)

122. In the Indictment, the SPO alleges that between at least 7 and 25 September 2020, the Suspects and Associates by common action obstructed or attempted to obstruct official proceedings of the Specialist Chambers, including SPO investigations.¹⁶²

123. Regarding the material elements of the offence, the Pre-Trial Judge finds that the supporting material indicates that, between at least 7 and 25 September 2020, Mr Gucati and Mr Haradinaj, in their respective capacities of chairman and deputy chairman of the KLA WVA,¹⁶³ acted as leaders and/or organisers of a group comprising them and their Associates, which obstructed, by its common action, the work of SC/SPO Officials within the context of SC Proceedings. In particular, as demonstrated above,¹⁶⁴ the Suspects and Associates participated in the organisation and holding of the Three Press Conferences, the unauthorised revelation and dissemination of Protected Information, including identifying details of Protected Persons, to the media and others, on behalf and as representatives of the KLA WVA, and in this context repeatedly threatened to continue disseminating such information and to discredit the SPO and/or the SC. Notably, the Suspects repeatedly used the plural, first-person pronouns “we”, “us” and “our” to refer to their common action.¹⁶⁵ As a result and due to the

¹⁶² Indictment, paras 4, 25-28, 48.

¹⁶³ 081931-02-TR-ET, p. 1 (Mr Klinaku: “I act under, Hysni Gucati, the head”). *See also* 081344-01-TR-ET, p. 12; 081344-02-TR-ET, p. 2.

¹⁶⁴ *See supra* paras 100-101 (Count 5), 105-106 (Count 6), 119 (Count 1).

¹⁶⁵ 082106-07-TR-ET, p. 1 (Mr Haradinaj: “we are doing this to deny [the SC’s] so-called professionalism”); 081347-01-TR-ET, pp. 14-15 (Mr Gucati: “they told me clearly that these documents cannot be multiplied, distributed or the names of witnesses be published [...]. We told them that we are not interested in multiplying them. We are not interested in keeping them at all. We are interested in unmasking the Special Chambers. And in informing you [the media] about any material that comes to us here, we will show you because we are against the Specialist Chambers.” [...]) “this Court is racist, it is biased. It is unacceptable for us and therefore this is the reason why we publish all these

(potential) impact on witnesses and others cooperating with the SPO and/or the SC, the Suspects hindered and/or delayed the work of SC/SPO Officials, in particular SPO prosecutors, investigators and SC staff members, within the context of SC Proceedings, thus obstructing the SC/SPO Officials in performing their official duties.¹⁶⁶

124. Regarding the mental element of the offence, the Pre-Trial Judge refers to the findings under Count 1.¹⁶⁷

125. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of obstructing official persons in performing official duties within the meaning of Article 401(2)-(3) and (5) of the KCC and Article 15(2) of the Law was committed by the Suspects and Associates between at least 7 and 25 September 2020.

B. THE MODES OF LIABILITY CHARGED

1. Commission

126. In the Indictment, the SPO alleges that the Suspects committed the offences under Counts 1-6, according to Article 17 of the KCC and Article 16(3) of the Law.¹⁶⁸

documents." [...] "It is in our interest to distribute them as much as possible in the media and to convince both the public and the media that this Court is unacceptable, and we have always been against it."); 081991-02-TR-ET, p. 10 (Mr Haradinaj: "This is our cause and anything that undermines this Prosecutor's Office, we are going to get it out there."); 082106-01-TR-ET, p. 11 (Mr Gucati: "If we could, we would get rid of this Special Court in five minutes. We will disband this Special Court."); 081991-03-TR-ET Revised, p. 2 (Mr Haradinaj: "It is our duty to work against this Court, it is our duty to protect our members, this is our duty.").

¹⁶⁶ See *supra* paras 119-120 (Count 1).

¹⁶⁷ See *supra* para. 120 (Count 1).

¹⁶⁸ Indictment, paras 37, 47(i), 48.

127. Regarding the objective¹⁶⁹ and subjective¹⁷⁰ elements of the Suspects' physical commission of the aforementioned offences, the Pre-Trial Judge refers to the above findings in Counts 1-6.

128. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that the Suspects committed the offences under Counts 1-6, within the meaning of Article 17 of the KCC and Article 16(3) of the Law.

2. Co-Perpetration

129. In the Indictment, the SPO alleges that, further and alternatively to their responsibility for commission, the Suspects co-perpetrated the offences under Counts 1-6 by participating therein or substantially contributing thereto, according to Article 31 of the KCC and Article 16(3) of the Law.¹⁷¹

130. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that, as described in relation to Counts 1 and 3-6,¹⁷² the Suspects acted in a concerted manner, each participating in or substantially contributing to the commission of the offences.

131. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the above findings in Counts 1 and 3-6.¹⁷³

¹⁶⁹ See *supra* paras 100-101 (Count 5), 105-107 (Count 6), 111 (Count 4), 115 (Count 3), 119 (Count 1) and 123 (Count 2).

¹⁷⁰ See *supra* paras 102 (Count 5), 108 (Count 6), 112 (Count 4), 116 (Count 3), 120 (Count 1) and 124 (Count 2).

¹⁷¹ Indictment, paras 39-40, 47(i), 48; Detailed Outline, p. 49.

¹⁷² See *supra* paras 100-101 (Count 5), 105-107 (Count 6), 111 (Count 4), 115 (Count 3) and 119 (Count 1). See also *supra* para. 87 (Co-Perpetration).

¹⁷³ See *supra* paras 102 (Count 5), 108 (Count 6), 112 (Count 4), 116 (Count 3) and 120 (Count 1). See also *supra* para. 87 (Co-Perpetration).

132. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that the Suspects co-perpetrated the offences under Counts 1 and 3-6, within the meaning of Article 31 of the KCC and Article 16(3) of the Law.

3. Incitement

133. In the Indictment, the SPO alleges that, further and alternatively to their responsibility for commission and/or co-perpetration, the Suspects incited one another, Associates and certain others to commit the offences under Counts 1-6, according to Article 32(1) of the KCC and Article 16(3) of the Law.¹⁷⁴ Further and alternatively, the SPO alleges that the Suspects are responsible: (i) under Article 32(2) of the KCC, for inciting the commission of the offences under Counts 1-6, even if such offences were ultimately only attempted, but not committed;¹⁷⁵ and (ii) under Article 32(3) of the KCC, for inciting the commission of the offences under Counts 1-3 and 6, even if such offences were ultimately neither committed, nor attempted.¹⁷⁶

134. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that the Suspects at the least incited the commission of the (attempted) offences under Counts 1-6 in the following manner. First, they encouraged one another and their Associates to commit these offences by repeatedly referring to their resolve and duty to publish and disseminate Protected Information and to undermine the SC, as set out in Count 1.¹⁷⁷ Secondly, they urged, instructed and pressured members of the press to take, record and disseminate Protected Information. In particular, at the Three

¹⁷⁴ Indictment, paras 41, 47(iv), 48.

¹⁷⁵ Indictment, paras 42, 47(v), 48.

¹⁷⁶ Indictment, paras 43, 47(vi), 48.

¹⁷⁷ See *supra* para. 120 (Count 1).

Press Conferences, both Suspects urged those in attendance to take a copy of the documents and/or look at the names and statements.¹⁷⁸ At the last of the Three Press Conferences, Mr Haradinaj also urged members of the press “to do their job” and stated that “we should all together carry out the duty”,¹⁷⁹ and encouraged them to take pictures of the documents.¹⁸⁰ On other occasions, Mr Haradinaj urged and pressured members of the press to publish documents.¹⁸¹ Thirdly, they encouraged any person with access to Protected Information to continue providing it to the KLA WVA,¹⁸² pledging to continue to reveal documents received in the future.¹⁸³

135. The supporting material further indicates that the Suspects and Associates committed the offences under Counts 1-6.¹⁸⁴ Further and in the alternative, the supporting material indicates that the Suspects and Associates attempted to commit the offences under Counts 1-4 and 6.¹⁸⁵ Moreover, the supporting material indicates that at least some members of the press published Protected Information and/or revealed the identity of Protected Persons. In particular, following the Three Press Conferences, news articles appeared in print and online, reproducing, by reference or photographs, Protected Information and revealing the identity and/or personal data of Protected Persons.¹⁸⁶

¹⁷⁸ 081344-01-TR-ET, pp. 11, 13 (Mr Haradinaj); 081344-02-TR-ET, pp. 1 (Mr Gucati), 8 (Mr Haradinaj); 081344-03-TR-ET, pp. 2 (Mr Gucati), 4, 12 (Mr Haradinaj).

¹⁷⁹ 081344-03-TR-ET, pp. 4, 9.

¹⁸⁰ 081344-03-TR-ET, p. 12.

¹⁸¹ 082106-06-TR-ET, p. 3; 082106-03-TR-ET, p. 20; 081355-02-TR-ET, pp. 7, 16; 081355-04-TR-ET Revised, pp. 8-9; 081358-03-TR-ET Revised, p. 4.

¹⁸² 082106-01-TR-ET, p. 11 (Mr Gucati); 082106-02-TR-ET Revised, p. 2 (Mr Gucati); 081344-03-TR-ET Revised, p. 3 (Mr Haradinaj); 081355-02-TR-ET, pp. 3-5 (Mr Haradinaj); 081355-04-TR-ET Revised, pp. 1-2, 13; SPOE00220800-SPOE00220800-ET, p. 1 (SPOE00220800) (Mr Haradinaj).

¹⁸³ See *supra* fn. 83 (Count 5).

¹⁸⁴ See *supra* paras 99-125 (Counts 1-6).

¹⁸⁵ See *infra* paras 147-149 (Attempt).

¹⁸⁶ 081364-081367-ET; 081361-081362-ET; 081914-081919-ET; 081371-081373-ET; 081374-081377-ET; 081381-081383-ET; 081392-01-TR-ET; 081395-081398-ET; 081405-01-TR-ET; 081414-081415-ET; 081422-01-TR-ET. See also 084015-084026, paras 13-18, 36-74 (084016-084025).

136. Regarding the subjective elements of this mode of liability, the aforementioned deliberate acts of encouragement, urging and pressure demonstrate the Suspects' intention to incite the commission of the offences under Counts 1-6, including the specific intention under Count 4.

137. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that the Suspects incited the commission of the offences under Counts 1-6 and that these offences were committed, within the meaning of Article 32(1) of the KCC and Article 16(3) of the Law. Further and alternatively, the Pre-Trial Judge finds that there is a well-grounded suspicion that the Suspects: (i) incited the attempted commission of the offences under Counts 1-6, within the meaning of Article 32(2) of the KCC and Article 16(3) of the Law; and (ii) incited the commission of those offences under Counts 1-3 and 6 that were neither committed, nor attempted, within the meaning of Article 32(3) of the KCC and Article 16(3) of the Law.

4. Assistance

138. In the Indictment, the SPO alleges that, further and alternatively to their responsibility for commission and/or co-perpetration, the Suspects provided assistance to one another, their Associates and certain others in the commission of the offences under Counts 1-6, according to Article 33 of the KCC and Article 16(3) of the Law.¹⁸⁷

139. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that the Suspects at the least assisted one another, their Associates and certain members of the press in the commission of the (attempted) offences under Counts 1-6. First, the Suspects assisted one

¹⁸⁷ Indictment, paras 44, 47(iv), 48.

another and their Associates in the commission of the offences by: (i) reviewing the Protected Information and/or partaking in decisions to reveal it;¹⁸⁸ (ii) organising and partaking in broadcasted events, including the Three Press Conferences, where Protected Information was revealed and disseminated;¹⁸⁹ (iii) further disseminating copies of Protected Information;¹⁹⁰ (iv) making disparaging remarks against Information Providers;¹⁹¹ and (v) repeatedly stating their resolve to discredit the Specialist Chambers, impede its work and/or bring about its dissolution.¹⁹² Secondly, the Suspects assisted certain members of the press, who published Protected Information and the details of Protected Persons,¹⁹³ in the commission of the offences,¹⁹⁴ by: (i) revealing and disseminating Protected Information;¹⁹⁴ and (ii) revealing the identity and/or personal data of Protected Persons.¹⁹⁵

140. Regarding the subjective elements of this mode of liability, the aforementioned acts demonstrate the Suspects' intention of making available the means and conditions for, as well as removing the impediments to, the commission of the offences under Counts 1-6.

141. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that the Suspects assisted in the commission of the offences under Counts 1-6, within the meaning of Article 33 of the KCC and Article 16(3) of the Law.

¹⁸⁸ 081344-01-TR-ET, pp. 1-2; 081355-04-TR-ET Revised, pp. 1, 3-4, 8, 12; 082106-02-TR-ET Revised, p. 2. *See supra* paras 100-101 (Count 5).

¹⁸⁹ *See supra* paras 100-101 (Count 5).

¹⁹⁰ *See supra* para. 101 (Count 5).

¹⁹¹ *See supra* para. 111 (Count 4).

¹⁹² *See supra* para. 120 (Count 1).

¹⁹³ *See supra* fn. 186 (Incitement).

¹⁹⁴ *See supra* paras 100-103 (Count 5).

¹⁹⁵ *See supra* paras 105-109 (Count 6).

5. Agreement to Commit a Criminal Offence

142. In the Indictment, the SPO alleges that, further and alternatively to their responsibility for commission and/or co-perpetration, the Suspects agreed to commit the offences under Counts 1-6 and undertook substantial acts towards their commission, according to Article 35 of the KCC and Article 16(3) of the Law.¹⁹⁶

143. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that the Suspects, in their respective capacities of chairman and deputy chairman of the KLA WVA,¹⁹⁷ mutually agreed, also with other Associates, to commit the offences under Counts 1-6 and at the least took substantial preparatory steps towards their commission. In particular, the Suspects repeatedly used the plural, first-person pronouns “we”, “us” and “our” to describe their common intentions and actions.¹⁹⁸ As regards the substantial preparatory steps undertaken by the Suspects and Associates towards the commission of the offences, the Pre-Trial Judge refers to the findings under Counts 1-6.¹⁹⁹

144. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the above findings in Counts 1-6.²⁰⁰

145. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that the Suspects agreed to commit the offences under Counts 1-6 and undertook substantial acts towards their

¹⁹⁶ Indictment, paras 39-40, 47(iii), 48.

¹⁹⁷ 081931-02-TR-ET, p. 1 (Mr Klinaku: “I act under, Hysni Gucati, the head”). *See also* 081344-01-TR-ET, p. 12; 081344-02-TR-ET, p. 2.

¹⁹⁸ *See supra* fn. 165 (Count 6).

¹⁹⁹ *See supra* paras 100-101 (Count 5), 105-107 (Count 6), 111 (Count 4), 115 (Count 3), 119 (Count 1) and 123 (Count 2).

²⁰⁰ *See supra* paras 102 (Count 5), 108 (Count 6), 112 (Count 4), 116 (Count 3), 120 (Count 1) and 124 (Count 2).

commission, within the meaning of Article 35 of the KCC and Article 16(3) of the Law.

6. Attempt

146. In the Indictment, the SPO alleges that, further and alternatively to their responsibility for commission and/or co-perpetration, the Suspects attempted the commission of the offences under Counts 1-4 and 6, according to Article 28 of the KCC and Article 16(3) of the Law.²⁰¹

147. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that the Suspects at the least took action towards the commission of the offences under Counts 1-4 and 6 by beginning to execute them, through fulfilling one or more of their material elements. As regards the specific acts in which the Suspects engaged, the Pre-Trial Judge refers to the findings under Counts 1-6.²⁰²

148. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the above findings in Counts 1-4 and 6.²⁰³

149. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that the Suspects attempted to commit the offences under Counts 1-4 and 6, within the meaning of Article 28 of the KCC and Article 16(3) of the Law.

²⁰¹ Indictment, paras 38, 47(ii), 48.

²⁰² See *supra* paras 100-101 (Count 5), 105-107 (Count 6), 111 (Count 4), 115 (Count 3), 119 (Count 1) and 123 (Count 2). While no attempt is punishable under Count 5, the acts described therein inform the Suspects' attempt to commit the offences under Counts 1-4 and 6.

²⁰³ See *supra* paras 108 (Count 6), 112 (Count 4), 116 (Count 3), 120 (Count 1) and 124 (Count 2).

VII. RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY

150. As a general rule, Rule 88(1) of the Rules provides that an indictment shall be made public upon confirmation. Further, pursuant to Rules 95(1) and (2)(b) and 102(1)(a) of the Rules, any disclosure of material, including the names of witnesses and victims, will take place after the initial appearance of the Accused, against whom an indictment has been confirmed. In exceptional circumstances, however, pursuant to Rules 88(2) and 105(1) of the Rules, the SPO may apply for the temporary non-disclosure of the indictment, related documents, and the identities of victims and witnesses to continue after confirmation of the indictment or initial appearance of the Accused, as the case may be. It is highlighted that Rule 105(1) measures are provisional in nature, allowing for the protection of vulnerable witnesses and victims until such time as a request for protective measures has been decided.

151. The Pre-Trial Judge refers to the aforementioned findings that the Suspects: (i) revealed on numerous occasions and without authorisation, while acknowledging that it was forbidden, Protected Information as well as the identity and/or personal data [REDACTED] of Protected Persons, including those who had provided information to the SPO;²⁰⁴ (ii) retaliated against Information Providers;²⁰⁵ (iii) intimidated Potential Information Providers;²⁰⁶ and (iv) as a result of the aforementioned acts, they hindered and/or delayed the work of SC/SPO Officials within the context of SC Proceedings.²⁰⁷ The Pre-Trial Judge therefore concludes that the Suspects have incentives to obstruct the proceedings and, based on their resolve to discredit the SC, may commit further similar offences.

²⁰⁴ See *supra* paras 100-103 (Count 5) and 105-109 (Count 6).

²⁰⁵ See *supra* paras 111-113 (Count 4).

²⁰⁶ See *supra* paras 115-117 (Count 3).

²⁰⁷ See *supra* paras 119-121 (Count 1) and 123-125 (Count 2).

152. In light of the above, the Pre-Trial Judge finds that the SPO has demonstrated good cause justifying exceptional circumstances that allow, pursuant to Rule 88(2) of the Rules, the temporary non-disclosure to the public of the SPO Submission of the Indictment with its annexes (“Related Documents”). The Pre-Trial Judge also finds that the SPO has demonstrated exceptional circumstances, pursuant to Rule 105(1) of the Rules, justifying interim non-disclosure of the identities of witnesses and victims, until appropriate protective measures have been ordered.

153. Considering that the Suspects are currently in detention and that, pursuant to Rules 87(6) and 92 of the Rules, their initial appearances are to be held without delay, the Indictment as confirmed in paragraph 155 (“Confirmed Indictment”), shall be made public,²⁰⁸ with redactions, as appropriate, after it has been served on the Accused, as per Rule 87(1) of the Rules. The Accused shall be served with the strictly confidential (redacted) Confirmed Indictment pursuant to Rules 87(1) and 105(1) of the Rules. Pursuant to Rule 88(3) of the Rules, the SPO or the Registrar may disclose the (redacted) version or parts of the Confirmed Indictment to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

154. The non-disclosure of the Related Documents and supporting material to the Confirmed Indictment shall be maintained until further order of the Pre-Trial Judge, as provided in Rule 88(2) of the Rules. However, the supporting material shall be made available to the Accused with redactions, as appropriate, no later than 30 days after their initial appearances, as per Rules 102(1)(a) and 105(1) of the Rules.

²⁰⁸ For the purposes of this decision, public shall mean all persons, organisations, entities, Third States, clients, associations and groups, including the media, other than the judges of the Specialist Chambers (and their staff), the Registry, the SPO, and the Accused.

VIII. DISPOSITION

155. In light of the foregoing, the Pre-Trial Judge hereby:

- a. **CONFIRMS** the following charges against Mr Gucati and Mr Haradinaj:
 - i. obstructing official persons in performing official duties by serious threat, punishable under Articles 17, 28, 31, 32(1)-(3), 33, 35 and 401(1) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 1);
 - ii. obstructing official persons in performing official duties by common action of a group, punishable under Articles 17, 28, 32(1)-(3), 33, 35 and 401(2)-(3) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 2);
 - iii. intimidation during criminal proceedings, punishable under Articles 17, 28, 31, 32(1)-(3), 33, 35 and 387 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 3);
 - iv. retaliation, punishable under Articles 17, 28, 31, 32(1)-(2), 33, 35 and 388(1) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 4);
 - v. violating the secrecy of proceedings, through unauthorised revelation of protected information, punishable under Articles 17, 31, 32(1)-(2), 33, 35 and 392(1) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 5); and
 - vi. violating the secrecy of proceedings, through unauthorised revelation of the identity and/or personal data of protected persons, punishable under Articles 17, 28, 31, 32(1)-(3), 33, 35 and 392(2)-(3) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 6);

- b. **ORDERS** the Specialist Prosecutor to submit, by **Monday, 14 December 2020, 12:00 hours**, a further revised indictment, taking into account the findings under paragraphs 87, 115, 117, 119, 121 and 132 which shall be considered the strictly confidential "Confirmed Indictment";
- c. **AUTHORISES** the SPO to redact any identifying information of witnesses and victims or confidential information from the Confirmed Indictment, Related Documents, and supporting material, and assign and use provisional pseudonyms to these victims and witnesses;
- d. **ORDERS** the SPO to submit a strictly confidential (redacted) Confirmed Indictment, by **Monday, 14 December 2020, 12:00 hours**;
- e. **ORDERS** the Registry to serve on the Accused, in consultation with the SPO, by **Monday, 14 December 2020, 14:00 hours**, the strictly confidential (redacted) Confirmed Indictment;
- f. **ORDERS** the SPO to submit a public (redacted) version of the Confirmed Indictment and **ORDERS** the disclosure of that version to the public by **Monday, 14 December 2020, 16:00 hours**;
- g. **AUTHORISES** the SPO and the Registrar to disclose the strictly confidential (redacted) Confirmed Indictment or parts thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution;
- h. **ORDERS** the non-disclosure of the Related Documents and supporting material until further order;
- i. **REQUESTS** the SPO to provide, by **Friday, 18 December 2020**, strictly confidential and *ex parte* written submissions, if any, as to the proposed redactions to be applied to this decision, in order to make it available to the Defence and the public; and

- j. **ORDERS** the SPO to submit a request for protective measures, if any, in relation to victims and witnesses identified in the Confirmed Indictment, Related Documents and supporting material by **Wednesday, 6 January 2021**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 11 December 2020
At The Hague, the Netherlands.