



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 22 February 2021

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Public Redacted Version of 'Consolidated Prosecution response to preliminary motions', KSC-BC-2020-07/F00120, dated 10 February 2021

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I. INTRODUCTION

1. The Preliminary Motions¹ should be dismissed. The Specialist Chambers ('SC') have jurisdiction over the offences and modes of liability referred to in the Indictment.² Moreover, the Indictment pleads the material facts in the particular circumstances of the Prosecution's case, thereby enabling the Accused to understand the charges and prepare a defence.

II. SUBMISSIONS

2. As a preliminary matter, contrary to Defence submissions,³ the deadline for preliminary motions ran from 4 January 2021, when disclosure under Rule 102(1)(a) of the Rules⁴ was completed.⁵ The material seized from the Kosovo Liberation Army War Veterans Association ('KLA WVA') was not itself relied upon as supporting material to the indictment, does not fall within the scope of Rule 102(1)(a), and its disclosure status does not impact the Rule 97(2) deadline.⁶ The Defence was clearly informed of the fact that Rule 102(1)(a) disclosure had been completed in full, through both written and oral submissions.⁷ The Specialist Prosecutor's Office ('SPO') has

¹ Preliminary Motion Alleging Defects in the Form of the Indictment Pursuant to Rule 97(1)(b), KSC-BC-2020-07/F00113, 30 January 2021 (filed 2 February 2021; notified 3 February 2021), Confidential ('Gucati Preliminary Motion'); Preliminary Motion on the Issue of the Indictment Being Defective, KSC-BC-2020-07/F00116, 3 February 2021 (filed 4 February 2021), Confidential ('Haradinaj Preliminary Motion'; collectively with the Gucati Preliminary Motion, 'Preliminary Motions').

² Annex 1 to Submission of confirmed Indictment, KSC-BC-2020-07/F00075/A01, 14 December 2020, Strictly Confidential ('Indictment').

³ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, para 8; Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, paras 39-49, 79-82.

⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁵ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-07/F00104, 22 January 2021 ('Framework Decision'), paras 27, 39. For the purposes of Rule 102(1)(a), supporting materials are limited to the evidentiary material referenced under Rule 86(3)(a). This is consistent with the practice before this and other courts, as well as the underlying purpose of Rule 102(1)(a). *See, for example*, Framework Decision, KSC-BC-2020-07/F00104, para.38; ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.3, Decision on Accused's Request for Access to Additional Documents, 10 December 2010, para.5 and the sources cited therein.

⁶ *Contra* Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, paras 39-49, 68-78.

⁷ Prosecution Submissions for first Status Conference, KSC-BC-2020-07/F00096, 5 January 2021, para.6; Transcript of Status Conference dated 8 January 2021, p.92.

discharged and will continue to discharge its disclosure obligations in accordance with the Law,⁸ Rules, and the Framework Decision. In turn, the Haradinaj Defence's request for a stay under Rule 110 is completely baseless, bordering on frivolous,⁹ and in any event would exceed the scope of permitted preliminary motions pursuant to Rule 97(1).¹⁰

A. THE SC HAVE JURISDICTION OVER THE OFFENCES AND MODES OF LIABILITY REFERENCED IN THE INDICTMENT

3. The Defence's jurisdictional challenges seek to impermissibly re-litigate matters already decided in this case.¹¹ Consistent with legislative intent and the principle that persons must be prosecuted and punished in accordance with the law applicable at the time the offences were committed, the Pre-Trial Judge – then acting in his former capacity as Single Judge – has already found, in response to Defence challenges, that the SC have jurisdiction over the offences and modes of liability incorporated in Articles 6(2) and 15(2), as renumbered in the 2019 Kosovo Criminal Code.¹² The Defence did not seek leave to appeal that decision, and fails to now demonstrate any error of reasoning or that reconsideration is otherwise necessary to avoid injustice.¹³

⁸ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

⁹ Rule 75(4).

¹⁰ Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, paras 48, 83. Rule 110 refers to measures in case of non-compliance with disclosure obligations.

¹¹ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, paras 16-18; Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, paras 65-67, 84.

¹² Decision on Defence Challenges, KSC-BC-2020-07/F00057, 27 October 2020, para.24. In any event, there is no material difference between the provisions of the 2012 and the 2019 Kosovo Criminal Code relied upon in the Indictment. *See also* Article 64 of the Law.

¹³ Rule 79(1).

B. THE INDICTMENT PLEADS THE MATERIAL FACTS

4. Contrary to Defence submissions,¹⁴ considering the nature of the alleged crimes and the circumstances of this case,¹⁵ the Indictment pleads the material facts necessary to fulfil the elements of the alleged crimes and modes of liability¹⁶ and with sufficient specificity to enable the Accused to understand the case against them and prepare a defence.¹⁷

5. As is abundantly clear from the Indictment, this case is based on the Accused's public statements and alleged direct participation in the unlawful dissemination of confidential and non-public information relating to confidential investigations of the Special Investigative Task Force ('SITF')/SPO and containing, *inter alia*, [REDACTED].¹⁸ The Indictment therefore describes in great detail¹⁹ the context, timing, content, and circumstances of the Accused's statements and conduct,²⁰ the contents of the confidential information disseminated,²¹ the common purpose or agreement,²² and the Accused's mental state.²³

¹⁴ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, para.19; Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, paras 62-64.

¹⁵ Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules, KSC-BC-2020-06/F00010, 2 July 2020 ('Case 6 Order'), para.16. *See also* STL, *Prosecutor v. Ayyash*, STL-18-10/PT/TC, Decision on Alleged Defects in the Form of the Indictment, 28 September 2020 ('STL Decision'), para.14(f)-(g) and the sources cited therein; ICC, *Prosecutor v. Yekatom and Ngaiissona*, ICC-01/14-01/18 OA2, Judgment on the appeal of Mr Alfred Yekatom against the decision of Trial Chamber V of 29 October 2020 entitled 'Decision on motions on the Scope of the Charges and the Scope of Evidence at Trial', 5 February 2021 ('Yekatom Appeal Decision'), paras 38, 54.

¹⁶ Case 6 Order, KSC-BC-2020-06/F00010, para.15.

¹⁷ Case 6 Order, KSC-BC-2020-06/F00010, para.9; STL Decision, para.14(a) and the sources cited therein. *See also* Submission of Indictment for confirmation and related requests, KSC-BC-2020-07/F00063, 30 October 2020, Strictly Confidential, para.4.

¹⁸ Unless indicated otherwise, certain terms defined in the Indictment are intended to have the same meaning when used in these submissions.

¹⁹ Case 6 Order, KSC-BC-2020-06/F00010, paras 11 (The Indictment should set out with sufficient specificity the factual allegations underpinning the charges, involving the questions of who did what, when, where and against whom), 17 (regarding the material facts where physical commission is alleged), 18 (regarding the material facts where an accused is not alleged to have directly carried out the crime or where the crimes are directed against a group or collectivity).

²⁰ Indictment, KSC-BC-2020-07/F00075/A01, paras 6-9, 11, 13-14, 16-18, 20. *See also* paras 25-26, 29-31, 33-34, 36-44.

²¹ Indictment, KSC-BC-2020-07/F00075/A01, paras 6, 10, 12, 15, 19, 21. *See also* paras 30, 34-35, 38, 40.

²² Indictment, KSC-BC-2020-07/F00075/A01, para.39. *See also* paras 6-9, 11-14, 16-18, 20-21, 25-26.

²³ Indictment, KSC-BC-2020-07/F00075/A01, paras 24, 36, 45-46. *See also* para.5.

6. Moreover, the consequences of the Accused's conduct and the identities of affected witnesses, assisted and incited persons, co-perpetrators, and accomplices²⁴ are pleaded in the Indictment with sufficient specificity in the circumstances of the case and based on the available evidence.²⁵ Indeed, considering the alleged public and indiscriminate nature of the Accused's statements and conduct, the full scope of such consequences and persons is not and may never be known and is unnecessary for Defence preparations.²⁶ The SPO's case does not depend on the specific identity of any individual.²⁷ Rather, any such details constitute evidence of the material facts pleaded in the Indictment.²⁸

7. The Defence improperly and selectively challenges certain words and phrases in isolation, without regard to the Indictment as a whole and without any explanation as to why further detail must be provided in the Indictment for Defence preparations.²⁹ Read in their proper context and the circumstances of this case, the challenged terms and phrases are sufficiently specific and all material facts have been pleaded, as set out below.

²⁴ See paras 10-17 below.

²⁵ Case 6 Order, KSC-BC-2020-06/F00010, paras 15, 17-18 (details need only be pleaded 'as far as possible', 'as much as possible', and 'if known', provided necessary particulars have been provided to make out the elements of the crimes); STL Decision, para.14(m) and the sources cited therein (the Prosecution must offer its best understanding of the case in the Indictment based on the best information available); ICTY, *Prosecutor v. Brđanin and Talić*, IT-93-36, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para.22 (the Prosecution cannot be obliged to perform the impossible).

²⁶ STL Decision, para.54(b) (noting that certain details – such as the extent of the conspiracy and the identities of its members – may remain obscure even after the end of the trial); ECtHR, *Previti v. Italy*, 45291/06, Decision, 8 December 2009 ('Previti Decision'), para.208.

²⁷ See, similarly, ICTY, *Prosecutor v. Naletilić and Martinović*, IT-98-34-A, Judgement, 3 May 2006, fn.87, para.89.

²⁸ The Prosecution is not required to plead the evidence proving the material facts. See STL Decision, para.14(b)-(d) and the sources cited therein.

²⁹ The Indictment must be read as a whole and select paragraphs should be read in the context of the entire document. See STL Decision, para.14(e) and the sources cited therein; *Yekatom* Appeal Decision, para.54. See also Indictment, KSC-BC-2020-07/F00075/A01, para.49 (providing that all sections of the Indictment should be read in conjunction with one another).

*Use of 'and/or' in paragraphs 11, 16, 20, 22, 25-26, 28, 30, 32, and 39 of the Indictment.*³⁰

8. Alternative characterisation of facts, including through the use of 'and/or', does not, in and of itself, create ambiguity or impair the ability of the Defence to prepare; rather, such alternative characterisation constitutes an evidentiary matter to be determined at trial.³¹

*Reference to 'other actions' in paragraph 6 of the Indictment.*³²

9. This phrase must be read together with other paragraphs of the Indictment, which allege, in detail, that between 7 and 25 September 2020, the Accused, together with others, reviewed confidential and non-public information relating to confidential SITF/SPO investigations, partook in decisions as to whether and how to disseminate it, and organised and participated in related events, including press conferences and public appearances, where confidential and non-public information was publicly disseminated and discussed.³³ The material facts of the Accused's alleged conduct have been pleaded with more than sufficient detail.

*References to alleged co-perpetrators and accomplices as 'others', 'at least one other representative of the KLA WVA', 'certain others', 'Associate(s)', and 'group' in paragraphs 6, 16, 25-26, 28-30, 33-34, 39, and 41-46 of the Indictment.*³⁴

10. Having regard to the Indictment as a whole, the Accused's co-perpetrators and accomplices are adequately identified by group to include those who, together with the Accused, reviewed the confidential and non-public information, partook in decisions as to whether and how to disseminate it, and organised and participated in

³⁰ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, pp.6-15. The page numbers of the Gucati Preliminary Motion which are referred to in this response are those assigned by the Registry.

³¹ IRMCT, *Prosecutor v. Turinabo et al.*, MICT-18-116-PT, Decision on the Nzabonimpa and Ndagijimana Defence Challenges to the Form of the Third Amended Indictment, 30 January 2020, paras 15, 18, 49; ICTY, *Prosecutor v. Kvočka*, IT-98-30/1, Decision on Defence Preliminary Motions on the Form of the Indictment, 12 April 1999 ('Kvočka Decision'), para.26.

³² Gucati Preliminary Motion, KSC-BC-2020-07/F00113, p.6.

³³ Indictment, KSC-BC-2020-07/F00075/A01, paras 7-20. See also paras 25-26, 28-31, 33-34, 37-43.

³⁴ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, pp.6-7, 9-10, 12-15.

related events, including press conferences and public appearances, where confidential and non-public information was publicly disseminated and discussed.³⁵ This group included at least one other representative of the KLA WVA.³⁶

11. Further specificity is: (i) unnecessary, as the relevant context and the events in which this group is alleged to have taken part is described in detail in the Indictment, enabling the Accused to prepare their defence; and (ii) impossible on the existing evidence,³⁷ in particular, the Accused's own statements, which do not identify all persons involved.³⁸ Accordingly, the SPO's case – and in turn, Defence preparation – does not depend on the identity of any specific member of this group, full membership of which may remain obscure.³⁹

*References to assisted and incited persons as 'others', 'certain members of the public', 'certain members of the press', and 'certain others' in paragraphs 6, 26, 30(v)-(vi), 33, and 41-46 of the Indictment.*⁴⁰

12. Having regard to the Indictment as a whole, the persons encouraged and incited are identified by group to include those members of the press and public present at, observing, or participating in specifically identified press conferences and other public events, including (i) certain members of the public in possession of or provided with access to confidential information relating to SC proceedings;⁴¹ (ii) certain members of the press and public encouraged, instructed, or advised by the

³⁵ Indictment, KSC-BC-2020-07/F00075/A01, paras 6, 16. *See also* paras 25-26, 28-31, 33-34, 39, 41-44.

³⁶ Indictment, KSC-BC-2020-07/F00075/A01, para.16.

³⁷ STL Decision, para.51 (there is no requirement on the Prosecution to identify all co-perpetrators, in particular when their identities are unknown). *See also* European Commission, *A v. The Netherlands*, 15243/89, Decision, 11 May 1992, pp.1, 5 (dismissing as manifestly unfounded a challenge to the overall detail of the charges where it was alleged, *inter alia*, that an accused committed a crime 'together and in association with others or another, in any event alone (repeatedly)').

³⁸ *See, for example*, 081358-01-TR-ET, p.8 (GUCATI stated that publication of the documents had been discussed with 'the committee' and others); 081344-01-TR-ET, p.1 (GUCATI stated that 'Faton and other friends' reviewed the documents with HARADINAJ). *See also* Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074, 11 December 2020, Strictly Confidential ('Confirmation Decision'), para.100 (defining 'Associates').

³⁹ STL Decision, para.54(b); *Previti* Decision, para.208.

⁴⁰ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, pp.6, 10-11, 13-15.

⁴¹ Indictment, KSC-BC-2020-07/F00075/A01, paras 11, 16, 18, 20, 26, 30, 33-34, 40.

Accused to take and/or record, and further disseminate and publish confidential information;⁴² and (iii) Associates.⁴³

13. Further specificity is: (i) unnecessary, as the relevant context and events are described in detail in the Indictment, enabling the Accused to prepare their defence; (ii) impracticable, in light of the alleged public and indiscriminate nature of Accused's statements and conduct; and (iii) impossible, as the evidence does not and cannot exhaustively identify members of this group. Moreover, liability in this case does not depend on the identity of every, or any specific, member of this group, the full scope of which is likely to remain obscure.⁴⁴

*References to further dissemination 'including in the press and online' following the First Press Conference and Third Press Conference in paragraphs 12 and 21 of the Indictment.*⁴⁵

14. In the circumstances of this case, use of the word 'including' is appropriate.⁴⁶ The Indictment pleads the known means of further dissemination following the First Press Conference and Third Press Conference, namely, 'in the press and online'.⁴⁷ In the circumstances, considering the alleged public and indiscriminate nature of the Accused's public statements and conduct, and the size of their audience and potential scope of further dissemination, further specificity is impracticable and impossible on the available evidence.

⁴² Indictment, KSC-BC-2020-07/F00075/A01, paras 9, 11, 13-14, 16, 26, 30, 33-34, 40.

⁴³ Indictment, KSC-BC-2020-07/F00075/A01, paras 41-44. *See also* paras 10-11 above.

⁴⁴ STL Decision, para.54(b); *Previti* Decision, para.208. The charges include, *inter alia*, the allegation that the Accused incited members of this group to commit certain crimes, regardless of whether such persons ever attempted or committed any such crimes (Indictment, KSC-BC-2020-07/F00075/A01, paras 42-43, 47(v)-(vi)).

⁴⁵ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, pp.7-8.

⁴⁶ *Kvočka* Decision, para.26.

⁴⁷ Indictment, KSC-BC-2020-07/F00075/A01, paras 12, 21, 27.

*References to the dissemination of 'certain contents' of the First Disclosure and Third Disclosure 'including [REDACTED]' in paragraphs 12 and 21 of the Indictment.*⁴⁸

15. Having regard to the Indictment as a whole, the contents and nature of the First Disclosure and Third Disclosure are sufficiently described as relating to confidential investigations, including documents marked 'confidential' and [REDACTED].⁴⁹ In this instance, the Indictment provided a particularly pertinent example of the contents further disseminated, namely, [REDACTED].⁵⁰ Further information is: (i) unnecessary, as the nature and contents of the First Disclosure and Third Disclosure and the manner and means of dissemination have been adequately described, thereby enabling Defence preparations; and (ii) impossible, considering the public and indiscriminate nature of the Accused's public statements and conduct, and the potentially broad scope of further dissemination. Moreover, liability in this case does not depend on the further dissemination of any particular contents of the First Disclosure and Third Disclosure, the full scope of which is likely to remain obscure.⁵¹

*References to intimidated 'witnesses and/or their family members' and 'serious consequences for the witnesses' in paragraphs 22, 32, and 35 of the Indictment.*⁵²

16. The persons intimidated as a result of the Accused's conduct are identified by group and the consequences therefor are adequately described.⁵³ Further detail: (i) is unnecessary, as the statements and conduct resulting in such consequences are

⁴⁸ Gucati Preliminary Motion, KSC-BC-2020-07/F00113, pp.6, 8.

⁴⁹ Indictment, KSC-BC-2020-07/F00075/A01, paras 6, 10, 12, 15, 19, 21. *See also* paras 30, 34-35, 38, 40.

⁵⁰ ECtHR, *Haarde v. Iceland*, 666847/12, Judgment, 23 November 2017 ('Haarde Judgment'), para.90 (indicating that, in certain circumstances, pleading material facts through examples in an indictment may be sufficient).

⁵¹ STL Decision, para.54(b); *Previti* Decision, para.208. The charges include, *inter alia*, the allegation that the Accused to certain persons to commit certain crimes, regardless of whether such persons ever attempted or committed any such crimes (Indictment, KSC-BC-2020-07/F00075/A01, paras 42-43, 47(v)-(vi)).

⁵² Gucati Preliminary Motion, KSC-BC-2020-07/F00113, pp.9, 13-14.

⁵³ Indictment, KSC-BC-2020-07/F00075/A01, paras 22 ('witnesses and/or their family members were intimidated. Their safety, privacy, reputations, and livelihoods were threatened'), 28, 32 (providing, *inter alia*, that the witnesses' fundamental rights were infringed), 35.

pleaded with specificity, thereby enabling Defence preparations; (ii) is impractical, considering the alleged public and indiscriminate nature of the Accused's statements and conduct; (iii) impossible, as the evidence does not and cannot identify all witnesses and family members affected; and (iv) poses a concrete and grave risk to the security of witnesses and their family members.⁵⁴ The SPO's case – and in turn, Defence preparations – do not depend on the identity of any individual witness or family member or individualised consequences therefor.

17. Finally, the SPO notes that, while all material facts have been pleaded with sufficient detail in the Indictment, the Defence has already received and will continue to receive further evidentiary details supporting the material facts, including as requested in the Gucati Preliminary Motion. Indeed, the Defence was on notice of the contours and certain evidentiary details of the SPO's case from service of the Arrest Warrants⁵⁵ and notification of the Arrest Request⁵⁶ and Arrest Decision.⁵⁷ Further evidentiary details: (i) have been provided in the Rule 86(3)(b) Outline,⁵⁸ Confirmation Decision, and disclosed materials; and (ii) will be provided through, *inter alia*, the pre-trial brief and future disclosures. The combined information provided through these documents and the Indictment ensures the ability of the Defence to fully prepare and the fairness of these proceedings.⁵⁹ In such circumstances, any amendment of the

⁵⁴ [REDACTED].

⁵⁵ Arrest Warrant for Hysni Gucati, KSC-BC-2020-07/F00012/A01, 24 September 2020, Confidential and *Ex Parte* ('Gucati Warrant'); Corrected Version of Arrest Warrant for Nasim Haradinaj, KSC-BC-2020-07/F00012/A03/COR, 24 September 2020, Confidential and *Ex Parte* (collectively with the Gucati Warrant, 'Arrest Warrants'). In assessing whether sufficient information concerning the charges has been provided for Defence preparations, a judge may consider information received before notification of the Indictment. *See, for example*, ECtHR, *Ayçoban and others v. Turkey*, 42208/02 et al., Judgment, 22 December 2005, para.22; ECtHR, *Unterguggenberger v. Austria*, 34941/97, Decision, 25 September 2001, p.11.

⁵⁶ Confidential Redacted Version of 'URGENT Request for arrest warrants and related orders', filing KSC-BC-2020-07/F00009 dated 22 September 2020, KSC-BC-2020-07/F00009/CONF/RED, 1 October 2020, Confidential ('Arrest Request').

⁵⁷ Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-07/F00012, 24 September 2020 ('Arrest Decision').

⁵⁸ Annex 2 to Submission of Indictment for confirmation and related requests, KSC-BC-2020-07/F00063/A02, Strictly Confidential ('Rule 86(3)(b) Outline').

⁵⁹ Case 6 Order, KSC-BC-2020-06/F00010, para.13 (additional details to the factual allegations contained in the Indictment may be retrieved from the detailed outline); ICC, *Prosecutor v. Lubanga*, ICC-01/04-

Indictment at this stage to include details beyond the material facts already pleaded would be unnecessarily formalistic and threaten the fairness and expeditiousness of the proceedings.⁶⁰

C. CHALLENGES TO THE INDICTMENT'S 'EVIDENTIAL FOUNDATION' SHOULD BE SUMMARILY DISMISSED

18. The Haradinaj Defence's unsubstantiated challenge to the Indictment's 'evidential foundation'⁶¹ should be summarily dismissed because (i) as indicated above, all Rule 102(1)(a) material underlying the indictment has been disclosed, and (ii) the submissions exceeds the scope of permissible preliminary motions under Rule 97(1).⁶² In any event, the Pre-Trial Judge confirmed the Indictment on the basis of concrete and tangible supporting material, evaluated holistically and demonstrating a clear line of reasoning underpinning the charges.⁶³ The Haradinaj Defence fails to demonstrate any error in this regard.

V. CONFIDENTIALITY

19. Pursuant to Rule 82(4), this filing is confidential. A public redacted version will be filed in due course.

01/06 A5, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para.128; STL Decision, para.47; *Yekatom* Appeal Decision, para.57; *Haarde* Judgment, para.90; *Previti* Decision, para.208.

⁶⁰ *Yekatom* Appeal Decision, para.54 (the right to be informed does not impose any special formal requirement as to the manner in which an accused is to be informed of the nature and cause of the charges against him or her); ICTY, *Prosecutor v. Krnojelac*, IT-97-25, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para.15 (in some circumstances, where adequate information has been provided in other documents, it may be a 'pointless technicality' to require amendment of an indictment to reflect such information). See also Case 6 Order, KSC-BC-2020-06/F00010, para.9 (indicating that the level of detail provided in the Indictment should enable, not prejudice, trial within a reasonable time).

⁶¹ Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, paras 68-78.

⁶² Pursuant to Rule 86(7), challenges by the Defence to a decision on the indictment shall be limited to those under Rule 97.

⁶³ Confirmation Decision, KSC-BC-2020-07/F00074, para.30. See also paras 8-11, 31-32, 103, 109, 113, 117, 121, 125, 128, 132, 137, 141, 145, 149.

20. Insofar as the Haradinaj Defence indicates that the Haradinaj Preliminary Motion may be reclassified as public,⁶⁴ the SPO notes that any public version thereof should include redactions to the SPO staff member's name referenced therein,⁶⁵ consistent with the Practice Direction.⁶⁶

VI. RELIEF REQUESTED

21. For the foregoing reasons, the Pre-Trial Judge should reject the Preliminary Motions.

Word count: 3738



Jack Smith

Specialist Prosecutor

Monday, 22 February 2021

At The Hague, the Netherlands.

⁶⁴ Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, paras 1-2.

⁶⁵ Haradinaj Preliminary Motion, KSC-BC-2020-07/F00116, para.70.

⁶⁶ Registry Practice Direction: Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019 ('Practice Direction'), Article 33(3) (providing that participants shall refer to staff members only by their functional titles, unless strictly necessary for the proceedings and preferably in submissions with a confidential or strictly confidential classification).