

KSC-BC-2020-07, *Specialist Prosecutor v. Hysni GUCATI and Nasim HARADINAJ*
Pre-Trial Brief pursuant to Rule 95(4)(a)

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**'Specialist Prosecutor's Pre-Trial Brief in the case against
Hysni GUCATI and Nasim HARADINAJ'**

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I. Introduction

1. On 7 September 2020, an unidentified person delivered documents containing confidential and non-public information relating to confidential investigations of the Special Investigative Task Force ('SITF') and Specialist Prosecutor's Office ('SPO') to the Kosovo Liberation Army War Veterans Association ('KLA WVA') premises in Prishtinë/Priština ('First Disclosure').

2. Hysni GUCATI and Nasim HARADINAJ (collectively, the 'Accused'), in their respective capacities as chairman and deputy chairman of the KLA WVA, reviewed the First Disclosure. They then convened as many members of the media as they could for a televised press conference at which they revealed, and distributed, confidential and non-public information contained in the First Disclosure. Later that day, GUCATI appeared on a television programme during which he revealed further confidential and non-public information from the First Disclosure, describing persons identified as having cooperated with the Specialist Chambers ('SC') as traitors and liars.

3. On 8 September 2020, a judicial order was served at the KLA WVA premises, *inter alia*, prohibiting GUCATI and the KLA WVA from further disseminating the First Disclosure and its content. The Accused ignored this order.

4. Indeed, when unidentified persons delivered further documents to the KLA WVA premises on 16 and 22 September 2020, the Accused repeated these same unlawful actions a second time, and then a third.

5. In particular, as set out below, over a period of 19 days, through three press conferences, appearances in over fifteen televised programmes, and numerous social media posts, the Accused and certain others ('Associates'), without authorisation, disseminated confidential and non-public information relating to the confidential investigations of the SITF and SPO, encouraged others to further disseminate confidential and non-public information, and undertook other actions for the declared

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purpose of obstructing the SC/SPO. This confidential and non-public information included documents marked 'confidential' and the names, [REDACTED] of witnesses,¹ [REDACTED].

6. The Accused organised and coordinated the unauthorised dissemination and related actions, including by, with Associates, reviewing the confidential and non-public information, partaking in decisions as to whether and how to disseminate it, and organising and participating in related events, including press conferences and public appearances, where confidential and non-public information was publicly disseminated and discussed and during which the Accused disparaged and threatened witnesses.

7. The Accused's intent in undertaking these unlawful actions can be discerned, *inter alia*, through their acts and assertions between 7 and 25 September 2020, as well as during the years preceding these events when the Accused overtly sought to obstruct the work of the SC and SPO and pursued their abolition.

8. The evidence will establish beyond reasonable doubt that their actions amounted to the following crimes:

- a. **Count 1: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by serious threat, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under the Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC') Articles 17, 28, 31, 32(1)-(3), 33, 35, and 401(1) and (5), and Articles 15(2) and 16(3) of the Law;²

¹ All references to 'witness' or 'witnesses' in the Pre-Trial Brief should be understood to include any person(s) likely to have information about a crime, the perpetrator, or important circumstances relevant to SC Proceedings. All references to 'SC Proceedings' in the Pre-Trial Brief should be understood to refer to official proceedings of the SC, including SPO investigations.

² 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.

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- b. **Count 2: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 28, 32(1)-(3), 33, 35, and 401(2)-(3) and (5), and Articles 15(2) and 16(3) of the Law;
- c. **Count 3: INTIMIDATION DURING CRIMINAL PROCEEDINGS**, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(3), 33, 35, and 387, and Articles 15(2) and 16(3) of the Law;
- d. **Count 4: RETALIATION**, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(2), 33, 35, and 388(1), and Articles 15(2) and 16(3) of the Law;
- e. **Count 5: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of secret information disclosed in official proceedings, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 31, 32(1)-(2), 33, 35, and 392(1), and Articles 15(2) and 16(3) of the Law; and
- f. **Count 6: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of the identities and personal data of protected witnesses, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(3), 33, 35, and 392(2)-(3), and Articles 15(2) and 16(3) of the Law.

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II. Statement of Facts

A. First Press Conference and First Disclosure

9. On 7 September 2020, the KLA WVA held a press conference at which GUCATI announced that the KLA WVA had news for the media and everybody else, including Kosovo politicians and the Kosovo Parliament ('First Press Conference').³ GUCATI stated that at around 09:15 that morning, a package arrived at the KLA WVA premises with 'around 4,000 files of the Specialist Chambers.'⁴ The First Disclosure was laid out on a table during the press conference.⁵

10. GUCATI handed the floor over to HARADINAJ, noting that HARADINAJ had analysed the First Disclosure together with 'Faton', referring to Faton KLINAKU, and others.⁶ GUCATI suggested that those in attendance could focus their cameras on the documents, explained that HARADINAJ would inform them about everything contained in the First Disclosure, and remained present while HARADINAJ spoke.⁷

11. HARADINAJ stated they had noticed a lot of things in the documents.⁸ He stated that the KLA WVA was pleasantly surprised by the receipt of the documents because they showed that those who voted for the creation of the court were scoundrels, renegades and the most harmful people who do not wish Kosovo well.⁹ He stated that four copies of the documents were being made available at the press

³ 081344-01-TR-ET Revised 1, p.1; 081344-01, min.00:00:01-00:01:22; *See also* 089984-02; 089984-02-TR-ET; 091925-01; 091925-02; 091925-03; 091925-04; 081926-02; 081926-04; 081979-14; 083991-01.

⁴ 081344-01-TR-ET Revised 1, p.1; 081344-01, min.00:00:01-00:01:22.

⁵ 081344-01; 089984-02.

⁶ 081344-01-TR-ET Revised 1, p.1; 081344-01, min.00:00:01-00:06:30.

⁷ 081344-01-TR-ET Revised 1, p.1; 081344-01, min.00:00:01-00:06:30; *See also* 081344-01-TR-ET Revised 1, pp.5-8; 081344-01, min.00:13:21-00:14:32, 00:15:53-00:15:54 where HARADINAJ and GUCATI also invited those in attendance to focus their cameras on the First Disclosure.

⁸ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30.

⁹ 081344-01-TR-ET Revised 1, pp.1-2; 081344-01, min.00:01:26-00:06:30.

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conference.¹⁰ HARADINAJ pointed to the First Disclosure and stated: '[h]ere are the names of all the witnesses who they say are under their protection. All of them', noting that all the 'secret data' about the witnesses, including names and surnames of Albanians, Roma and Serbs, and the date when every person was interviewed and the interview location is included in the First Disclosure, which also contains statements.¹¹

12. In particular, HARADINAJ stated that: (i) the First Disclosure showed that [REDACTED] had cooperated with the SPO;¹² (ii) the First Disclosure contained a summons for [REDACTED], noting the location where [REDACTED] stated that he lives;¹³ (iii) [REDACTED], had been contacted and had cooperated, noting the location where [REDACTED] now lived according to the First Disclosure;¹⁴ (iv) there were documents referring [REDACTED], providing his place of residence;¹⁵ (v) [REDACTED] had been spoken to, providing information as to his place of employment;¹⁶ and (vi) [REDACTED] had cooperated, noting his former occupation.¹⁷ [REDACTED]. HARADINAJ also noted that, in the First Disclosure, one could see the names of Albanians who had been summonsed.¹⁸

13. HARADINAJ referred to the documents as 'confidential' and 'top secret' and asserted that the persons referred to in the First Disclosure must now know 'that they are known names and that no one is unknown' because the exact location, summons,

¹⁰ 081344-01-TR-ET Revised 1, pp.2-3; 081344-01, min.00:01:26-00:06:30; *See also* 081979-05-TR-ET, pp.2-3; 081979-05, min.00:02:10-00:06:38; 081979-05-TR-ET, pp.6-8; 081979-05, min.00:14:21-00:17:28; SPOE00220724-00220752, p.SPOE00220748; SPOE00220724-SPOE00220752-ET, p.SPOE00220748.

¹¹ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30.

¹² 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30.

¹³ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30.

¹⁴ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30; *See also* 084015-084026, p.084016, para.10.

¹⁵ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30; *See also* 084015-084026, p.084016, para.10.

¹⁶ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30; *See also* 084015-084026, p.084016, para.10.

¹⁷ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30; *See also* 084015-084026, p.084016, para.10.

¹⁸ 081344-01-TR-ET Revised 1, pp.2-3; 081344-01, min.00:01:26-00:06:30.

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and statements given are all shown in the First Disclosure.¹⁹ HARADINAJ noted that the First Disclosure included statements given in '[REDACTED]'.²⁰ Referring to himself and other members of the KLA WVA, HARADINAJ stated that they were providing the First Disclosure and that it seemed genuine to them.²¹ He again noted that the First Disclosure included statements containing names, surnames, former and current places of residence, and some telephone numbers, and then asked: '[h]ow can one guarantee protection to the witnesses when everyone can read these today'.²² HARADINAJ further stated, in relation to the First Disclosure, that the KLA WVA have made it public so it is known, asking: 'Why should we not reveal them?'.²³ He stated that he was not bothered about 'witnesses of The Hague', adding that he would have loved to make them all public.²⁴

14. HARADINAJ also said that the KLA WVA would send a copy of the First Disclosure to the 'scoundrels' in Parliament so that their children would know what they voted for,²⁵ that they would give those attending the First Press Conference as many copies as they wanted, and that the attendees could read as many names as they wanted in the First Disclosure.²⁶ HARADINAJ urged those in attendance to take a copy of the documents, noting that he would give them everything.²⁷

15. HARADINAJ stated that the documents prove that the SC are selective, racist, and working with the same people who were part of 'MILOSEVIC's apparatus'.²⁸ He

¹⁹ 081344-01-TR-ET Revised 1, pp.3-4; 081344-01, min.00:06:31-00:09:09.

²⁰ 081344-01-TR-ET Revised 1, pp.3-4; 081344-01, min.00:06:31-00:09:09.

²¹ 081344-01-TR-ET Revised 1, pp.4-5; 081344-01, min.00:09:43-00:11:21.

²² 081344-01-TR-ET Revised 1, pp.4-5; 081344-01, min.00:09:43-00:13:16.

²³ 081344-01-TR-ET Revised 1, pp.4-5; 081344-01, min.00:09:43-00:13:16.

²⁴ 081344-01-TR-ET Revised 1, p.5; 081344-01, min.00:11:27-00:13:16.

²⁵ 081344-01-TR-ET Revised 1, p.3; 081344-01, min.00:06:31-00:09:09.

²⁶ 081344-01-TR-ET Revised 1, pp.5-6; 081344-01, min.00:11:27-00:13:16.

²⁷ 081344-01-TR-ET Revised 1, p.6; 081344-01, min.00:13:21-00:14:41.

²⁸ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30.

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added that to the KLA WVA, the SC was ‘non-existent’ and that the court should pay its price.²⁹

16. HARADINAJ acknowledged that it had been the decision of himself, GUCATI, and Associates to make the confidential documents public, stating: ‘had we wanted, we would not have made these public at all.’³⁰ He then encouraged those in attendance to ‘look at the names. Look at the statements!’³¹

B. Events following the First Press Conference

17. As anticipated by HARADINAJ, the dissemination of the contents of the First Disclosure did not stop with the First Press Conference. Soon after it ended, certain media houses contacted the SPO with questions concerning the First Disclosure, noting that, according to the KLA WVA, it emanated from the SC and included names of protected witnesses.³² A number of news articles and videos concerning the First Disclosure, referring extensively to its content, and reproducing photographs thereof, appeared online.³³ [REDACTED].³⁴

²⁹ 081344-01-TR-ET Revised 1, pp.3-4, 6; 081344-01, min.00:06:31-00:09:09, 00:13:21-00:14:32.

³⁰ 081344-01-TR-ET Revised 1, p.8; 081344-01, min.00:16:02-00:16:11.

³¹ 081344-01-TR-ET Revised 1, p.8; 081344-01, min.00:16:02-00:16:11.

³² 091909-091917 RED, pp.091909-091910, paras 2-5; 083999-083999; 091927-091930, pp.091929-091930, paras 14-20.

³³ See 081361-081378, pp.081364-081368 (081364-081367-ET); 081361-081378, pp.081361-081363 (081361-081362-ET); 081915-081919, pp.081915-081916 (081914-081919-ET, pp.081915-081916); 081915-081919, pp.081917-081918 (081914-081919-ET, pp.081917-081918); 081915-081919, p.081919 (081914-081919-ET, p.081919); 081361-081378, pp.081369-081370 (081369-081370-ET); See also 084015-084026, pp.084016-084018, paras 13-18; 081979-04-TR-ET, p.1; 081979-04. HARADINAJ posted links to such articles and videos on his Facebook profile, see SPOE00220754-00220757, p.SPOE00220754; SPOE00220779-00220779 (SPOE00220779-SPOE00220779-ET Revised); SPOE00220808-00220810; 081915-081919, pp.081917-081918 (081914-081919-ET, pp.081917-081918); SPOE00220754-00220757, p.SPOE00220755; SPOE00220780-SPOE00220780 (SPOE00220780-SPOE00220780-ET Revised); SPOE00220811-00220812 (SPOE00220811-SPOE00220812-ET); SPOE00220724-00220752, p.SPOE00220729 (SPOE00220724-SPOE00220752-ET, p.SPOE00220729); 081979-04-TR-ET, p.1; 081979-04. Following the First Press Conference, articles also appeared in the media noting that GUCATI had confirmed that the First Disclosure contained the names of SC witnesses, see 081922-081926-ET, pp.081922, 081924; 081922-081925.

³⁴ 084015-084026, p.084017, paras 16-17, referring to 081915-081919, pp.081915-081916 (081914-081919-ET, pp.081915-081916), pp.081917-081919 (081914-081919-ET, pp.081917-081918).

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18. During a television programme which aired hours after the First Press Conference, GUCATI acknowledged that he and others had not been able to go through all the documents but they had looked at them and had given a copy of the documents to KosovaPress and some of the media.³⁵ He asserted that the First Disclosure included a note stating that over 7,000 files would be delivered to the KLA WVA premises.³⁶

19. GUCATI showed the screen of his mobile telephone to the television camera and noted that what he was showing the camera stated that the ‘Special Prosecutor ... the Special Court’ is seeking help from the Serbian Prosecutor’s Office in relation to [REDACTED].³⁷ [REDACTED].

20. GUCATI stated that a wide range of people were named in the documents, including Serbs, Roma, and Turks and referred to the date when an interview with [REDACTED], an Albanian witness, was held in [REDACTED], and to others interviewed in [REDACTED] and in [REDACTED].³⁸ GUCATI stated that he found it ‘surprising’ to see, in the files, that several people whom he and others trusted had collaborated with the SC, adding that he believed that some of the witnesses did so in order to obtain asylum in the West.³⁹ GUCATI labelled those identified in the First Disclosure as having cooperated with the SC as ‘traitor[s]’ who lie, and ‘Albanian-speaker[s]’,⁴⁰ a term he used to refer to persons who have supported Serbia and

³⁵ 081358-01-TR-ET, pp.6-13; 081358-01, min.01:01:00-01:02:33, 01:03:52-01:06:42, 01:07:54-01:10:49. On 11 September 2020, during a Skype interview broadcast on a television programme, HARADINAJ stated that Kosovo Press and many other media outlets took copies of the documents, 081979-11-TR-ET Revised, pp.3-4; 081979-11, min.00:07:17-00:09:17.

³⁶ 081358-01-TR-ET, p.4; 081358-01, min.00:57:54-00:59:42.

³⁷ 081358-01-TR-ET, pp.5-6; 081358-01, min.00:59:42-01:01:00.

³⁸ 081358-01-TR-ET, pp.6-7; 081358-01, min.01:01:00-01:03:52.

³⁹ 081358-01-TR-ET, pp.9-12; 081358-01, min.01:05:00-01:09:36; *See also* 089185-06-TR-ET, p.1; 089185-06 min.08:01-08:54.

⁴⁰ 081358-01-TR-ET, pp.6-7, 12-13; 081358-01, min.01:01:00-01:02:33, 01:09:36-01:10:49; *See also* 089185-06-TR-ET, p.1; 089185-06, min.08:01-08:54.

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continue to do so, and who do not have the best interests of Kosovo and the KLA in mind,⁴¹ whom he equated with traitors.⁴²

21. Asked whether it was a good idea for him to have published the documents, GUCATI stated he believed that it was and that it was discussed with the committee and other people.⁴³ When the presenter noted that things could happen because the documents contained names, GUCATI responded that this could happen.⁴⁴

22. On 8 September 2020, pursuant to a SC order,⁴⁵ the SPO seized documents forming part of the First Disclosure ('Batch 1').⁴⁶ The relevant excerpts of the First Order were read out to KLINAKU in English and translated into Albanian, and a copy of the First Order was provided to him.⁴⁷

23. The First Order refers, *inter alia*, to the sensitive nature of the documents and the concrete risk that their further dissemination by GUCATI and/or the KLA WVA could compromise the safety, security and well-being of the witnesses as well as the integrity of the SPO investigations.⁴⁸ In the First Order, the Single Judge ordered GUCATI, the KLA WVA, and any other individual in possession of the documents and/or their content, to refrain from copying and further disseminating them and their content.⁴⁹

24. During the seizure, KLINAKU noted that the documents handed over to the SPO were the original documents which he claimed unknown persons had provided

⁴¹ 081358-01-TR-ET, p.6; 081358-01, min.01:01:00-01:02:33.

⁴² 081358-01-TR-ET, pp.12-13; 081358-01, min.01:09:36-01:10:49.

⁴³ 081358-01-TR-ET, p.8; 081358-01, min.01:03:52-01:05:00.

⁴⁴ 081358-01-TR-ET, pp.8-9; 081358-01, min.01:03:52-01:05:00.

⁴⁵ 091971-091980; 092028-092038 ('First Order').

⁴⁶ 083988-083991 RED; 080449-080449; *See also* 081926-03; 081979-13; KSC-BC-2020-07/F00008. Batch 1 also contains a handwritten note in Albanian describing the handover of Batch 1 to the SPO on 8 September 2020 and referring to Faton KLINAKU, Secretary, as the person who handed the documents over, 081340-081340 (081340-081340-ET); 091927-091930, pp.091927-091928, paras 8-10.

⁴⁷ 083988-083991 RED, pp.083988-083989, paras 3-6; *See also* KSC-BC-2020-07/F00008.

⁴⁸ 091971-091980, p.091979, para.21; 092028-092038, p.092036, para.21.

⁴⁹ 091971-091980, p.091979, para.22(c); 092028-092038, p.092037, para.22(c).

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to the KLA WVA the previous day and that three copies of these documents had been provided to the media, specifically to KosovaPress, Gazeta Infokus, and T7.⁵⁰

25. Batch 1 includes confidential requests for assistance in criminal investigations ('Requests') addressed by the SITF to the competent Serbian authorities [REDACTED], as well as documents of the Serbian authorities, including responses to the Requests ('Serbian Documents'); both the Requests and Serbian Documents pertain to confidential SITF/SPO investigations and criminal proceedings.⁵¹ Batch 1 also includes [REDACTED].⁵²

26. Batch 1 contains [REDACTED] Requests of which the vast majority contain annexes which are expressly indicated to be confidential.⁵³ The confidential annexes list [REDACTED] names of witnesses and potential witnesses who have never been publicly identified by the SITF/SPO, and in relation to whom the SITF sought to obtain from the competent Serbian authorities: (i) assistance in order to conduct witness interviews; and/or (ii) the record of previous witness statements and testimonies.⁵⁴

27. Batch 1 contains [REDACTED], which [REDACTED] include [REDACTED] detailed information about serious crimes.⁵⁵

28. Batch 1 does not include⁵⁶ the note GUCATI referred to the previous day, allegedly stating that 7,000 files would be delivered to the KLA WVA premises.⁵⁷

⁵⁰ 083988-083991 RED, p.083989, para.7; *See also* KSC-BC-2020-07/F00008, para.4.

⁵¹ 084015-084026, p.084015, para.7; 091791-091792, pp.091791-091792, paras 6-12; 093492-093590, p.093492, paras 3-4, Annex 1.

⁵² 091791-091792, p.091791, para.8; 093492-093590, p.093492, paras 3-4, Annex 1.

⁵³ 084015-084026, p.084016, paras 8-9; 093492-093590, p.093492, paras 3-4, Annex 1.

⁵⁴ 084015-084026, p.084016, paras 9-12; 093492-093590, p.093492, paras 3-4, Annex 1.

⁵⁵ 091791-091792, p.091792, para.12; 093492-093590, p.093492, paras 3-4, Annex 1.

⁵⁶ For a description of the contents of Batch 1, *see also* 084015-084026, pp.084015-084016; 091791-091792; 093492-093590, p.093492, paras 3-4, Annex 1.

⁵⁷ 081358-01-TR-ET, p.4; 081358-01, min.00:57:54-00:59:42.

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29. In particular, Batch 1 includes [REDACTED]⁵⁸ and which GUCATI showed and discussed [REDACTED].⁵⁹

30. Within hours of the seizure of Batch 1, HARADINAJ was made aware of the seizure and provided with a copy of the document KLINAKU signed acknowledging the seizure of documents, which HARADINAJ published on his Facebook profile.⁶⁰

31. During a television programme which aired on 8 September 2020, shortly after the seizure of Batch 1, KLINAKU acknowledged that he and others told SC investigators that they handed over three copies of the documents delivered by the unidentified person to the media and added that they had told the media that they could make multiple copies so that everybody received them because, as far as he and others were concerned, the SC does not exist and they never accepted it.⁶¹

32. On 8 September 2020, HARADINAJ posted CCTV footage to his Facebook profile, indicating that the footage showed the delivery of documents to the KLA WVA and their seizure by the SPO, and commenting that the KLA WVA welcomed both sides any time; HARADINAJ's post was shared by GUCATI.⁶² In a comment beneath his own Facebook post, HARADINAJ, referring to the First Disclosure, stated that 'they can no longer make them disappear'.⁶³ He noted that three more copies had been distributed, that those copies had been distributed to another ten places, and that it is the task of these ten places to further distribute another three copies each.⁶⁴

⁵⁸ 081361-081378, p.081362.

⁵⁹ 084015-084026, p.084017, para.15; 093492-093590, p.093509 (entry corresponding to page number 116); 081358-01-TR-ET, pp.5-6; 081358-01, min.00:59:42-01:01:00.

⁶⁰ SPOE00220798-00220798 (SPOE00220798-SPOE00220798-ET Revised); SPOE00220799-00220799 (SPOE00220799-SPOE00220799-ET Revised). The Facebook posts by HARADINAJ and GUCATI referred to in this brief were all uploaded as 'public', as denoted by the globe icon featured in such posts, which means they were not only visible to any specific group of persons.

⁶¹ 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

⁶² SPOE00220800-00220800 (SPOE00220800-SPOE00220800-ET); SPOE00222202-00222288, p.SPOE00222250 (SPOE00222202-SPOE00222288-ET, p.SPOE00222250); 081979-13; 081979-14.

⁶³ SPOE00220800-00220800 (SPOE00220800-SPOE00220800-ET).

⁶⁴ SPOE00220800-00220800 (SPOE00220800-SPOE00220800-ET).

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33. On 9 September 2020, HARADINAJ posted an image of the certified copy of the First Order, classified as Strictly Confidential and *Ex Parte*, on his Facebook profile.⁶⁵

34. On the same day, [REDACTED].⁶⁶ [REDACTED] during the First Press Conference, members of that media house, among others, were given a copy of documents forming part of the First Disclosure.⁶⁷ Later that day, SPO staff members received these documents [REDACTED] ('Batch 4').⁶⁸

35. Batch 4 consists of 930 pages.⁶⁹ All documents included in Batch 1 are included in Batch 4 except for one Request, and a handwritten note describing the handover of Batch 1 to the SPO on 8 September 2020.⁷⁰ Batch 4 also contains the following, which are not contained in Batch 1: (i) a number of Requests and other documents in Serbian containing, *inter alia*, [REDACTED] names of SITF/SPO witnesses and potential witnesses who have never been publicly identified by the SITF/SPO;⁷¹ and (iii) a two-page template which appears unrelated to the other documents in Batch 4.⁷²

36. One of the emails sent by media houses to the SPO following the First Press Conference included as attachments, *inter alia*, four photographs of documents contained in Batch 1, and two photographs which only appear in Batch 4.⁷³ The documents in these six attached photographs contain Requests and documents from Serbian authorities referring, *inter alia*, to witness interviews; two of the documents

⁶⁵ SPOE00222202-00222288, p.SPOE00222202.

⁶⁶ 083988-083991 RED, p.083989 para.7; 091909-091917 RED, p.091910, paras 5-6, p.091917; 083986-083987 RED, p.083986, para.1; *See also* KSC-BC-2020-07/F00008, para.4.

⁶⁷ 091909-091917 RED, p.091910, paras 5-6, p.091917; 083986-083987 RED, p.083986, para.1.

⁶⁸ 083986-083987 RED; 078569-078569; 091927-091930, p.091927, para.5. Later that day, HARADINAJ became aware that the SPO obtained files from this media house, *see* SPOE00220813-0020813 (SPOE00220813-SPOE0020813-ET).

⁶⁹ 091927-091930, p.091927, para.7.

⁷⁰ 091927-091930, pp.091927-091928, paras 8-10; 081340-081340 (081340-081340-ET).

⁷¹ 091927-091930, p.091928, paras 11-12.

⁷² 091927-091930, p.091929, para.13; 078981-078982 (078981-078982-ET).

⁷³ 083999-083999; 091927-091930, pp.091929-091930, paras 14-20; *See also* 084000-084001 RED.

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are marked as strictly confidential while two of the documents refer to other documents described as confidential.⁷⁴

37. During a television programme which aired on 9 September 2020,⁷⁵ HARADINAJ stated that the KLA WVA received four copies of the First Disclosure, and that he and others looked through the documents over a period of four hours.⁷⁶ He stated that he and others had provided copies of the First Disclosure to journalists, who further distributed other copies to other members of the press, adding that he thought that these files could not be kept secret in Kosovo anymore.⁷⁷ He stated: ‘we had not hidden away what we had received. We had made them public through the media’, and that nobody could stop the copies of the First Disclosure from becoming public now.⁷⁸

38. HARADINAJ stated that among the documents in the First Disclosure was information from the ‘[REDACTED]’.⁷⁹ He noted that the First Disclosure included documents with requests to Serbia to provide the location of witnesses.⁸⁰

39. HARADINAJ stated that if he was to receive this kind of material again, he would make it public and that even if the KLA WVA were to violate a law, it was the KLA WVA’s duty to do everything to show that the SC is not correct because it is racist and selective.⁸¹ HARADINAJ also reiterated his call to members of the press to publish the documents contained in the First Disclosure.⁸²

⁷⁴ 091927-091930, pp.091929-091930, paras 14-20.

⁷⁵ Later that day, HARADINAJ posted a link to this interview on his Facebook profile, *see* SPOE00220724-00220752, p.SPOE00220752 (SPOE00220724-SPOE00220752-ET, p.SPOE00220752).

⁷⁶ 081991-01-TR-ET Revised 1, p.7; 081991-01, min.00:13:10-00:13:47, 00:14:24-00:15:51; *See also* SPOE00220813-0020813 (SPOE00220813-SPOE0020813-ET).

⁷⁷ 081991-01-TR-ET Revised 1, pp.5-6; 081991-01, min.00:07:42-00:08:04, 00:08:42-00:08:58, 00:10:15-00:11:29.

⁷⁸ 081991-01-TR-ET Revised 1, p.3; 081991-01, min.00:04:19-00:05:37.

⁷⁹ 081991-01-TR-ET Revised 1, pp.7-8; 081991-01, min.00:14:24-00:15:51.

⁸⁰ 081991-01-TR-ET Revised 1, p.8; 081991-01, min.00:14:24-00:15:51.

⁸¹ 081991-01-TR-ET Revised 1, pp.7-8; 081991-01, min.00:13:54-00:15:51.

⁸² 081991-01-TR-ET Revised 1, pp.3, 10; 081991-01, min.00:04:44-00:05:37, 00:20:23-00:21:06.

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40. On 11 September 2020, appearing on another television programme, HARADINAJ again stated that he and others had looked through the documents over a period of four hours, during which time they came across names of witnesses and former witnesses.⁸³ He asserted that all Albanian lawyers should receive copies of the First Disclosure since it would help them to defend their clients and dismiss charges once indictments are brought before the SC.⁸⁴ HARADINAJ stated that whenever he and others will receive files, they will make them public because this was their duty since they do not recognise the SC or the ‘Special Prosecutor’, adding that it was not the duty of the KLA WVA or anybody else to look after the SC’s or the SPO’s secrets.⁸⁵

C. Second Press Conference and Second Disclosure

41. On 16 September 2020, the KLA WVA held another press conference (‘Second Press Conference’) at which GUCATI stated that the KLA WVA had received another set of documents at around 15:30 that day.⁸⁶ He told those who were present that they could take the documents (‘Second Disclosure’).⁸⁷ While showing one of the documents forming part of the Second Disclosure, GUCATI noted that [REDACTED] and [REDACTED] had cooperated with Serbian Prosecutors and the SC.⁸⁸ He then handed the floor over to HARADINAJ and remained present while HARADINAJ spoke.⁸⁹

42. HARADINAJ noted that it can be seen that Clint WILLIAMSON, former SITF Lead Prosecutor, had over 57 communications with [REDACTED], and that David

⁸³ 081979-11-TR-ET Revised, pp.4-5; 081979-11, min.00:07:17-00:11:53.

⁸⁴ 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:06:03-00:06:55, 00:12:27-00:14.23.

⁸⁵ 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:06:03-00:06:55, 00:09:41-00:11:53. Later that day, HARADINAJ posted a link to this interview on his Facebook profile, see SPOE00220724-00220752, p.SPOE00220744 (SPOE00220724-SPOE00220752-ET, p.SPOE00220744).

⁸⁶ 081344-02-TR-ET Revised, pp.1-2; 081344-02, min.00:00:01-00:02:31; See also 089984-01; 091925-05; 091925-06; 091925-07; 091925-08; 081979-10; 081979-10-TR-ET.

⁸⁷ 081344-02-TR-ET Revised, p.1; 081344-02, min.00:00:01-00:02:31.

⁸⁸ 081344-02-TR-ET Revised, p.1; 081344-02, min.00:00:01-00:02:31.

⁸⁹ 081344-02-TR-ET Revised, pp.1-4; 081344-02, min.00:00:01-00:09:49.

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SCHWENDIMAN, former SITF Lead Prosecutor and SPO Specialist Prosecutor, had over 130 communications with [REDACTED].⁹⁰ HARADINAJ stated that the communications he and others saw concerned [REDACTED].⁹¹ The SITF/SPO had not previously publicly disclosed any information concerning locations of interest to its investigations.⁹² HARADINAJ also noted that the Second Disclosure included ‘the indictment of Ramush’ and referred to the indictments of Fatmir LIMAJ and Ramush HARADINAJ.⁹³

43. HARADINAJ told those present at the Second Press Conference to take the files, noting ‘[w]e present them here, whoever likes to take them.’⁹⁴ When a person in attendance asked whether that person could take a picture of the documents, HARADINAJ responded: ‘Of course. You may even take them all in your pocket’.⁹⁵ HARADINAJ repeated his promise to make documents public whenever the KLA WVA received them.⁹⁶ Referring to himself and other members of the KLA WVA, HARADINAJ added that they did not hold any responsibility, that this matter did not bother him, and noted that it is their duty to discredit the SC.⁹⁷ He stated that the documents might have been provided to the KLA WVA because they had the courage to make them public and they do not agree with the Court.⁹⁸

D. Events following the Second Press Conference

44. As they did after the First Press Conference, HARADINAJ and GUCATI appeared on several television programmes after the Second Press Conference,

⁹⁰ 081344-02-TR-ET Revised, pp.2-3; 081344-02, min.00:02:40-00:09:49.

⁹¹ 081344-02-TR-ET Revised, p.3; 081344-02, min.00:02:40-00:09:49.

⁹² Publicly available information shows that a number of these locations were being investigated by the SPO, *see* KSC-BC-2020-06/F0045/A03, paras 61, 63, 68-70, 75-76.

⁹³ 081344-02-TR-ET Revised, pp.4-5; 081344-02, min.00:09:49-00:10:29.

⁹⁴ 081344-02-TR-ET Revised, p.4; 081344-02, min.00:02:40-00:09:49.

⁹⁵ 089984-01-TR-ET, p.1; 089984-01, min.00:15:52-00:16:19.

⁹⁶ 081344-02-TR-ET Revised, p.4; 081344-02, min.00:02:40-00:09:49.

⁹⁷ 081344-02-TR-ET Revised, pp.2-4; 081344-02, min.00:02:40-00:09:49.

⁹⁸ 081344-02-TR-ET Revised, pp.6-7; 081344-02, min.00:12:09-00:12:45.

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ensuring that the contents of the First and Second Disclosures achieved maximum dissemination.

45. During an interview on 16 September 2020,⁹⁹ HARADINAJ stated that he and others looked through the First Disclosure for three hours, during which time he and others got what they needed.¹⁰⁰ HARADINAJ stated that he and others have stated publicly that they will reveal whatever material they receive that compromises the SC and SPO, adding that he and others do not recognize the SC and that this is why they will reveal this information, noting '[i]t's not our job to keep secrets.'¹⁰¹ He further identified names in the documents, referring to 'Mr. WILLIAMSON' communicating with [REDACTED].¹⁰² He further referred to [REDACTED], and pledged to reveal names including [REDACTED].¹⁰³ HARADINAJ openly declared, referring to the First Disclosure, that he and others released it because it was beneficial to them.¹⁰⁴ In response to a question as to whether he was aware that what was happening could damage the judicial process, HARADINAJ stated that that is what he would like to happen.¹⁰⁵

46. During a televised programme which aired on 17 September 2020, HARADINAJ stated that the KLA WVA had time to look through the documents that the unknown person had brought them.¹⁰⁶ HARADINAJ stated that SPO witnesses included [REDACTED]¹⁰⁷ He again called on journalists to take documents provided by the KLA WVA and to publish them,¹⁰⁸ and stated that he hoped the person who

⁹⁹ On 19 September 2020, HARADINAJ posted a link to this interview on his Facebook profile, *see* SPOE00220724-00220752, p.SPOE00220735 (SPOE00220724-SPOE00220752-ET, p.SPOE00220735).

¹⁰⁰ 081979-07-TR-ET, pp.3-4; 081979-07, min.25:32-26:20.

¹⁰¹ 081979-07-TR-ET, pp.1-2; 081979-07, min.00:27-01:10.

¹⁰² 081979-07-TR-ET, pp.2-3; 081979-07, min.09:30-11:01.

¹⁰³ 081979-07-TR-ET, pp.2-3; 081979-07, min. 09:30-11:01, 24:45-25:32.

¹⁰⁴ 081979-07-TR-ET, pp.3-5; 081979-07, min.25:32-26:20.

¹⁰⁵ 081979-07-TR-ET, pp.5-6; 081979-07, min.28:52-29:38.

¹⁰⁶ 082106-06-TR-ET Revised 2, p.3; 082106-06, min.00:05:02-00:07:52.

¹⁰⁷ 082106-06-TR-ET Revised 2, p.2; 082106-06, min.00:00:19-00:03:50.

¹⁰⁸ 082106-06-TR-ET Revised 2, p.3; 082106-06, min.00:05:02-00:07:52.

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had brought the files would bring more.¹⁰⁹ HARADINAJ described those who had cooperated with the SPO as '[c]hetniks, criminals'.¹¹⁰

47. On 17 September 2020, the SPO seized certain documents forming part of the Second Disclosure ('Batch 2').¹¹¹ GUCATI signed the document acknowledging the seizure.¹¹² During the seizure, an SPO staff member informed GUCATI, HARADINAJ and others present that the KLA WVA was not authorized to keep the SPO's classified material and that they had to hand such material over to the SPO or other legal authorities.¹¹³ A copy of the Second Order,¹¹⁴ which referred to the sensitive, non-public nature of the documents forming part of the Second Disclosure and reiterated the order not to further disseminate this material, was handed to GUCATI; the relevant paragraphs thereof were interpreted into Albanian and read out to him.¹¹⁵

48. During the seizure, HARADINAJ stated that he was aware that publishing the witnesses' names may imperil their lives.¹¹⁶ HARADINAJ informed SPO staff members that about 70% of the documents referenced in the Second Press Conference had been taken by journalists; GUCATI confirmed this.¹¹⁷ HARADINAJ, GUCATI and others repeated this on other occasions,¹¹⁸ including during an appearance on a television programme where HARADINAJ described what the SPO seized of the Second Disclosure as 'the leftovers'.¹¹⁹

¹⁰⁹ 082106-06-TR-ET Revised 2, pp.2-3; 082106-06, min.00:04:37-00:07:52.

¹¹⁰ 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50.

¹¹¹ 082010-082013 RED; 079512-080448 RED; *See also* KSC-BC-2020-07/F00028.

¹¹² 082010-082013 RED, p.082012, paras 12, 18; 079500-079500; *See also* KSC-BC-2020-07/F00028, para.6.

¹¹³ 082010-082013 RED, p.082011, para.8; *See also* KSC-BC-2020-07/F00028, para.2.

¹¹⁴ 092017-092027; 091981-091991 ('Second Order').

¹¹⁵ 082010-082013 RED, p.082012 para.12; *See also* KSC-BC-2020-07/F00028, para.5.

¹¹⁶ 082010-082013 RED, pp.082011-082012, para.9.

¹¹⁷ 082010-082013 RED, p.082012 paras 10, 13; *See also* KSC-BC-2020-07/F00028, para.3. GUCATI also confirmed this during a press conference which he held later that day, 081347-01-TR-ET Revised, p.3; 081347-01, min.00:02:27-00:03:57.

¹¹⁸ *See* 082136-01-TR-ET Revised, pp.5-6; 082136-01, min.00:15:41-00:16:18; *See also* 081344-03; 081355-03-TR-ET Revised 1, pp.7, 10-11; 081355-03, min. 00:13:57-00:14:20, 00:18:22-00:19:40.

¹¹⁹ HARADINAJ stated that the KLA WVA informed an SPO staff member that on 16 and 17 September they had distributed over 80% of the documents they received on 16 September 2020 to anyone who

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49. Batch 2 consists of 937 pages, six of which are identical to those from Requests and Serbian Documents already included in Batch 1, including references to [REDACTED] witnesses or potential witnesses and references to [REDACTED].¹²⁰ The remaining 931 pages are copies of court judgments and related documents issued by Kosovo Courts and other judicial institutions, including the International Criminal Tribunal for the former Yugoslavia, in relation to war crimes cases,¹²¹ and, as specifically noted by HARADINAJ during the Second Press Conference,¹²² copies of indictments, including against Fatmir LIMAJ and others, and against Ramush HARADINAJ and others.¹²³ The copies of these judgments do not bear any logo or marks typical of SITF or SPO documents.¹²⁴

50. Soon after the seizure of Batch 2, GUCATI and others held a press conference at the KLA WVA premises during which GUCATI acknowledged that SPO staff members had served him with a copy of the Second Order and that the staff members told him that these documents could not be multiplied or distributed and that the names of witnesses could not be published.¹²⁵ GUCATI stated that the KLA WVA told SPO staff members that any time they received documents from the SC, they will make them public for the media.¹²⁶ GUCATI stated that the reason why he and others will

wanted a copy. He later stated that the SC took the documents after the media took almost 50 or 100 per cent of the material and that earlier that day the SC had collected about 20 per cent of the documents since journalists had taken the rest, 081355-02-TR-ET Revised 1, pp.4-5, 17-18, 36; 081355-02, min.00:25:13-00:26:15, 00:37:33-00:38:23, 00:59:46-00:59:54.

¹²⁰ 084015-084026, pp.08018-08019, paras 22-27; 093492-093590, pp.093492-093493, paras 5-6, Annex 3.

¹²¹ 084015-084026, p.084018, para.21; 079512-080448 RED. During a televised interview, HARADINAJ acknowledged that Batch 2 also contains court judgements 'sent to them from here', 081355-02-TR-ET Revised 1, p.30; 081355-02, min.00:52:33-00:53:07. News articles appeared online following the Second Press Conference, reporting, *inter alia*, that that the Second Disclosure included court judgments issued by EULEX and the ICTY, *see* 081361-081378, pp.081371-081373 (081371-081373-ET), which features images of two pages that also appear in Batch 2 (079512-080448 RED, pp.080319, 080346) but to which redactions have been applied.

¹²² 081344-02-TR-ET Revised, pp.4-5; 081344-02, min.00:09:49-00:10:29.

¹²³ 079512-080448 RED, pp.080007-080030, 080032-080034, 080346-080441; 081344-02-TR-ET Revised, pp.4-5; 081344-02, min.00:09:49-00:10:29.

¹²⁴ 084015-084026, p.084018, para.21; 079512-080448 RED.

¹²⁵ 081347-01-TR-ET Revised, pp.3, 8; 081347-01, min.00:02:27-00:03:57, 00:16:42-00:17:19.

¹²⁶ 081347-01-TR-ET Revised, p.3; 081347-01, min.00:02:27-00:03:57.

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make the documents public was to prove what they had said three years ago to members of the army and to the citizens of Kosovo, so that the media and citizens would be convinced that the SC are cooperating with Serbian authorities against members of the KLA.¹²⁷

51. GUCATI stated that he and others 'are interested in unmasking the Special Chambers' adding that in informing persons about any material received by the KLA WVA, the KLA WVA will show why they are against the SC, and that: '[w]e have said for a long time that this Court is racist, it is biased. It is unacceptable for us and therefore this is the reason why we publish all these documents.'¹²⁸ GUCATI then stated, in relation to the documents delivered to the KLA WVA, that it was in their interest to distribute them as much as possible in the media and to convince both the public and the media that the court is unacceptable, noting that he and others have always been against it.¹²⁹

52. In another interview on 17 September 2020, HARADINAJ thanked the person who provided the documents to the KLA WVA for his cooperation and stated that if this person could provide additional material like that which he had already provided, the KLA WVA would welcome it.¹³⁰ HARADINAJ stated that every time the KLA WVA received such files, the SPO would not be able to stop them and that he did not recognize the court.¹³¹ HARADINAJ described the documents received by the KLA WVA as 'sensitive documents for The Hague Tribunal which cooperates with Serbia, but not for me [...] They're not at all sensitive to me.'¹³² He stated that even if he and others disclosed certain names, every statement was taken under duress, was

¹²⁷ 081347-01-TR-ET Revised, p.3; 081347-01, min.00:02:27-00:03:57.

¹²⁸ 081347-01-TR-ET Revised, p.8; 081347-01, min.00:15:25-00:17:19.

¹²⁹ 081347-01-TR-ET Revised, p.8; 081347-01, min.00:17:26-00:17:40.

¹³⁰ 081355-02-TR-ET Revised 1, p.4; 081355-02, min.00:24:24-00:25:12.

¹³¹ 081355-02-TR-ET Revised 1, p.14; 081355-02, min.00:34:18-00:35:13.

¹³² 081355-02-TR-ET Revised 1, pp.19-20; 081355-02, min.00:39:29-00:39:36.

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not relevant and cannot be used as the basis for an indictment - that is why they made them public.¹³³

53. During another interview that day, HARADINAJ stated he and others are carrying out their actions in order to discredit the alleged professionalism of the court.¹³⁴

54. In yet another interview on 17 September 2020,¹³⁵ HARADINAJ stated that the documents received by the KLA WVA 'have their original seal' and that they read 'Top Secret'.¹³⁶ HARADINAJ referred to the SC cooperating with [REDACTED].¹³⁷ He berated the media as 'miserable' for failing to 'unveil the truth' and for being reluctant to publish the material made public by the KLA WVA, noting that this made it necessary for HARADINAJ and others to provide the documents to 'foreign media'.¹³⁸ When the interviewer noted that, to his knowledge, publication of such material is forbidden by law, HARADINAJ stated: 'No, no, please, they're not by law, because we do have a law here which protects the sources.'¹³⁹

55. [REDACTED].¹⁴⁰ [REDACTED].¹⁴¹ [REDACTED].¹⁴² On the same day, HARADINAJ posted a link to another article [REDACTED].¹⁴³ [REDACTED].¹⁴⁴

¹³³ 081355-02-TR-ET Revised 1, pp.25-26; 081355-02, min.00:46:29-00:47:54.

¹³⁴ 082106-07-TR-ET Revised, p.2; 082106-07, min.00:06:24-00:08:04.

¹³⁵ On 18 September 2020, HARADINAJ posted a link to this interview on his Facebook profile, *see* SPOE00220724-00220752, p.SPOE00220737 (SPOE00220724-SPOE00220752-ET, p.SPOE00220737).

¹³⁶ 081979-08-TR-ET, p.2; 081979-08, min.00:02:48-00:04:05.

¹³⁷ 081979-08-TR-ET, pp.1, 3-4; 081979-08, min.00:00:13-00:01:49, 00:06:33-00:08:53.

¹³⁸ 081979-08-TR-ET, p.2; 081979-08, min.00:04:24-00:05:16.

¹³⁹ 081979-08-TR-ET, pp.2-3; 081979-08, min.00:05:16-00:06:16.

¹⁴⁰ SPOE00220754-00220757, p.SPOE00220754; SPOE00220808-00220810; 081915-081919, pp.081917-081918 (081914-081919-ET, pp.081917-081918).

¹⁴¹ SPOE00220808-00220810; 081915-081919, pp.081917-081918 (081914-081919-ET, pp.081917-081918); 084015-084026, p.084017, para.17.

¹⁴² 084015-084026, p.084017, para.17.

¹⁴³ SPOE00220754-00220757, p.SPOE00220755; SPOE00220811-00220812 (SPOE00220811-SPOE00220812-ET).

¹⁴⁴ SPOE00220811-00220812 (SPOE00220811-SPOE00220812-ET).

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56. During an interview on 18 September 2020, HARADINAJ stated that the SPO members who seized material from the KLA WVA confirmed the 'sensitivity' of such material.¹⁴⁵ He stated that he hoped the person who delivered the documents to the KLA WVA would do so again and described the delivery to the KLA WVA as a 'miracle'.¹⁴⁶ HARADINAJ stated that he and others told SPO representatives who seized material from the KLA WVA that they did not recognize the SC.¹⁴⁷

57. During the same interview, Tome GASHI stated that the unidentified person who took the documents to the KLA WVA had done a patriotic job for the common good, especially for the benefit of those who will be accused in the SC.¹⁴⁸ He noted that the documents seized by the SPO had a logo and were genuine, adding that these were sensitive documents for the SPO.¹⁴⁹ GASHI stated the documents were certainly very favourable for the KLA WVA and anyone who might have legal issues with the SC, adding that the documents could be used to attack the credibility of the SC and certain evidence.¹⁵⁰ The latter suggestion mirrored what one and two days earlier HARADINAJ had stated were his and the KLA WVA's reasons for disclosing the documents delivered to them,¹⁵¹ and would be repeated by GASHI on another occasion.¹⁵²

58. GASHI stated that the publication of the documents means that the judge must think again before deciding whether to confirm the indictment against President THAÇI and others, and that he hoped that the leaked documents would help the

¹⁴⁵ 081355-03-TR-ET Revised 1, pp.2-3; 081355-03, min.00:01:20-00:01:58, 00:03:22-00:04:38; 081979-09; Later that day, HARADINAJ posted a link to this interview on his Facebook profile, *see* SPOE00220724-00220752, p.SPOE00220739 (SPOE00220724-SPOE00220752-ET, p.SPOE00220739).

¹⁴⁶ 081355-03-TR-ET Revised 1, p.2; 081355-03, min.00:01:59-00:03:22.

¹⁴⁷ 081355-03-TR-ET Revised 1, pp.2-3; 081355-03, min. 00:03:27-00:04:38.

¹⁴⁸ 081355-03-TR-ET Revised 1, pp.4-5; 081355-03, min.00:08:26-00:09:47.

¹⁴⁹ 081355-03-TR-ET Revised 1, p.3; 081355-03, min.00:04:59-00:08:25.

¹⁵⁰ 081355-03-TR-ET Revised 1, pp.3-5; 081355-03, min.00:04:59-00:08:25.

¹⁵¹ 081344-02-TR-ET Revised, pp.2-4; 081344-02, min.00:02:40-00:09:49; 082106-07-TR-ET Revised, pp.1-2; 082106-07, min.00:06:24-00:08:04.

¹⁵² 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

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indictment against President THAÇI not to be confirmed.¹⁵³ GASHI assessed that the theory that witnesses cannot be protected in Kosovo was being confirmed and asked whether witnesses are really being protected in The Hague.¹⁵⁴ He noted that he and others knew that the documents could be used to intimidate certain persons and that misuse of the documents constitutes a criminal offence, but this was not GASHI's business.¹⁵⁵

59. [REDACTED].¹⁵⁶ [REDACTED].¹⁵⁷ [REDACTED].¹⁵⁸ The article also includes two images of documents with layout typical of Requests, [REDACTED].¹⁵⁹

60. During an interview on 19 September 2020, HARADINAJ referred to the files provided to, and made public by, the KLA WVA as 'a basis for the indictment against the boys of the war', and referred to them as confidential.¹⁶⁰ HARADINAJ stated that the documents showed that [REDACTED], whom HARADINAJ describes as a [REDACTED], was involved in obtaining 'testimonies' from witnesses on behalf of the SPO.¹⁶¹ HARADINAJ also noted that it was common knowledge that he and others made the Second Disclosure available to the media and that the media took copies thereof,¹⁶² that he wished that the person who delivered documents to the KLA WVA would deliver more documents, that this person was welcome to do so, and that what this person had carried out was an important national duty.¹⁶³

¹⁵³ 081355-03-TR-ET Revised 1, pp.16-17; 081355-03, min.00:27:52-00:28:49, 00:29:03-00:30:22.

¹⁵⁴ 081355-03-TR-ET Revised 1, p.5; 081355-03, min.00:09:48-00:10:22.

¹⁵⁵ 081355-03-TR-ET Revised 1, pp.8-9; 081355-03, min.00:15:33-00:16:08.

¹⁵⁶ SPOE00222202-00222288, p.SPOE00222247 (SPOE00222202-SPOE00222288-ET, p.SPOE00222247); 081915-081919, pp.081915-081916 (081914-081919-ET, pp.081915-081916).

¹⁵⁷ 081915-081919, p.081915 (081914-081919-ET, p.081915).

¹⁵⁸ 084015-084026, p.084017, para.16.

¹⁵⁹ 081915-081919, pp.081915-081916; 084015-084026, p.084017, para.16; 093492-093590, p.093498 (entry corresponding to page numbers 15-16).

¹⁶⁰ 081979-05-TR-ET, pp.2-3, 9; 081979-05, min.00:02:10-00:06:38, 00:18:58-00:19:24.

¹⁶¹ 081979-05-TR-ET, pp.2-3; 081979-05, min.00:02:10-00:06:38.

¹⁶² 081979-05-TR-ET, pp.3-5; 081979-05, min.00:06:48-00:11:44.

¹⁶³ 081979-05-TR-ET, p.5; 081979-05, min.00:12:16-00:12:35. That HARADINAJ and GUCATI welcomed the delivery of the Second Disclosure is further evident from posts they uploaded on their Facebook

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61. HARADINAJ showed a certified version of the Second Order, which was classified as Strictly Confidential and *Ex Parte*, to the camera, along with an SPO document acknowledging receipt of the seized material; referring to the Second Order, he acknowledged that it included an obligation for him and others not to publish, adding ‘we do not need to publish them. We’ve given it out to those who can publish it. It is now up to them to publish it or not.’¹⁶⁴ HARADINAJ stated that the SPO took over 20 percent of the total material which was available at the KLA WVA premises and that journalists had taken the rest, noting ‘[t]here are no secrets left unrevealed.’¹⁶⁵ He stated that he thought that the media should not hide what the SPO’s former Deputy Specialist Prosecutor had done, referring to over 130 communications with [REDACTED] and others.¹⁶⁶

62. Later that day, HARADINAJ posted a link to this interview on his Facebook profile.¹⁶⁷ A Facebook user [REDACTED] commented that this user and others needed to publish books with the statements made by ‘these traitors, this scum of the earth’.¹⁶⁸

63. On 20 September 2020, during yet another appearance on a television programme, HARADINAJ stated that he read the Second Disclosure as much as he could during the KLA WVA’s office hours.¹⁶⁹ HARADINAJ referred to the documents as having been taken from secret storage.¹⁷⁰

64. HARADINAJ stated that the SC is ‘selective’ and ‘racist’ and that the documents he and others made public show that the court is basing charges on

profiles, *see* SPOE00220783-00220783 (SPOE00220783-SPOE00220783-ET Revised); SPOE00222202-00222288, p.SPOE00222248 (SPOE00222202-SPOE00222288-ET, p.SPOE00222248).

¹⁶⁴ 081979-05-TR-ET, p.6; 081979-05, min.00:12:44-00:15:00; *See* 079500-079500; 092017-092027; 091981-091991.

¹⁶⁵ 081979-05-TR-ET, p.6; 081979-05, min.00:14:21-00:17:28.

¹⁶⁶ 081979-05-TR-ET, pp.7-8; 081979-05, min.00:14:21-00:17:28.

¹⁶⁷ SPOE00220724-00220752, p.SPOE00220731; SPOE00220724-SPOE00220752-ET, p.SPOE00220731.

¹⁶⁸ SPOE00220724-00220752, p.SPOE00220731 (SPOE00220724-SPOE00220752-ET, p.SPOE00220731).

¹⁶⁹ 081355-04-TR-ET-Revised 2, p.9; 081355-04, min.00:37:46-00:37:48.

¹⁷⁰ 081355-04-TR-ET-Revised 2, p.24; 081355-04, min.00:49:08-00:49:27.

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information provided by ‘criminals, bloodsuckers’.¹⁷¹ He also referred to such persons as spies, accused them of betraying their people, and indicated that the First Disclosure was intended to make it clear to such people that, rather than being protected, they would be exploited, also noting that persons who have provided information have not been protected but have been killed, discredited, or derided.¹⁷² HARADINAJ stated that the court will totally collapse because people now knew who the witnesses are.¹⁷³ He described the documents that the KLA WVA had made public as a ‘national victory’ and stated that the KLA WVA is very happy to have received the files and that people were welcome to bring more.¹⁷⁴

65. During another television programme which aired on the same day, HARADINAJ stated that he and others are going to make anything that undermines the SPO known because they do not recognize the SPO, and that he would feel proud and honoured if he were to be arrested for his actions.¹⁷⁵

66. On 20 September 2020, HARADINAJ posted a link to a video published by Gazeta Newborn on his Facebook profile.¹⁷⁶ [REDACTED].¹⁷⁷ [REDACTED].¹⁷⁸

67. On 21 September 2020 at 08:21, GUCATI published a post on his Facebook profile in which he stated that the files handed over to the KLA WVA were official documents of the SC which included the names of the majority of witnesses; he referred to the documents as emerging from the SC's offices and as ‘very confidential and sensitive’.¹⁷⁹ GUCATI stated that the files include statements made by witnesses against the KLA, and that the people who chose to hand the files over to the KLA

¹⁷¹ 081355-04-TR-ET-Revised 2, p.7; 081355-04, min.00:34:44-00:35:22.

¹⁷² 081355-04-TR-ET-Revised 2, p.26; 081355-04, min.00:50:33-00:51:07.

¹⁷³ 081355-04-TR-ET-Revised 2, pp.30-31; 081355-04, min.00:59:36-00:59:50.

¹⁷⁴ 081355-04-TR-ET-Revised 2, pp.2-4; 081355-04, min.00:32:25-00:33:30.

¹⁷⁵ 081991-02-TR-ET, pp.1-2, 9-10; 081991-02, min. 00:01:01-00:04:03, 00:14:17-00:15:48.

¹⁷⁶ SPOE00220724-00220752, pp.SPOE00220729-SPOE00220730 (SPOE00220724-SPOE00220752-ET, pp.SPOE00220729-SPOE00220730); 081979-04.

¹⁷⁷ 081979-04-TR-ET, p.1; 081979-04, min.00:00:20-00:00:33.

¹⁷⁸ 093492-093590, p.093554 (entry corresponding to page number 582).

¹⁷⁹ 081983-081988; 081983-081988-ET Revised, pp.081983-081986.

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WVA meant to burden it with a great responsibility but that the KLA WVA was not there to remedy anyone's mistakes.¹⁸⁰

E. Third Press Conference and Third Disclosure

68. At around 10:35 on 22 September 2020, further documents were delivered at the KLA WVA premises in Prishtinë/Priština.¹⁸¹ GUCATI and others read passages from the documents, spread out in four piles.¹⁸² HARADINAJ showed one of the documents to German KFOR soldiers who happened to be present at the time, and expressed his confidence that this incident and others would benefit certain persons who had been accused.¹⁸³

69. In what had become, by now, a clear and consistent pattern, at a press conference held shortly after the delivery of documents that day ('Third Press Conference'), GUCATI stated that someone had delivered files to the KLA WVA offices and that he and others believed these files had been leaked from the SC or 'the Hague Court'.¹⁸⁴ GUCATI invited those in attendance to move closer to have a look at the document ('Third Disclosure').¹⁸⁵ GUCATI stated that HARADINAJ had read the Third Disclosure for about 30 minutes.¹⁸⁶ As on previous occasions, he then handed the floor over to HARADINAJ and remained present while HARADINAJ spoke.¹⁸⁷

70. HARADINAJ stated that the KLA WVA had two copies of the documents which were provided to them earlier that day.¹⁸⁸ He stated that he understood that the

¹⁸⁰ 081983-081988; 081983-081988-ET Revised, pp.081983-081986.

¹⁸¹ 093457-093458 (093457-093458-ET).

¹⁸² 093457-093458 (093457-093458-ET).

¹⁸³ 093457-093458 (093457-093458-ET); *See also* 082136-01-TR-ET Revised, p.9; 082136-01, min.00:20:25-00:20:41.

¹⁸⁴ 082136-01-TR-ET Revised, pp.1-2; 082136-01, min.00:03:15-00:06:04; *See also* 081344-03; 091925-09; 091925-10; 091925-11; 091925-12; 081979-03; 081979-03-TR-ET; 081926-01; 081926-01-TR-ET.

¹⁸⁵ 082136-01-TR-ET Revised, pp.1-2; 082136-01, min.00:03:15-00:06:04.

¹⁸⁶ 082136-01-TR-ET Revised, pp.1-2; 082136-01, min.00:03:15-00:06:04.

¹⁸⁷ 082136-01-TR-ET Revised, pp.1-2; 082136-01, min.00:03:15-00:06:51.

¹⁸⁸ 082136-01-TR-ET Revised, p.2; 082136-01, min.00:06:54-00:10:28.

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Third Disclosure concerned a 'draft indictment' in relation to five persons potentially to be accused: '[REDACTED]', Hashim THAÇI, Jakup KRASNIQI, Kadri VESELI and Rexhep SELIMI'.¹⁸⁹ A confirmed indictment against THAÇI, VESELI, KRASNIQI and SELIMI was only made public by the SC on 5 November 2020.¹⁹⁰

71. HARADINAJ stated that [REDACTED], whose name also later featured in the public version of the indictment against THAÇI and others,¹⁹¹ was mentioned in the Third Disclosure along with other persons, and locations including [REDACTED].¹⁹² The SPO only publicly revealed several of these locations as crime sites through the indictment made available to the public on 5 November 2020.¹⁹³

72. HARADINAJ noted that the particulars of many people are mentioned in the documents and that the name of [REDACTED] is mentioned, as are the names of many others.¹⁹⁴ He stated that these documents were now at the disposal of those in attendance, telling them to do their job, and thanking them for being active, adding that he believed that he and they should all carry out their task together.¹⁹⁵

73. HARADINAJ noted that the documents forming part of the Third Disclosure bear the SPO's logo and are copies of originals.¹⁹⁶ Asked whether the KLA WVA had notified the five people whose names were mentioned in the documents, HARADINAJ responded that the person asking that question should do it, adding: '[w]hy did we call you?'¹⁹⁷ Asked for more detail about the content of the document, HARADINAJ noted the person asking him could go and have a look at the document,

¹⁸⁹ 082136-01-TR-ET Revised, p.2; 082136-01, min.00:06:04-00:06:51.

¹⁹⁰ KSC-BC-2020-06/F0045/A03. [REDACTED].

¹⁹¹ KSC-BC-2020-06/F0045/A03, para.15.

¹⁹² 082136-01-TR-ET Revised, p.2; 082136-01, min.00:06:04-00:10:28.

¹⁹³ KSC-BC-2020-06/F0045/A03, paras 60-65, 68-70, 72.

¹⁹⁴ 082136-01-TR-ET Revised, p.3; 082136-01, min.00:06:54-00:10:28.

¹⁹⁵ 082136-01-TR-ET Revised, p.3; 082136-01, min.00:06:54-00:10:28. *See also* 081991-04-TR-ET, p.1; 081991-04, min.00:06:23-00:07:10 where HARADINAJ thanked the media for the work they were doing, stated he hoped the media would not ignore him and others, and asserted the media should be braver.

¹⁹⁶ 082136-01-TR-ET Revised, pp.3-4; 082136-01, min.00:10:41-00:11:45.

¹⁹⁷ 082136-01-TR-ET Revised, p.4; 082136-01, min.00:12:02-00:12:10.

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stating this was the reason why HARADINAJ and others called them there, otherwise they would have published the documents themselves.¹⁹⁸

74. HARADINAJ said that the documents provided earlier that day were in the room and invited those present to look at the documents, to take a copy, and to take pictures of them.¹⁹⁹ Asked whether he was suggesting that the media should publish the documents, HARADINAJ responded that the media should publish whatever it can.²⁰⁰ When a person attending the press conference noted that publication of the documents is prohibited by law and carries a sentence of up to 10 years' imprisonment, HARADINAJ responded that he did not know as much.²⁰¹ When the person asking the latter question stated that this is what the SC's law stated, HARADINAJ responded: 'In which case I will end up in prison, too',²⁰² later adding: 'You think you will scare me with ten years! Even if you sentence me to 300 years, I will still disclose them. I am speaking on my behalf and on the behalf of the whole presidium [...] We are ready to face 300 years [...] We are ready to die.'²⁰³

75. Asked whether [REDACTED] was referred to in the documents, GUCATI and HARADINAJ noted that the person who asked this question had the document and was welcome to read it.²⁰⁴

76. Towards the end of the Third Press Conference, as persons approached the speakers' table where documents from the Third Disclosure were displayed, GUCATI noted that the document is a copy, another person noted that they obtained a copy,

¹⁹⁸ 082136-01-TR-ET Revised, p.5; 082136-01, min.00:14:19-00:15:30.

¹⁹⁹ 082136-01-TR-ET Revised, pp.6-7; 082136-01, min.00:16:57-00:17:59.

²⁰⁰ 082136-01-TR-ET Revised, p.12; 082136-01, min.00:23:40-00:24:06.

²⁰¹ 082136-01-TR-ET Revised, p.12; 082136-01, min.00:24:06-00:24:10.

²⁰² 082136-01-TR-ET Revised, p.12; 082136-01, min.00:24:11-00:24:15.

²⁰³ 082136-01-TR-ET Revised, p.13; 082136-01, min.00:24:44-00:25:16.

²⁰⁴ 082136-01-TR-ET Revised, pp.13-14; 082136-01, min.00:25:43-00:25:54.

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while yet another person asked for a copy.²⁰⁵ A number of persons gathered around the Third Disclosure and took photographs thereof.²⁰⁶

77. HARADINAJ noted that the person who provided the documents left a message saying he would bring compact discs from now on.²⁰⁷ He stated that he and others welcomed this, that the KLA WVA would publish everything they receive, and that they bear no responsibility in relation to this.²⁰⁸ HARADINAJ stated he would not disclose the identity of the person who delivered documents to the KLA WVA even if this person did not wear a mask.²⁰⁹

78. Asked whether, when documents were previously seized from the KLA WVA, the SPO staff members who seized the documents had asked HARADINAJ not to give documents to the media, HARADINAJ responded that such persons would not want the media to be informed about the documents.²¹⁰

F. Events following the Third Press Conference

79. Within hours of the Third Press Conference, the SPO served on Tome GASHI, in the presence of GUCATI, HARADINAJ, KLINAKU and others, an order from the SPO instructing GUCATI and/or the KLA WVA to produce all SPO documents and to refrain from recording or copying and further disseminating such documents.²¹¹ HARADINAJ signed a document acknowledging receipt of the order in the presence of GUCATI and others.²¹² The SPO staff members took documents forming part of the Third Disclosure ('Batch 3').²¹³

²⁰⁵ 082136-01-TR-ET Revised, p.15; 082136-01, min.00:26:46-00:26:59.

²⁰⁶ 082136-01, min.00:26:45-00:27:18.

²⁰⁷ 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28.

²⁰⁸ 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28; *See also* 082106-03-TR-ET, pp.2-4; 082106-03, min.00:01:33-00:04:16.

²⁰⁹ 082136-01-TR-ET Revised, p.10; 082136-01, min.00:21:28-00:21:38.

²¹⁰ 082136-01-TR-ET Revised, p.6; 082136-01, min.00:16:18-00:16:45.

²¹¹ 082014-082016; SPOE00220914-00220914 ('SPO Order'); *See also* KSC-BC-2020-07/F00010/A01.

²¹² 082014-082016, p.082015, para.12; SPOE00220915-00220915; *See also* KSC-BC-2020-07/F00010/A01.

²¹³ 082014-082016, p.082016, para.17; *See also* KSC-BC-2020-07/F00010.

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80. During the handover, HARADINAJ told SPO staff members that when the unknown man arrived, two German KFOR officers were attending a meeting at the KLA WVA premises and that one of the two officers took photographs of the documents delivered by the unknown man.²¹⁴ HARADINAJ also stated that while briefly looking at the documents, he saw the names of [REDACTED].²¹⁵ KLINAKU stated that earlier that day, he had sent an email to all media in Kosovo, calling for a press conference, without mentioning the reason.²¹⁶ GUCATI estimated that journalists from 20-25 media houses attended.²¹⁷ GUCATI and HARADINAJ stated that, at the end of the press conference, for approximately 5 minutes, some of the journalists photographed the front pages and certain other pages of the four piles of documents brought by the unknown man.²¹⁸

81. Batch 3 is comprised of two incomplete copies of an SPO confidential document pertaining to SPO investigations and official proceedings, [REDACTED].²¹⁹ It includes an analysis of certain available evidence and applicable law [REDACTED].²²⁰ It also contains references to [REDACTED] (potential) witnesses, [REDACTED].²²¹

82. On 22 September 2020 and over the following days, contents of the Third Disclosure, including witness names and evidence, were further disseminated, including in the press and online.²²² HARADINAJ had previously asserted that, due

²¹⁴ 082014-082016, p.082015, para.6; *See also* 093457-093458 (093457-093458-ET).

²¹⁵ 082014-082016, p.082015, para.8.

²¹⁶ 082014-082016, p.082015, para.9.

²¹⁷ 082014-082016, p.082015, para.10.

²¹⁸ 082014-082016, p.082015, para.11; *See also* 082136-01, min.00:26:45-00:27:18.

²¹⁹ 084015-084026, pp.084019-084020, para.29; 093492-093590, pp.093493-093495, paras 7-10, Annex 5.

²²⁰ 084015-084026, pp.084019-084020, para.29; 093492-093590, pp.093493-093495, paras 7-9.

²²¹ 084015-084026, p.084020, para.31; 093492-093590, pp.093493-093495, paras 7-9.

²²² 081361-081378, pp.081374-081378 (081374-081377-ET); 081381-081391 (081381-081383-ET Revised), including video-clip 081392-01 (081392-01-TR-ET Revised); 081395-081404 (081395-081398-ET), including video-clip 081405-01 (081405-01-TR-ET Revised); 081414-081422 (081414-081415-ET), including video-clip 081422-01 (081422-01-TR-ET); SPOE00220819-00220826 (SPOE00220819-SPOE00220826-ET); SPOE00220827-00220829 (SPOE00220827-SPOE00220829-ET); SPOE00220830-00220837 (SPOE00220830-SPOE00220837-ET); SPOE00220845-00220850 (SPOE00220845-SPOE00220850-ET); SPOE00220851-00220857 (SPOE00220851-SPOE00220857-ET); SPOE00220858-00220865 (SPOE00220858-SPOE00220865-ET); SPOE00220866-00220871 (SPOE00220866-

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to the reluctance of certain media houses to publish material made available by the KLA WVA, it was necessary for HARADINAJ and others to provide the documents to 'foreign media'.²²³ [REDACTED].²²⁴

83. During a press conference with various media representatives at the KLA WVA premises on 22 September 2020 following handover to the SPO of documents forming part of the Third Disclosure, GUCATI confirmed that the SC collected the material and stated that this meant the material came from the SC.²²⁵ During the same press conference, GASHI acknowledged that GUCATI, HARADINAJ and others looked through the documents referred to during the three press conferences 'for their own purposes'.²²⁶ GASHI noted that members of the media had the opportunity to access the material forming part of the Third Disclosure if they so wanted, adding that the material 'is genuine' and 'seems to be of a very sensitive nature and relates to the criminal investigation of people who've been subject to investigations by the Court for many years.'²²⁷

84. GASHI noted that he believed that 'Chairman Mr. GUCATI, Mr. HARADINAJ and others have always maintained they will go public with whatever they receive and whoever brings them, in the sense that the Albanian public opinion at large will be informed on what is happening with The Specialist Chambers', adding that '[w]e are of the opinion that if at a later stage the indictments against the KLA members are confirmed these materials could be used to undermine the credibility of The Specialist

SPOE00220871-ET); SPOE00220872-00220872 (SPOE00220872-SPOE00220872-ET); SPOE00220873-00220878 (SPOE00220873-SPOE00220878-ET); SPOE00220879-00220885 (SPOE00220879-SPOE00220885-ET); SPOE00220886-00220888 (SPOE00220886-SPOE00220888-ET); *See also* 084015-084026, pp.084021-084025, paras 36-74.

²²³ 081979-08-TR-ET, p.2; 081979-08, min.00:04:24-00:05:16.

²²⁴ 081381-081391 (081381-081383-ET Revised), including video-clip 081392-01 (081392-01-TR-ET Revised); 081395-081404 (081395-081398-ET), including video-clip 081405-01 (081405-01-TR-ET Revised); 081414-081422 (081414-081415-ET), including video-clip 081422-01 (081422-01-TR-ET).

²²⁵ 081931-01-TR-ET, pp.1-2; 081931-01, min.00:01:06-00:01:31.

²²⁶ 081931-01-TR-ET, p.3; 081931-01, min.00:07:18-00:08:24.

²²⁷ 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

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Chambers'.²²⁸ GASHI acknowledged that during the Third Press Conference HARADINAJ mentioned the names and surnames of persons who were under investigation as set out in the Third Disclosure.²²⁹ GASHI also asserted that the promise of the KLA WVA 'is to inform the public opinion every time they receive anything that relates to The Specialist Chambers, because we're against this Court.'²³⁰

85. At the same press conference, HARADINAJ claimed that the SPO representatives took everything away earlier that day because the media did not take any copies.²³¹ HARADINAJ stated that he and others told the SPO representatives that the media 'flicked through' the Third Disclosure but 'didn't dare' take copies, and that more than 25 media representatives attended the Third Press Conference.²³² GASHI also claimed that media representatives had seen the Third Disclosure but had not taken copies.²³³

86. During an interview on 22 September 2020, GUCATI stated that the unidentified person who had brought the documents to the KLA WVA told them he would provide compact discs with some material; GUCATI asserted that the KLA WVA would make such documents public to show those in Kosovo and Albanians around the world that the SC collaborate with the Serbian authorities, adding that it was important to convince the citizens of Kosovo and to show them that this Court is worthless.²³⁴

87. During another interview that day, GUCATI, stated that it was unfair that he and others were accused of trying to undermine the administration of justice and that he and others have protected every name included in the documents and made sure

²²⁸ 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33; *See also* 081931-01-TR-ET, pp.2-3, 081931-01, min.00:04:42-00:06:21.

²²⁹ 081931-01-TR-ET, p.3; 081931-01, min.00:07:18-00:08:24.

²³⁰ 081931-01-TR-ET, p.4; 081931-01, min.00:09:45-00:13:18.

²³¹ 081931-01-TR-ET, p.7; 081931-01, min.00:17:43-00:18:05.

²³² 081931-01-TR-ET, p.7; 081931-01, min.00:17:43-00:18:05.

²³³ 081931-01-TR-ET, p.7; 081931-01, min.00:18:05-00:18:06.

²³⁴ 082106-02-TR-ET Revised 1, p.2; 082106-02, min.00:03:29-00:04:17.

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they were well-protected.²³⁵ He stated that he and others know that they have not done anything against the law because they have not announced the name and surname of the witnesses, they only showed the documentation.²³⁶

88. GUCATI stated that the documents received by the KLA WVA contained official stamps, reference numbers, signatures of international prosecutors, and stamps and the emblem of the SC.²³⁷ GUCATI stated that he keeps publicizing the documents because he and others wanted to show the reality and that they have been in conflict with the SC for three years because the SC is collaborating closely with Serbian authorities.²³⁸ GUCATI noted that he and others have been protesting against the SC since it was created in 2015.²³⁹ GUCATI stated that he would make public all documents he might receive and that he and others are against the SC because it is racist, one-sided and irrelevant, noting it was not his job to protect the documents.²⁴⁰ GUCATI stated that the documents made it to his office and his responsibility is to undermine the SC.²⁴¹ He added that if he and others could, they would get rid of the SC and disband it.²⁴²

89. Asked whether he had a responsibility in relation to what happened in view of the fact that he made the documents public, GUCATI stated he and others were not responsible because they have not made public any of the names of witnesses and made no statements about what was written in the documents.²⁴³ Asked whether he would have any regrets about publishing the documents if he were to face punishment as a consequence, GUCATI stated he would not have any regrets even if he were to be

²³⁵ 082106-01-TR-ET, pp.1-2; 082106-01, min.00:00:00-00:03:08.

²³⁶ 082106-01-TR-ET, p.2; 082106-01, min.00:00:00-00:03:08.

²³⁷ 082106-01-TR-ET, p.14; 082106-01, min.00:17:50-00:19:36.

²³⁸ 082106-01-TR-ET, p.2; 082106-01, min.00:01:36-00:03:08.

²³⁹ 082106-01-TR-ET, p.2; 082106-01, min.00:01:36-00:03:08.

²⁴⁰ 082106-01-TR-ET, pp.7-8; 082106-01, min.00:08:55-00:10:20.

²⁴¹ 082106-01-TR-ET, pp.8-9; 082106-01, min.00:10:20-00:13:16.

²⁴² 082106-01-TR-ET, p.11; 082106-01, min.00:14:47-00:16:12.

²⁴³ 082106-01-TR-ET, pp.10-11; 082106-01, min.00:13:16-00:14:47.

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imprisoned for five years.²⁴⁴ GUCATI stated that he and others do not know how the SC could accuse them or serve them with indictments because they have not made the names of any witnesses public.²⁴⁵

90. During a television programme which aired on 22 September 2020, HARADINAJ stated that he and others had given all the documents in the Third Disclosure to the media.²⁴⁶ Asked by a journalist whether he had kept copies of the Third Disclosure, HARADINAJ replied that he had not, and that he and others were giving the documents to those in attendance.²⁴⁷ Asked whether copies of the Third Disclosure were being kept in KLA WVA archives, HARADINAJ stated they were not because the media was the fourth power in Kosovo and the KLA WVA is counting on the media, adding that the KLA WVA gave the documents to the media who have archived them as much as they wanted and that the media could take as many documents as they wanted.²⁴⁸ HARADINAJ stated that if the media had not taken as many copies of the documents as they wanted from the KLA WVA, the media should feel ashamed,²⁴⁹ and that he hoped the KLA WVA had not wasted all its efforts because the KLA WVA thought that by handing the documents over to the media, the media would save the documents.²⁵⁰ HARADINAJ stated that the KLA WVA are against the court, have always been against it, and will do anything to embarrass the racist, selective, political court.²⁵¹ He stated that what was important was that the documents provided to the KLA WVA undermine the work carried out by the court over five

²⁴⁴ 082106-01-TR-ET, p.12; 082106-01, min.00:14:47-00:16:12.

²⁴⁵ 082106-01-TR-ET, pp.12-13; 082106-01, min.00:16:12-00:17:50.

²⁴⁶ 082106-03-TR-ET, pp.3-4; 082106-03, min.00:01:33-00:04:16.

²⁴⁷ 082106-03-TR-ET, p.5; 082106-03, min.00:04:16-00:06:36.

²⁴⁸ 082106-03-TR-ET, pp.5-6; 082106-03, min.00:05:34-00:06:36.

²⁴⁹ 082106-03-TR-ET, pp.5-7; 082106-03, min.00:05:34-00:07:28.

²⁵⁰ 082106-03-TR-ET, pp.8-9; 082106-03, min.00:08:22-00:09:39.

²⁵¹ 082106-03-TR-ET, p.15; 082106-03, min.00:15:02-00:18:18.

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years.²⁵² Asked what he wanted the media to do, HARADINAJ stated that he wanted the media to make the documents public as much as they dared to do so.²⁵³

91. The presenter of another television programme on which HARADINAJ appeared on 22 September 2020 noted that HARADINAJ had mentioned some names earlier that day, to which HARADINAJ responded by stating he only mentioned one name and that he was going to mention that name again, stating: 'it is [REDACTED], I have seen his name'.²⁵⁴ HARADINAJ stated that the material being made public suited him and others because it proved what they had always said in relation to the court cooperating with the Serbians,²⁵⁵ and, referring to the SC, that 'the leak of the documents, discredits them.'²⁵⁶

92. Addressing a journalist who stated he was not in possession of the Third Disclosure, HARADINAJ stated that, at the press conference, the documents were on the table for the journalist to take and that the journalist could have taken them.²⁵⁷ HARADINAJ stated the KLA WVA did not publish the documents because the media is 'the fourth force in this country', to which the programme's presenter responded by saying publishing the documents would be against the law, prompting HARADINAJ to ask whether he should publish them and whether the presenter wanted him to break the law.²⁵⁸

93. During a televised programme on 24 September 2020, KLINAKU referred to the SC having a scandal on its hands due to the distribution of files which had taken

²⁵² 082106-03-TR-ET, pp.17-18; 082106-03, min.00:21:08-00:22:51.

²⁵³ 082106-03-TR-ET, pp.20-21; 082106-03, min.00:24:30-00:25:41.

²⁵⁴ 081358-03-TR-ET Revised, p.30; 081358-03, min.00:39:20-00:39:58.

²⁵⁵ 081358-03-TR-ET Revised, pp.3-6; 081358-03, min.00:04:16-00:05:55.

²⁵⁶ 081358-03-TR-ET Revised, p.56; 081358-03, min.01:14:00-01:14:06.

²⁵⁷ 081358-03-TR-ET Revised, pp.7-8; 081358-03, min.00:10:54-00:12:41.

²⁵⁸ 081358-03-TR-ET Revised, pp.28-29; 081358-03, min.00:37:46-00:38:13.

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place,²⁵⁹ acknowledged that he and others had made '[REACTED]'s' name public,²⁶⁰ and referred to the SC as a 'sham'.²⁶¹

94. During an interview on 25 September 2020, HARADINAJ stated: 'It is their job to keep their secrets safe. It is not my fault that they have involved those illiterate people, that they have involved naive people, and that they have lied to these naïve people of ours that they will protect their secrets. They should have protected their archives.'²⁶² HARADINAJ also stated: 'we will be against this court as long as we live, as long as we can breathe. Full stop. We will work against this court. Full stop [...] We were handed them over by a person who delivered them to us. God willing, he will bring us more', adding that this did not mean that it would be only HARADINAJ, GUCATI or KLINAKU who would provide the documents to the media, since even the lowest ranked KLA member would do so, and that: '[w]e will disclose them to the media.'²⁶³

95. During another interview on 25 September 2020, HARADINAJ stated that he will not follow the orders of the Court or recognize it, and that it was his and others' duty to work against the court.²⁶⁴ Clearly unrepentant, shortly before his arrest, HARADINAJ stated that if he received more documents he would release them to the media.²⁶⁵

III. The Accused committed the crimes charged in the Indictment

96. The sections below address, in turn, each count of the Indictment²⁶⁶ in the sequence set out therein.

²⁵⁹ 081981-02-TR-ET Revised, p.2; 081981-02, min.00:07:53-00:07:56.

²⁶⁰ 081981-02-TR-ET Revised, p.6; 081981-02, min.00:10:04-00:10:07.

²⁶¹ 081981-02-TR-ET Revised, p.7; 081981-02, min.00:10:57-00:11:04.

²⁶² 081931-04-TR-ET Revised 1, p.2; 081931-04, min.00:03:24-00:04:59.

²⁶³ 081931-04-TR-ET Revised 1, p.2; 081931-04, min.00:03:24-00:04:59.

²⁶⁴ 081991-03-TR-ET Revised, pp.2, 4-5; 081991-03, min.00:06:32-00:07:30, 00:09:29-00:10:50.

²⁶⁵ 081991-03-TR-ET Revised, pp.4-5; 081991-03, min.00:09:29-00:10:50.

²⁶⁶ KSC-BC-2020-07/F00075/A01 ('Indictment').

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A. *The Accused, by serious threat, obstructed official persons in performing official duties*
(Count 1)

97. The evidence set out in the Statement of Facts,²⁶⁷ including as further elaborated in relation to Counts 2-6,²⁶⁸ establishes that between at least 7 and 25 September 2020, the Accused and Associates, including Faton KLINAKU, KLA WVA Secretary, and Tome GASHI, legal counsel for the KLA WVA, through the acts described therein, which, considered alone or together, constituted serious threats, obstructed or attempted to obstruct SC Proceedings. These actions were carried out directly, by serious threats directed at the SPO, and indirectly, by serious threats to witnesses and others, against SPO officials, including Prosecutors, Investigators and other staff members, during an exercise of their official functions, specifically the SPO's ongoing criminal investigations. Further, consistent with their declared purpose,²⁶⁹ the actions of GUCATI and HARADINAJ were also against SC officials, including judges and others.

98. In particular, the evidence shows that during the Three Press Conferences,²⁷⁰ which the Accused and KLINAKU took part in organizing, the over fifteen media appearances concerning the First, Second and/or Third Disclosure that the Accused, KLINAKU and/or GASHI attended, at times jointly, and in posts uploaded to social media, the Accused repeatedly made the Confidential Information²⁷¹ available, and/or mentioned contents thereof including the identities, personal data, and evidence of

²⁶⁷ See Section II.

²⁶⁸ See Section III B-F.

²⁶⁹ See Section II A(i)(b).

²⁷⁰ The term 'Three Press Conferences' refers to the press conferences held at the KLA WVA premises on 7, 16 and 22 September 2020, depicted in 081344-01, 089984-02, 081344-02, 089984-01, 082136-01, and 081344-03.

²⁷¹ The confidential and non-public documents disseminated as part of the First Disclosure, Second Disclosure, and Third Disclosure are hereafter referred to as the 'Confidential Information'.

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witnesses, to members of the press, television viewers and other members of the public.²⁷²

99. Further, the Accused repeatedly threatened to continue disseminating information of confidential investigations, including witness identities, and to obstruct the mandate of the SC/SPO.²⁷³ They sought to ensure the maximum possible dissemination of the Confidential Information and constantly pressured the media to further publish it.²⁷⁴ The Accused and GASHI publicly praised the unidentified sources who provided the documents to the KLA WVA and/or welcomed future disclosures from such sources.²⁷⁵

²⁷² 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:01:26-00:06:30; 081344-02-TR-ET Revised, pp.1-3; 081344-02, min.00:00:01-00:02:31; 081979-07-TR-ET, pp.2-3; 081979-07, min.09:30-11:01, 24:45-25:32; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081979-08-TR-ET, pp.1, 3-4; 081979-08, min.00:00:13-00:01:49, 00:06:33-00:08:53; 081979-05-TR-ET, pp.6-7; 081979-05, min.00:14:21-00:17:28; 082136-01-TR-ET Revised, pp.1-3; 082136-01, min.00:03:15-00:10:28; 081358-03-TR-ET Revised, pp.29-30; 081358-03, min.00:39:20-00:39:58; 082014-082016, p.082015, paras 9-11; 093457-093458 (093457-093458-ET); 081358-01-TR-ET, pp.5-8; 081358-01, min.00:59:42-01:03:52; Section II, paras 55, 59, 66; *See also*: (i) SPOE00220724-00220752, p.SPOE00220752 (SPOE00220724-SPOE00220752-ET, p.SPOE00220752) showing that HARADINAJ posted a link to the recording of a television programme where he was a guest and during which he stated that among the documents in the First Disclosure was information from [REDACTED], 081991-01-TR-ET Revised 1, p.8; 081991-01, min.00:14:24-00:15:51; and (ii) SPOE00220724-00220752, p.SPOE00220731 (SPOE00220724-SPOE00220752-ET, p.SPOE00220731) showing that HARADINAJ posted a link to the recording of a television programme where he was a guest and during which he stated that the documents showed that [REDACTED], whom HARADINAJ describes as a [REDACTED], was involved in obtaining 'testimonies' from witnesses on behalf of the SPO, 081979-05-TR-ET, pp.2-3; 081979-05, min.00:02:10-00:06:38.

²⁷³ 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:06:03-00:06:55, 00:09:41-00:11:53; 081344-02-TR-ET Revised, pp.2-4; 081344-02, min.00:02:40-00:09:49; 081355-02-TR-ET Revised 1, p.4; 081355-02, min.00:24:40-00:25:12; 081347-01-TR-ET Revised, p.3; 081347-01, min.00:02:27-00:03:57; 081355-04-TR-ET-Revised 2, pp.3-4; 081355-04, min.00:32:59-00:34:11; 082136-01-TR-ET Revised, pp.1-3; 082136-01, min.00:03:15-00:11:45; 081991-03-TR-ET Revised, pp.4-5; 081991-03, min.00:09:29-00:10:50.

²⁷⁴ 082136-01-TR-ET Revised, pp.5-6, 11-13; 082136-01, min.00:14:19-00:15:30, 00:23:40-00:25:41; 081991-01-TR-ET Revised 1, pp.3, 10; 081991-01, min.00:04:44-00:05:37, 00:20:23-00:21:06; 082106-06-TR-ET Revised 2, p.3; 082106-06, min.00:05:02-00:07:52; 081979-08-TR-ET, p.2; 081979-08, min.00:04:24-00:05:16; 081347-01-TR-ET Revised, p.8; 081347-01, min.00:17:26-00:17:40; SPOE00220800-00220800 (SPOE00220800-SPOE00220800-ET); 081355-02-TR-ET Revised 1, pp.6, 15; 081355-02, min.00:27:21-00:27:53, 00:35:33-00:35:48; 081355-04-TR-ET-Revised 2, p.21; 081355-04, min.00:44:46-00:45:53; *See also* 081358-03-TR-ET Revised, pp.4-5; 081358-03, min.00:05:55-00:07:34; 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

²⁷⁵ 081355-02-TR-ET Revised 1, p.4; 081355-02, min.00:24:40-00:25:12; 081355-04-TR-ET-Revised 2, pp.3-4; 081355-04, min.00:32:59-00:33:30; 082136-01-TR-ET Revised, pp.2-3, 7-8; 082136-01, min.00:06:54-00:10:28, 00:19:14-00:19:30; 081991-01-TR-ET Revised 1, p.7; 081991-01, min.00:13:54-00:15:51; 082106-07-

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100. Additionally, the Accused and GASHI made disparaging comments about, and/or threats in relation to, witnesses.²⁷⁶ The Accused made it clear that the documents they were making public contained specific witness names and locations of residence, along with other personal details²⁷⁷ and that, now, persons will find out who these witnesses are.²⁷⁸ This threat was also echoed by GASHI.²⁷⁹

101. Due to the impact or potential impact of the Accused's actions on witnesses, the SPO's ability to effectively investigate and prosecute crimes, including by obtaining and securing relevant evidence, was threatened. In particular, witnesses felt threatened and intimidated as a result of the Accused's actions,²⁸⁰ and SPO resources and time were diverted and devoted to address actual and potential consequences, including to witnesses and SC Proceedings.²⁸¹

TR-ET Revised, p.2; 082106-07, min.00:06:24-00:08:04; 082106-01-TR-ET, pp.12-13; 082106-01, min.00:16:12-00:17:50; 082106-04-TR-ET Revised, p.2; 082106-04, min.0:28:46-0:30:37; 081355-03-TR-ET Revised 1, pp.4-5; 081355-03, min.00:08:26-00:09:47.

²⁷⁶ 081344-01-TR-ET Revised 1, pp.1-6; 081344-01, min.00:01:26-00:09:09, 00:11:27-00:13:16; 081358-01-TR-ET, pp.6-7, 9-13; 081358-01, min.01:01:00-01:02:33, 01:05:00-01:10:49; 081355-04-TR-ET-Revised 2, pp.7, 11, 26; 081355-04, min.00:34:48-00:35:22, 00:38:39-00:38:51, 00:50:33-00:51:07; 081355-03-TR-ET Revised 1, pp.5-6; 081355-03, min.00:09:48-00:10:22; *See also* 089185-06-TR-ET, p.1; 089185-06 min.08:01-08:54.

²⁷⁷ 081344-01-TR-ET Revised 1, pp.1-6; 081344-01, min.00:01:26-00:06:30, 00:09:43-00:13:16; 081358-01-TR-ET, pp.6-8; 081358-01, min.01:01:00-01:03:52; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28.

²⁷⁸ 081355-04-TR-ET-Revised 2, pp.11, 26, 30-31; 081355-04, min.00:38:39-00:38:51, 00:50:33-00:51:07, 00:59:42-00:59:50; 081344-01-TR-ET Revised 1, pp.3-4; 081344-01, min.00:06:31-00:09:09.

²⁷⁹ 081355-03-TR-ET Revised 1, pp.5, 8-9; 081355-03, min.00:09:48-00:10:22, 00:15:33-00:16:08; 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

²⁸⁰ *See* Section III D.

²⁸¹ 084008-084010; 090142-090143; 078313-078315 RED; 082102-082103 RED; 083959-083960 RED; 084231-084231 RED; 084232-084233 RED; 084236-084242 RED; 084243-084244 RED; 084245-084246 RED; 084247-084248 RED; 084249-084250 RED; 085880-085883 RED; 088300-088300 RED; 088301-088301 RED; 088302-088302 RED; 088303-088303 RED; 088304-088304 RED; 089196-089196 RED; 089908-089908 RED; 089909-089909 RED; 089910-089910 RED; 089934-089935 RED; 089936-089937 RED; 089938-089939 RED; 089940-089941 RED; 089942-089943 RED; 089944-089945 RED; 089946-089947 RED; 089948-089949 RED; 089950-089950 RED; 089951-089952 RED; 089953-089954 RED; 089955-089956 RED; 089988-089988 RED; 089989-089989 RED; 089990-089990 RED; 089991-089992 RED; 089997-090000 RED; 090001-090003 RED; 090004-090005 RED; 090006-090007 RED; 090024-090024 RED; 090025-090025 RED; 090026-090026 RED; 090028-090028 RED; 090031-090031 RED; 090033-090033 RED; 090040-090040 RED; 090041-090042 RED; 090048-090048 RED; 090049-090049 RED; 090050-090051 RED; 090052-090053 RED; 090054-090055 RED; 090056-090057 RED; 090058-090059 RED; 090062-090063 RED; 090066-090067 RED; 090121-TR-ET Part 1 RED;

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i. The Accused carried out their actions with the required intent

102. The following factors demonstrate the Accused's awareness of, and desire to, use serious threat to obstruct official persons in performing official duties. Alternatively, these factors show that the Accused were aware that, as a result of their actions, official persons may be obstructed in performing their official duties, and that they acceded to the occurrence of this prohibited consequence.

a. The Accused disseminated confidential and non-public documents containing, and publicly revealed, the identities and personal details of witnesses

103. The Accused's actions between 7 and 25 September 2020 as set out in the Statement of Facts clearly demonstrate that they disseminated the Confidential Information containing, and publicly revealed, the identities and personal details of witnesses. The consistent pattern of conduct makes it clear that their actions were deliberate throughout. HARADINAJ himself acknowledged that if he and others wanted, they would not have made the documents public at all.²⁸²

b. The Accused publicly stated their intention to obstruct the work of the SC/SPO through the publication of the documents

104. The Accused, and others, made clear their intention to obstruct the work of the SC/SPO long before September 2020.

090125-TR-ET Part 1 RED; 090125-TR-ET Part 2 RED; 090128-TR-ET Part 1 RED; 090131-TR-ET Part 1 RED; 090134-TR-ET Part 1 RED; 090138-TR-ET Part 1 RED; 090138-TR-ET Part 2 RED; 090141-TR-ET Part 1 RED; 090175-090176 RED; 090177-090177 RED; 090178-090179 RED; 090263-090263 RED; 090264-090264 RED; 091203-091203 RED; 091216-091217 RED; 091813-091814 RED; 091815-091816 RED; 091817-091818 RED; 091819-091820 RED; 091821-091822 RED; 091823-091825 RED; 091826-091827 RED; 091828-091829 RED; 091830-091831 RED; 091832-091833 RED; 091834-091835 RED; 091836-091837 RED; 091838-091839 RED; 091840-091841 RED; 091842-091843 RED; 091844-091845 RED; 091846-091847 RED; 091848-091849 RED; 091850-091851 RED; 091852-091853 RED; 091854-091855 RED; 091856-091858 RED; 091865-091866 RED; 091867-091867 RED; 091899-091900 RED; 091901-091901 RED; 091902-091902 RED; 091903-091903 RED; 091904-091905 RED; 091906-091906 RED; 091907-091908 RED; 084303-084303 RED; 089886-089886 RED; 092911-092912 RED; 092913-092913 RED; 092914-092915 RED; 092916-092917 RED; 092918-092919 RED; 092922-092924 RED; 092925-092925 RED; 092945-092945 RED; 093383-093383 RED; 093386-093387 RED; 093388-093388 RED.

²⁸² 081344-01-TR-ET Revised 1, p.8; 081344-01, min.00:16:02-00:16:11.

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105. In December 2017, it was reported that GUCATI confirmed that the KLA WVA had collected signatures from citizens for a parliamentary request to amend the law concerning the SC; the same article reported that the signatures collected for this purpose were instead used to request the SC's abrogation.²⁸³

106. That same month, on his Facebook profile, HARADINAJ shared an image referring to a television programme where the abrogation of the SC would be discussed along with a note indicating that the television show would air that night; below the image, HARADINAJ commented that the SC should fall and that it will fall.²⁸⁴

107. [REDACTED].²⁸⁵ [REDACTED],²⁸⁶ [REDACTED].²⁸⁷

108. In December 2018 and January 2019, GUCATI publicly called on persons not to respond to summonses by the SC.²⁸⁸

109. In December 2019, GUCATI publicly stated he and others would talk to parliamentary groups about ending the SC's mandate in June 2020 and noted that he and others had discussed ways to block the SC with persons including the KLA WVA's legal representatives.²⁸⁹

²⁸³ SPOE00234630-00234631 (SPOE00234630-SPOE00234631-ET); *See also* 082733-02-TR-ET Revised, pp.3-4; 082733-02, min.01:01:38-01:03:16.

²⁸⁴ SPOE00222243-SPOE00222244 (SPOE00222243-SPOE00222244-ET).

²⁸⁵ SPOE00222202-00222288, pp.SPOE00222241-SPOE00222242 (SPOE00222202-SPOE00222288-ET, pp.SPOE00222241-SPOE00222242).

²⁸⁶ 082014-082016, p.082015, para.8.

²⁸⁷ 082136-01-TR-ET Revised, p.3; 082136-01, min.00:06:54-00:10:28; 081358-03-TR-ET Revised, p.30; 081358-03, min.00:39:20-00:39:58.

²⁸⁸ 089185-02-TR-ET, p.1; 089185-02, min.02:35-04:12; 089185-03-TR-ET, p.1; 089185-03, min.10:23-10:57.

²⁸⁹ 089185-05-TR-ET, pp.1-3, 089185-05, min.13:28-15:42.

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110. In April 2020, HARADINAJ and GUCATI denounced a public figure who expressed support for SPO investigations as ‘anti-national’²⁹⁰ and ‘Serbia’s advocate’,²⁹¹ and insinuated espionage on his part.²⁹²

111. During a television programme which aired on 24 June 2020, GUCATI stated that news about indictments filed against THAÇI and VESELI took him and others by surprise, and characterised the indictments as politically motivated.²⁹³ During the same programme, HARADINAJ acknowledged that indictments had been filed and stated that the initiative to terminate the SC was undertaken by the KLA WVA, led by its presidency, noting they had collected more than 13,000 signatures in an effort to terminate the SC.²⁹⁴ HARADINAJ stated that the court was mono-ethnic and racist and that those who were in favour of the court were anti-KLA collaborators, spies and traitors.²⁹⁵

112. During another television programme on 24 June 2020, GUCATI noted that the SC’s mandate was expected to be extended in August 2020 but that he and others would speak to members of Parliament about ways in which to abrogate the SC and seek legal advice on this issue.²⁹⁶ Appearing on yet another television programme which aired that day, GUCATI stated that in the 20 years since the war, he has not heard of witnesses in Kosovo coming forward to say they have been threatened.²⁹⁷ GUCATI stated that he and others know of witnesses who are abroad and who lied in order to obtain documents for other countries, adding that there are hundreds of such witnesses.²⁹⁸

²⁹⁰ SPOE00222219-SPOE00222219 (SPOE00222219-SPOE00222219-ET).

²⁹¹ SPOE00222268-SPOE00222268 (SPOE00222268-SPOE00222268-ET).

²⁹² SPOE00222264-SPOE00222267 (SPOE00222264-SPOE00222267-ET).

²⁹³ 082733-02-TR-ET Revised, pp.1-2; 082733-02, min.00:34:20-00:35:42, 00:36:02-00:36:57.

²⁹⁴ 082733-02-TR-ET Revised, pp.3-4; 082733-02, min.01:01:38-01:03:16.

²⁹⁵ 082733-02-TR-ET Revised, pp.4-5, 16-17; 082733-02, min.01:03:57-01:05:30, 01:44:49-01:45:23.

²⁹⁶ 089185-10-TR-ET, p.1; 089185-10 min.18:48-19:33.

²⁹⁷ 082733-01-TR-ET, p.1; 082733-01, min.0:19:57-0:21:22.

²⁹⁸ 082733-01-TR-ET, p.1; 082733-01, min.0:19:57-0:21:22.

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113. On 25 June 2020, HARADINAJ reiterated that his call and that of the KLA WVA was to abrogate the court, which he described as monoethnic and racist, and stated that the SC was as harmful to Kosovo as handing out its territories to other states.²⁹⁹

114. On 30 June 2020, HARADINAJ referred to the indictment filed by the SPO against Hashim THAÇI as 'just a pamphlet of the court, outside the legal requirements' and described it as 'blackmail'.³⁰⁰ HARADINAJ stated that the KLA WVA would work to undo the SC.³⁰¹

115. During the First Press Conference, HARADINAJ stated that the KLA WVA was pleasantly surprised by the receipt of the documents because the documents showed that those who voted for the creation of the court were scoundrels, renegades and the most harmful people who did not wish Kosovo well.³⁰² HARADINAJ stated that the documents prove that the SC are selective, racist, and working with the same people who were part of 'MILOSEVIC's apparatus'.³⁰³ He added that to the KLA WVA, the SC was 'non-existent' and that the court should pay its price.³⁰⁴

116. On 8 September 2020, KLINAKU stated that, as far as he and others were concerned, the SC does not exist and they never accepted it.³⁰⁵

117. On 11 September 2020, HARADINAJ stated that he and others would release files however many times they received them because this was their duty since they do not recognise the Court or the SPO.³⁰⁶

118. During the Second Press Conference, HARADINAJ made it clear that the KLA WVA's reason for providing the documents is to discredit the court.³⁰⁷ He stated that

²⁹⁹ 083985-01-TR-ET, pp.1-2, 083985-01 min.28:21-28:58, 36:39-37:51.

³⁰⁰ 083985-03-TR-ET, p.2; 083985-03 min.05:34-06:43.

³⁰¹ 083985-03-TR-ET, p.3; 083985-03 min.07:48-08:50.

³⁰² 081344-01-TR-ET Revised 1, pp.1-2; 081344-01, min.00:01:26-00:06:30.

³⁰³ 081344-01-TR-ET Revised 1, pp.2-3; 081344-01, min.00:01:26-00:06:30.

³⁰⁴ 081344-01-TR-ET Revised 1, pp.3, 6; 081344-01, min.00:06:31-00:09:09, 00:13:21-00:14:32.

³⁰⁵ 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

³⁰⁶ 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:06:03-00:06:55, 00:09:41-00:11:53.

³⁰⁷ 081344-02-TR-ET Revised, pp.2-4; 081344-02, min.00:02:40-00:09:49.

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the documents might have been provided to the KLA WVA because they had the courage to make them public and they do not agree with the Court.³⁰⁸

119. During an interview on 16 September 2020, HARADINAJ stated that he and others have stated publicly that they will reveal whatever material they receive that compromises the SC and SPO, adding that he and others do not recognize the SC and that this is why they will reveal this information, noting '[i]t's not our job to keep secrets.'³⁰⁹

120. On 17 September 2020, HARADINAJ appeared on a television programme during which he stated that even if he and others disclosed certain names, every statement was taken under duress, was not relevant and cannot be used as the basis for an indictment - that is why they made them public.³¹⁰ During an interview which aired on the same day, HARADINAJ stated he and others are carrying out their actions in order to discredit the alleged professionalism of the court.³¹¹

121. At a press conference on 17 September 2020, GUCATI stated that the reason why he and others will make the documents public was to prove what they had said three years ago to members of the army and to the citizens of Kosovo, so that the media and citizens would be convinced that the SC are cooperating with Serbian authorities against members of the KLA.³¹² GUCATI stated that he and others 'are interested in unmasking the Special Chambers' adding that in informing persons about any material received by the KLA WVA, the KLA WVA will show why they are against the SC, and that: '[w]e have said for a long time that this Court is racist, it is biased. It is unacceptable for us and therefore this is the reason why we publish all these documents.'³¹³ GUCATI then stated, in relation to the documents delivered to

³⁰⁸ 081344-02-TR-ET Revised, pp.6-7; 081344-02, min.00:12:09-00:12:45.

³⁰⁹ 081979-07-TR-ET, pp.1-2; 081979-07, min.00:27-01:10.

³¹⁰ 081355-02-TR-ET Revised 1, pp.25-26; 081355-02, min.00:46:29-00:47:54.

³¹¹ 082106-07-TR-ET Revised, p.2; 082106-07, min.00:06:24-00:08:04.

³¹² 081347-01-TR-ET Revised, p.3; 081347-01, min.00:02:27-00:03:57.

³¹³ 081347-01-TR-ET Revised, p.8; 081347-01, min.00:15:25-00:17:19.

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the KLA WVA, that it was in their interest to distribute them as much as possible in the media and to convince both the public and the media that the court is unacceptable, noting that he and others have always been against it.³¹⁴

122. During an interview on 18 September 2020, HARADINAJ stated that he and others told SPO representatives who seized material from the KLA WVA that they did not recognize the SC.³¹⁵ During the same interview, GASHI stated that the unidentified person who took the documents to the KLA WVA had done a patriotic job for the common good, especially for the benefit of those who will be accused in the SC.³¹⁶ He noted that the documentation seized by the SPO were sensitive documents for the SPO but that they were certainly very favourable for the KLA WVA and for anyone who might have legal issues with the SC, adding that the documents could be used to attack the credibility of the SC and certain evidence.³¹⁷ GASHI stated that the publication of the documents means that the judge must think again before deciding whether to confirm the indictment against President THAÇI and others, and that he hoped that the leaked documents would help the indictment against President THAÇI not to be confirmed.³¹⁸ GASHI stated that the theory that witnesses cannot be protected in Kosovo is being confirmed and asked whether witnesses are really being protected in The Hague.³¹⁹

123. On 20 September 2020, HARADINAJ stated that the court is 'selective' and 'racist' and that the documents he and others made public show that the court is basing charges on information provided by 'criminals, bloodsuckers'.³²⁰ During another television programme which aired on the same day, HARADINAJ stated that

³¹⁴ 081347-01-TR-ET Revised, p.8; 081347-01, min.00:17:26-00:17:40.

³¹⁵ 081355-03-TR-ET Revised 1, p.3; 081355-03, min. 00:03:27-00:04:38.

³¹⁶ 081355-03-TR-ET Revised 1, pp.4-5; 081355-03, min.00:08:26-00:09:47.

³¹⁷ 081355-03-TR-ET Revised 1, pp.3-5; 081355-03, min.00:04:59-00:08:25.

³¹⁸ 081355-03-TR-ET Revised 1, pp.16-17; 081355-03, min.00:27:52-00:28:49, 00:29:03-00:30:22.

³¹⁹ 081355-03-TR-ET Revised 1, p.5; 081355-03, min.00:09:48-00:10:22.

³²⁰ 081355-04-TR-ET-Revised 2, p.7; 081355-04, min.00:34:48-00:35:22.

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he and others are going to make anything that undermines the SPO known because they do not recognize the SPO.³²¹

124. On 22 September 2020, HARADINAJ stated that the KLA WVA are against the court, have always been against it, and will do anything to embarrass the racist, selective, political court.³²² He stated that what was important was that the documents provided to the KLA WVA undermine the work carried out by the court over five years.³²³

125. During another television programme which aired on 22 September 2020, HARADINAJ stated that the material being made public suited him and others because it proved what they had always said in relation to the court cooperating with the Serbians,³²⁴ and, referring to the SC, that 'the leak of the documents, discredits them.'³²⁵

126. During an interview on 22 September 2020, GUCATI stated that the unidentified person who had brought the documents to the KLA WVA told them he would provide compact discs with some material; GUCATI asserted that the KLA WVA would make such documents public to show those in Kosovo and Albanians around the world that the SC collaborate with the Serbian authorities, adding that it was important to convince the citizens of Kosovo and to show them that this Court is worthless.³²⁶

127. During another interview that day, GUCATI stated that he keeps publicizing the documents because he and others wanted to show the reality and that they have been in conflict with the SC for three years because the SC is collaborating closely with

³²¹ 081991-02-TR-ET, pp.9-10; 081991-02, min.00:14:17-00:15:48.

³²² 082106-03-TR-ET, p.15; 082106-03, min.00:15:02-00:18:18.

³²³ 082106-03-TR-ET, p.18; 082106-03, min.00:21:08-00:22:51.

³²⁴ 081358-03-TR-ET Revised, p.3; 081358-03, min.00:04:16-00:05:55.

³²⁵ 081358-03-TR-ET Revised, p.56; 081358-03, min.01:14:00-01:14:06.

³²⁶ 082106-02-TR-ET Revised 1, p.2; 082106-02, min.00:03:29-00:04:17.

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Serbian authorities.³²⁷ GUCATI noted that he and others have been protesting against the SC since it was created in 2015.³²⁸ GUCATI stated that he would make public all documents he might receive and that he and others are against the SC because it is racist, one-sided and irrelevant, noting it was not his job to protect the documents.³²⁹ GUCATI stated that the documents made it to his office and his responsibility is to undermine the SC.³³⁰ He added that if he and others could, they would get rid of the SC and disband it.³³¹

128. On 22 September 2020, GASHI, in the presence of GUCATI and HARADINAJ, stated: '[w]e are of the opinion that if at a later stage the indictments against the KLA members are confirmed these materials could be used to undermine the credibility of The Specialist Chambers'.³³² GASHI also asserted that the promise of the KLA WVA 'is to inform the public opinion every time they receive anything that relates to The Specialist Chambers, because we're against this Court.'³³³

129. On 25 September 2020, during an interview with a journalist outside the KLA WVA premises, HARADINAJ stated that he will not follow the orders of the Court or recognize it, and that it was his and others' duty to work against the court, again noting that if he received more documents, he would release them to the media.³³⁴

³²⁷ 082106-01-TR-ET, pp.2-3; 082106-01, min.00:01:36-00:03:08.

³²⁸ 082106-01-TR-ET, p.2; 082106-01, min.00:01:36-00:03:08.

³²⁹ 082106-01-TR-ET, pp.7-8; 082106-01, min.00:08:55-00:10:20.

³³⁰ 082106-01-TR-ET, pp.8-9; 082106-01, min.00:10:20-00:13:16.

³³¹ 082106-01-TR-ET, p.11; 082106-01, min.00:14:47-00:16:12.

³³² 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

³³³ 081931-01-TR-ET, pp.4-5; 081931-01, min.00:09:45-00:13:18.

³³⁴ 081991-03-TR-ET Revised, pp.2, 4-5; 081991-03, min.00:06:32-00:07:30, 00:09:29-00:10:50. The Accused and KLINAKU stated that they did not recognize and/or would not cooperate with the SC on several other occasions, *see* 081355-01-TR-ET Revised, p.1; 081355-01, min.00:00:01-00:00:08; 081931-03-TR-ET Revised, pp.1, 5; 081931-03, min.00:03:19-00:03:30, 00:06:53-00:07:04; 081979-01-TR-ET Revised, pp.1-2; 081979-01, min. 00:00:37-00:00:52, 00:01:53-00:02:05; 081979-05-TR-ET, p.1; 081979-05, min.00:00:25-00:01:38; 082106-05-TR-ET Revised, pp.1-2; 082106-05, min. 00:00:00-00:02:01; 083988-083991 RED, p.083989, para.9; 082010-082013 RED, p.082011, para.5.

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130. During another interview that day, HARADINAJ stated: 'It is their job to keep their secrets safe. It is not my fault that they have involved those illiterate people, that they have involved naive people, and that they have lied to these naïve people of ours that they will protect their secrets. They should have looked after their archives'.³³⁵ HARADINAJ stated: 'we will be against this court as long as we live, as long as we can breathe. Full stop. We will work against this court. Full stop [...] We were handed them over by a person who delivered them to us. God willing, he will bring us more', adding that this did not mean that it would be only HARADINAJ, GUCATI or KLINAKU who would provide the documents to the media, since even the lowest ranked KLA member would do so, and that: '[w]e will disclose them to the media.'³³⁶

c. The Accused and others had reviewed the documents prior to making them public

131. The Accused and others publicly acknowledged having reviewed the documents before making them public and displayed a high degree of familiarity with the contents thereof, with a particular affinity for the names of persons mentioned therein.

132. During the First Press Conference, GUCATI stated that HARADINAJ had looked at and analysed the First Disclosure with 'Faton', referring to KLINAKU, and other persons.³³⁷ HARADINAJ stated they had noticed a lot of things in the documents.³³⁸ He also stated that it seemed to him and others that the documents were genuine.³³⁹

133. During a television programme which aired on 7 September 2020 after the First Press Conference, GUCATI stated that he and others had not been able to go through

³³⁵ 081931-04-TR-ET Revised 1, p.2; 081931-04, min.00:03:24-00:04:59.

³³⁶ 081931-04-TR-ET Revised 1, p.2; 081931-04, min.00:03:24-00:04:59.

³³⁷ 081344-01-TR-ET Revised 1, p.1; 081344-01, min.00:00:01-00:01:22.

³³⁸ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30.

³³⁹ 081344-01-TR-ET Revised 1, pp.4-5; 081344-01, min.00:09:43-00:11:21.

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all the documents but that he and others had looked at them and handed them over to some of the media.³⁴⁰

134. On 9 September 2020, HARADINAJ stated that he and others looked through the documents over a period of four hours and proceeded to provide detailed information on the contents thereof.³⁴¹

135. On 11 September 2020, HARADINAJ again stated that he and others had looked through the documents over a period of four hours, during which time they came across names of witnesses and former witnesses.³⁴²

136. On 16 September 2020, HARADINAJ stated that he and others looked through the First Disclosure for three hours, during which time he and others got what they needed.³⁴³

137. On 17 September 2020, HARADINAJ stated that the KLA WVA had time to read the documents that the unknown person had brought them.³⁴⁴

138. On 20 September 2020, HARADINAJ stated that he read the Second Disclosure as much as he could during the KLA WVA's office hours.³⁴⁵

139. Immediately prior to the Third Press Conference, GUCATI and others read passages from the documents they had just received.³⁴⁶ During the Third Press Conference, GUCATI stated that HARADINAJ had read the Third Disclosure for about 30 minutes.³⁴⁷

³⁴⁰ 081358-01-TR-ET, p.6-; 081358-01, min.01:01:00-01:02:33.

³⁴¹ 081991-01-TR-ET Revised 1, pp.7-8; 081991-01, min.00:13:22-00:13:47, 00:14:24-00:15:51; *See also* SPOE00220813-0020813 (SPOE00220813-SPOE0020813-ET).

³⁴² 081979-11-TR-ET Revised, pp.4-5; 081979-11, min.00:07:17-00:11:53.

³⁴³ 081979-07-TR-ET, pp.3-4; 081979-07, min.25:32-26:20.

³⁴⁴ 082106-06-TR-ET Revised 2, p.3; 082106-06, min.00:05:02-00:07:52.

³⁴⁵ 081355-04-TR-ET-Revised 2, p.9; 081355-04, min.00:37:46-00:37:48.

³⁴⁶ 093457-093458 (093457-093458-ET).

³⁴⁷ 082136-01-TR-ET Revised, p.2; 082136-01, min.00:03:15-00:06:04.

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140. On 22 September 2020, GASHI acknowledged that GUCATI, HARADINAJ and others looked through the documents referred to during the three press conferences ‘for their own purposes’.³⁴⁸

141. The above further illustrates that the Accused and others were by no means ignorant of the specific content of the documents they chose to make public. Rather, they reviewed the information therein and chose to disseminate it because of its content.

d. The documents which the Accused made public were marked confidential [REDACTED]

142. Given the time the Accused spent pouring over and showing off the documents they made public, it would be implausible to believe that they did not notice the numerous markings indicating confidentiality [REDACTED].

143. Most Requests included in Batch 1 are composed of a cover letter and annexes, expressly referred to in the cover letter as ‘confidential’ annexes.³⁴⁹ Other Requests and documents contained in Batch 1, including correspondence concerning logistical arrangements to carry out interviews, expressly refer to the confidentiality of the SITF investigations.³⁵⁰

144. Specific markings on numerous documents included in Batch 1, as well as the nature of the information contained therein, make the confidential nature of Batch 1 unmistakably apparent.³⁵¹ The indicia of confidentiality included: (i) the appearance of logos and/or letterheads of the SITF and various Serbian authorities; (ii) references to case numbers; (iii) Serbian War Crimes Prosecutor’s Office (‘WCPO’) stamps of receipt; (iv) various markings, including abbreviations, reading ‘Confidential’ or

³⁴⁸ 081931-01-TR-ET, p.3; 081931-01, min.00:07:18-00:08:24.

³⁴⁹ 084015-084026, p.084016, para.8; 093492-093590, p.093492, paras 3-4, Annexes 1-2.

³⁵⁰ 084015-084026, p.084016, para.8; 091791-091792, p.091791, para.7; 093492-093590, p.093492, paras 3-4, Annexes 1-2.

³⁵¹ 093492-093590, p.093492, paras 3-4, Annexes 1-2.

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‘Strictly Confidential’ in English and Serbian; (v) signatures of the SITF (Acting) Lead Prosecutor, SITF Deputy Lead Prosecutor, Serbian officials and judicial authorities; and (vi) lists of witnesses marked ‘CONFIDENTIAL’. Some of these indicia are included in the images of documents from Batch 1 published online following the First Disclosure.³⁵²

145. In the six pages of Batch 2 which are not publicly available judgements and related records, there are cover letters of Requests that refer to annexes qualified as confidential, not included in Batch 2.³⁵³ Serbian Documents included in Batch 2, in the Serbian language, include confidential information.³⁵⁴ The following indicia further establish the confidential nature of these six pages in Batch 2:³⁵⁵ (i) the appearance of logos and/or letterheads of the SITF and the Serbian Ministry of Interior; (ii) references to case numbers; (iii) official stamps of receipt by Serbian authorities; (iv) signatures of the SITF (Acting) Lead Prosecutor and Serbian officials; and (v) references to the confidentiality of the investigation.

146. Most of the 489 pages contained in Batch 3 display an unmistakable header and a footer; the header of Batch 3 includes the symbol of the SPO and the wording ‘Specialist Prosecutor’s Office’ as well as the wording ‘CONFIDENTIAL, [REDACTED]’; the footer includes the word ‘Confidential’.³⁵⁶ Full and partial versions

³⁵² Compare: (i) 093492-093590, Annex 2(a) with 081361-081378, pp.081362, 081365-081367, and 081915-081919, pp.081915-081916, 081918-081919; (ii) Annex 2(b) with 081361-081378, p.081362, and 081915-081919, pp.081918-081919.

³⁵³ 084015-084026, pp.084018-084019, paras 23, 25; 093492-093590, pp.093492-093493, paras 5-6, Annexes 3-4.

³⁵⁴ 084015-084026, p.084019, paras 26-27; 093492-093590, pp.093492-093493, paras 5-6, Annexes 3-4. During the First Press Conference, HARADINAJ noted that the documents in the First Disclosure were in English and Serbo-Croatian and that he understands some English and can read Serbo-Croatian very well, 081344-01-TR-ET Revised 1, pp.4-5; 081344-01, min.00:09:43-00:11:21. GUCATI stated that he knew the Serbian crest and stamp in the Cyrillic language well and that he can still read the Serbian language a little bit, 081358-01-TR-ET, p.6; 081358-01, min.01:01:00-01:02:33.

³⁵⁵ 093492-093590, pp.093492-093493, paras 5-6, Annexes 3-4.

³⁵⁶ 084015-084026, p.084021, para.35; 093492-093590, pp.093493-093495, paras 7-10, Annex 5.

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of these headers and/or footers are included in several images of documents from Batch 3 published online following the Third Disclosure.³⁵⁷

e. The Accused publicly characterised the documents which they made public as confidential

147. The Accused themselves characterised the documents which they made public as confidential, or otherwise used language indicating they were fully aware of the sensitive nature of the documents they chose to disseminate.

148. During the First Press Conference, HARADINAJ pointed to the documents and stated: '[h]ere are the names of all the witnesses who they say are under their protection. All of them.'³⁵⁸ He also referred to the documents as 'confidential' and 'top secret'.³⁵⁹

149. On 17 September 2020, HARADINAJ appeared on a television programme where he described the documents as 'sensitive documents for The Hague Tribunal which cooperates with Serbia, but not for me [...] They're not at all sensitive to me.'³⁶⁰

³⁵⁷ Compare: (i) 093492-093590, Annex 5(a) with 081381-081391 (pp.081384, 081386-081391), 081395-081404 (pp.081395-081404), 081414-081422 (pp.081414, 081416-081421), SPOE00220819-00220826 (pp.SPOE00220824-SPOE00220825), SPOE00220830-00220837 (pp.SPOE00220835-SPOE00220836), SPOE00220845-00220850 (pp.SPOE00220846-SPOE00220850), SPOE00220851-00220857 (pp.SPOE00220852-SPOE00220855), SPOE00220858-00220865 (pp.SPOE00220859-SPOE00220860, SPOE00220862-SPOE00220863), SPOE00220866-00220871 (pp.SPOE00220867-SPOE00220868, SPOE00220870-SPOE00220871), SPOE00220873-00220878 (pp.SPOE00220875-SPOE00220878), SPOE00220879-00220885 (pp.SPOE00220881-SPOE00220882); (ii) 093492-093590, Annex 5(b)(2) with 081381-081391 (pp.081384-081385), SPOE00220819-00220826 (p.SPOE00220824), SPOE00220827-00220829 (SPOE00220828), SPOE00220851-00220857 (p.SPOE00220855), SPOE00220858-00220865 (p.SPOE00220863), SPOE00220866-00220871 (p.SPOE00220871), SPOE00220886-00220888 (p.SPOE00220887); and (iii) 093492-093590, Annex 5(c) with 081395-081404 (pp.081399-081400, 081402, 081404), 081414-081422 (pp.081414, 081417-081418, 081421), SPOE00220819-00220826 (p.SPOE00220824), SPOE00220830-00220837 (p.SPOE00220835), SPOE00220845-00220850 (pp.SPOE00220846, SPOE00220848-SPOE00220850), SPOE00220851-00220857 (p.SPOE00220852), SPOE00220858-00220865 (p.SPOE00220859), SPOE00220866-00220871 (p.SPOE00220867), SPOE00220873-00220878 (pp.SPOE00220875-SPOE00220876, SPOE00220878), SPOE00220879-00220885 (p.SPOE00220881).

³⁵⁸ 081344-01-TR-ET Revised 1, p.2; 081344-01, min.00:01:26-00:06:30.

³⁵⁹ 081344-01-TR-ET Revised 1, p.3; 081344-01, min.00:06:31-00:09:09.

³⁶⁰ 081355-02-TR-ET Revised 1, p.20; 081355-02, min.00:39:29-00:39:36.

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On the same day, HARADINAJ also stated that the documents ‘have their original seal’ and that they read ‘Top Secret’.³⁶¹

150. On 19 September 2020, HARADINAJ referred to the files provided to, and made public by, the KLA WVA as ‘a basis for the indictment against the boys of the war’, and referred to them as confidential.³⁶²

151. On 20 September 2020, HARADINAJ referred to the documents as having been taken from secret storage.³⁶³

152. On 21 September 2020 at 08:21, GUCATI published a post on his Facebook profile in which he stated that the files handed over to the KLA WVA were official documents of the SC which included the names of the majority of witnesses; he referred to the documents as emerging from the SC's offices and as ‘very confidential and sensitive’.³⁶⁴

153. On 22 September 2020, GUCATI stated that the documents contained official stamps, reference numbers, signatures of international prosecutors, and stamps and the emblem of the SC.³⁶⁵

154. On 22 September 2020, GASHI noted that the material forming part of the Third Disclosure ‘is genuine’ and ‘seems to be of a very sensitive nature and relates to the criminal investigation of people who’ve been subject to investigations by the Court for many years.’³⁶⁶

³⁶¹ 081979-08-TR-ET, p.2; 081979-08, min.00:02:48-00:04:05.

³⁶² 081979-05-TR-ET, p.2; 081979-05, min.00:02:10-00:06:38, 00:18:58-00:19:24.

³⁶³ 081355-04-TR-ET-Revised 2, p.24; 081355-04, min.00:49:08-00:49:27.

³⁶⁴ 081983-081988; 081983-081988-ET Revised, pp.081983-081986.

³⁶⁵ 082106-01-TR-ET, p.14; 082106-01, min.00:17:50-00:19:36.

³⁶⁶ 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

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155. On a number of occasions, GUCATI,³⁶⁷ HARADINAJ,³⁶⁸ KLINAKU,³⁶⁹ and GASHI³⁷⁰ stated that the documents included the names and details of witnesses that they and/or the press were not permitted to make public. However, as demonstrated above, the Accused did not heed the warnings they and others made in this regard, at times disclosing such information only to deny having done so moments later.³⁷¹ Their lip service to this principle can only be construed as a desperate attempt to distance themselves from what they knew to be criminal conduct.

f. The Accused expressly acknowledged the potential consequences of their actions

156. The Accused did not merely publicly express their intention to obstruct the work of the SC/SPO through their actions, review the information, which was clearly marked as confidential, prior to disseminating it, and publicly characterise the information as confidential. They, and others, also expressly acknowledged the potential consequences of their deliberate actions, both to witnesses and the judicial process, accepting that witnesses' lives may be imperilled and that the judicial process may be damaged. They also acknowledged the risks to themselves, recognising that their actions may lead to their incarceration.

157. During a television programme which aired mere hours after the First Press Conference at which HARADINAJ, in GUCATI's presence, specifically named several witnesses, GUCATI stated: '[w]e wouldn't release the names and you know why we

³⁶⁷ 082136-01-TR-ET Revised, pp.1-2; 082136-01, min.00:03:15-00:06:04; *See also* 082106-01-TR-ET, pp.1-3; 082106-01, min.00:00:00-00:03:08.

³⁶⁸ 081344-02-TR-ET Revised, pp.2-4; 081344-02, min.00:02:40-00:09:49; 081979-07-TR-ET, p.3; 081979-07, min.24:45-25:32; 082106-03-TR-ET, pp.8-9, 21-22; 082106-03, min.00:08:22-00:09:39, 00:25:41-00:26:44.

³⁶⁹ 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

³⁷⁰ 081347-01-TR-ET Revised, pp.3-9; 081347-01, min.00:04:00-00:07:52, 00:08:25-00:11:45, 00:14:32-00:15:21, 0:17:40-00:20:04; 081355-03-TR-ET Revised 1, p.4; 081355-03, min.00:07:39-00:08:25; 081931-01-TR-ET, p.3; 081931-01, min.00:07:18-00:08:24. Erroneously, GASHI also stated that, on the other hand, publishing communication between institutions does not constitute a criminal offence at all and no one is forbidden from publishing it, 081355-03-TR-ET Revised 1, pp.14-15; 081355-03, min.00:25:12-00:25:38.

³⁷¹ Seconds after HARADINAJ mentioned [REDACTED] on a television programme, another guest noted it would be problematic if protected witnesses were named, to which HARADINAJ responded by stating that he and others had not named any witnesses nor will they do so, 081358-03-TR-ET Revised, p.30; 081358-03, min.00:39:20-00:40:08.

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wouldn't release the names, because I don't know people, even if I was to see the name I wouldn't know them', adding there was a wide-range of people, including Serbs, Roma and Turks, and that '[t]here are witness names and interviews'.³⁷² Asked whether it was a good idea for him to have published the documents, GUCATI stated he believed that it was and that it was discussed with the committee and other people.³⁷³ When the presenter noted that things could happen because the documents contained names, GUCATI responded that this could happen.³⁷⁴

158. On 9 September 2020, HARADINAJ stated that if he was to receive this kind of material again, he would make it public and that even if the KLA WVA were to violate a law, it was the KLA WVA's duty to do everything to show that the SC is not correct because it is racist and selective.³⁷⁵

159. During an interview on 16 September 2020, in response to a question as to whether he was aware that what was happening could damage the judicial process, HARADINAJ stated that that is what he would like to happen.³⁷⁶

160. During the seizure of Batch 2, HARADINAJ stated that he was aware that publishing the witnesses' names may imperil their lives.³⁷⁷

161. On 18 September 2020, GASHI noted that he and others knew that the documents could be used to intimidate certain persons and that misuse of the documents constitutes a criminal offence, but this was not GASHI's business.³⁷⁸

³⁷² 081358-01-TR-ET, pp.6-7; 081358-01, min.01:01:00-01:02:33.

³⁷³ 081358-01-TR-ET, pp.8-9; 081358-01, min.01:03:52-01:05:00.

³⁷⁴ 081358-01-TR-ET, p.8; 081358-01, min.01:03:52-01:05:00.

³⁷⁵ 081991-01-TR-ET Revised 1, p.8; 081991-01, min.00:13:54-00:15:51.

³⁷⁶ 081979-07-TR-ET, pp.5-6; 081979-07, min.28:52-29:38.

³⁷⁷ 082010-082013 RED, pp.082011-082012, para.9.

³⁷⁸ 081355-03-TR-ET Revised 1, pp.8-9; 081355-03, min.00:15:33-00:16:08.

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162. On 20 September 2020, HARADINAJ stated that he did not recognize the Special Court and he would feel proud and honoured if he were to be arrested for his actions.³⁷⁹

163. On 21 September 2020 GUCATI published a post on his Facebook profile in which he stated that the publication of the files was a sensitive issue, that the files include statements made by witnesses against the KLA, and that the people who chose to hand the files over to the KLA WVA meant to burden it with a great responsibility but that the KLA WVA was not there to remedy anyone's mistakes.³⁸⁰

164. During the Third Press Conference, when it was noted that publication of the documents is prohibited by law and carries a sentence of up to 10 years' imprisonment, HARADINAJ responded that he did not know as much.³⁸¹ When the person asking the latter question stated that this is what the SC's law stated, HARADINAJ responded: 'In which case I will end up in prison, too',³⁸² later adding: 'You think you will scare me with ten years! Even if you sentence me to 300 years, I will still disclose them. I am speaking on my behalf and on the behalf of the whole presidium [...] We are ready to face 300 years [...] We are ready to die.'³⁸³

165. During a television programme which aired on 22 September 2020, HARADINAJ stated the KLA WVA did not publish the documents because the media is 'the fourth force in this country', to which the programme's presenter responded by saying publishing the documents would be against the law, prompting HARADINAJ to ask whether he should publish them and whether the presenter wanted him to break the law.³⁸⁴

³⁷⁹ 081991-02-TR-ET, pp.1-2; 081991-02, min.00:01:01-00:04:03.

³⁸⁰ 081983-081988; 081983-081988-ET Revised, pp.081983-081986.

³⁸¹ 082136-01-TR-ET Revised, p.12; 082136-01, min.00:24:06-00:24:10.

³⁸² 082136-01-TR-ET Revised, p.12; 082136-01, min.00:24:11-00:24:15.

³⁸³ 082136-01-TR-ET Revised, p.13; 082136-01, min.00:24:44-00:25:16.

³⁸⁴ 081358-03-TR-ET Revised, pp.28-29; 081358-03, min.00:37:46-00:38:13.

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166. On 22 September 2020, GUCATI, clearly lying while increasingly aware of the consequences of his actions, stated that it was unfair that he and others were accused of trying to undermine the administration of justice and that he and others have protected every name included in the documents and made sure they were well-protected.³⁸⁵ He stated that he and others know that they have not done anything against the law because they have not announced the name and surname of the witnesses, they only showed the documentation.³⁸⁶

167. Asked whether he had a responsibility in relation to what happened in view of the fact that he made the documents public, GUCATI stated he and others were not responsible because they have not made public any of the names of witnesses and made no statements about what was written in the documents.³⁸⁷ Asked whether he would have any regrets about publishing the documents if he were to face punishment as a consequence, GUCATI stated he would not have any regrets even if he were to be imprisoned for five years.³⁸⁸ GUCATI stated that he and others do not know how the SC could accuse them or serve them with indictments because they have not made the names of any witnesses public.³⁸⁹

g. SC and SPO Orders notified the Accused that the information they were making public was sensitive and non-public, and should not be further disseminated

168. The Accused's review of the documents, the explicit references to confidentiality contained therein, their own characterisation of the documents as confidential, and the warnings from journalists that their actions were criminal, were by no means the only avenues through which the Accused were informed that the information they were making public was sensitive and non-public and should not be

³⁸⁵ 082106-01-TR-ET, pp.1-2; 082106-01, min.00:00:00-00:03:08.

³⁸⁶ 082106-01-TR-ET, p.2; 082106-01, min.00:00:00-00:03:08.

³⁸⁷ 082106-01-TR-ET, p.11; 082106-01, min.00:13:16-00:14:47.

³⁸⁸ 082106-01-TR-ET, p.12; 082106-01, min.00:14:47-00:16:12.

³⁸⁹ 082106-01-TR-ET, pp.12-13; 082106-01, min.00:16:12-00:17:50.

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further disseminated. The orders served at the KLA WVA on 8,³⁹⁰ 17³⁹¹ and 22³⁹² September 2020 directly stated this.

169. Although it was KLINAKU who was present when Batch 1 was seized and the First Order was served,³⁹³ within hours, HARADINAJ was made aware of the seizure and provided with a copy of the document KLINAKU signed acknowledging the seizure of documents, which HARADINAJ published on his Facebook profile.³⁹⁴ The following day, HARADINAJ also posted an image of the certified copy of the First Order, classified as Strictly Confidential and *Ex Parte*, on his Facebook profile.³⁹⁵

170. Both Accused were present when Batch 2 was seized and the Second Order was served, with GUCATI signing the document acknowledging the seizure.³⁹⁶ Following this seizure, GUCATI acknowledged that SPO staff members had served him with a copy of the Second Order and that the staff members told him that these documents could not be multiplied or distributed and that the names of witnesses could not be published.³⁹⁷ HARADINAJ acknowledged that during the seizure of Batch 2, SPO representatives confirmed the sensitivity of the seized material.³⁹⁸

171. During a televised interview on 19 September 2020, HARADINAJ showed a certified version of the Second Order, which was classified as Strictly Confidential and *Ex Parte*, to the camera, along with an SPO document acknowledging receipt of the

³⁹⁰ 091971-091980; 092028-092038.

³⁹¹ 092017-092027; 091981-091991.

³⁹² SPOE00220914-00220914.

³⁹³ 083988-083991 RED; *See also* KSC-BC-2020-07/F00008.

³⁹⁴ SPOE00220798-00220798 (SPOE00220798-SPOE00220798-ET Revised); SPOE00220799-00220799 (SPOE00220799-SPOE00220799-ET Revised).

³⁹⁵ SPOE00222202-00222288, p.SPOE00222202.

³⁹⁶ 082010-082013 RED, p.082012, paras 10, 12-13; 079500-079500; *See also* KSC-BC-2020-07/F00028.

³⁹⁷ 081347-01-TR-ET Revised, pp.3, 8; 081347-01, min.00:02:27-00:03:57, 00:16:42-00:17:19.

³⁹⁸ 082106-06-TR-ET Revised 2, p.1; 082106-06, min.00:00:19-00:03:50; 081979-05-TR-ET, pp.1, 4-5; 081979-05, min.00:01:38-00:02:06, 00:06:48-00:11:44; 081979-09; 081355-03-TR-ET Revised 1, p.3; 081355-03, min.00:01:20-00:01:58, 00:03:22-00:04:38. Later that day, HARADINAJ posted a link to this interview on his Facebook profile, *see* SPOE00220724-00220752, p.SPOE00220739 (SPOE00220724-SPOE00220752-ET, p.SPOE00220739).

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seized material,³⁹⁹ and, referring to the Second Order, acknowledged that it included an obligation for HARADINAJ and others not to publish, adding ‘we do not need to publish them. We’ve given it out to those who can publish it. It is now up to them to publish it or not.’⁴⁰⁰

172. Both Accused were also present when Batch 3 was seized and the SPO Order was served, with HARADINAJ signing a document acknowledging the seizure.⁴⁰¹

B. The Accused, by participating in the common action of a group, obstructed official persons in performing official duties (Count 2)

173. The evidence set out in the Statement of Facts,⁴⁰² including as elaborated in Counts 1 and 3-6,⁴⁰³ also establishes that between at least 7 and 25 September 2020, the Accused participated in a group of persons, composed of the Accused, KLINAKU, GASHI and others, including other members and representatives of the KLA WVA, whose common action obstructed or attempted to obstruct one or more official persons in performing official duties.

174. This evidence shows that, in their capacities as chairman and deputy chairman, respectively, of the KLA WVA,⁴⁰⁴ GUCATI and HARADINAJ coordinated and organised the group in taking these actions, which were carried out against SPO officials, including Prosecutors, Investigators and other staff members, during an exercise of their official functions, specifically the SPO’s ongoing criminal investigations. The actions of the group were also against SC officials, including judges and others.

³⁹⁹ 081979-05, min.00:12:44-00:15:00; See 079500-079500; 092017-092027; 092028-092038.

⁴⁰⁰ 081979-05-TR-ET, p.6; 081979-05, min.00:13:25-00:13:47.

⁴⁰¹ 082014-082016; SPOE00220915-00220915; See also KSC-BC-2020-07/F00010/A01.

⁴⁰² See Section II.

⁴⁰³ See Section III A, C-F.

⁴⁰⁴ See, e.g. 081344-01-TR-ET Revised 1, pp.7-8; 081344-01, min.00:14:48-00:15:02; 081344-02-TR-ET Revised, pp.1-2; 081344-02, min.00:00:01-00:02:31; 081347-01-TR-ET Revised, p.2; 081347-01, min.00:02:00-00:02:26.

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175. In particular, the Accused, KLINAKU, GASHI and others were involved in reviewing the First, Second and Third Disclosures.⁴⁰⁵ The Accused, KLINAKU and others took part in organising the First, Second and/or Third Press Conferences at which they made the First, Second and Third Disclosures public.⁴⁰⁶ The Accused spoke at the press conferences, which were also attended by other members of the KLA WVA sitting next to them as they addressed those in attendance.⁴⁰⁷ One or more of the Accused, KLINAKU and GASHI, at times jointly, represented the KLA WVA at over fifteen media appearances concerning the First, Second and/or Third Disclosure,⁴⁰⁸ including appearances by the Accused when the Confidential Information was disseminated further.⁴⁰⁹

176. The Accused and GASHI publicly praised the unidentified sources who provided the documents to the KLA WVA and/or welcomed future disclosures from such sources.⁴¹⁰ Further, the Accused repeatedly threatened to continue disseminating

⁴⁰⁵ 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:00:01-00:06:30; 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:07:17-00:11:53; 081355-04-TR-ET-Revised 2, p.9; 081355-04, min.00:37:46-00:37:48; 082136-01-TR-ET Revised, pp.1-2; 082136-01, min.00:03:15-00:06:03; 081355-03-TR-ET Revised 1, pp.3-5; 081355-03, min.00:04:59-00:08:25.

⁴⁰⁶ *See, e.g.* 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:00:01-00:06:30; 082014-082016, p.082015, para.9; 081344-02-TR-ET Revised, pp.1-4; 081344-02, min.00:00:01-00:09:49; 093457-093458 (093457-093458-ET); 082136-01-TR-ET Revised, pp.1-3; 082136-01, min.00:03:15-00:10:28.

⁴⁰⁷ *See* 081344-01-TR-ET Revised 1; 081344-01; 081344-02-TR-ET Revised; 081344-02; 082136-01-TR-ET Revised; 082136-01.

⁴⁰⁸ 081358-01-TR-ET; 081358-01; 081931-02-TR-ET Revised; 081931-02; 081991-01-TR-ET Revised 1; 081991-01; 081979-11-TR-ET Revised; 081979-11; 081979-07-TR-ET; 081979-07; 081347-01-TR-ET Revised; 081347-01; 082106-06-TR-ET Revised 2; 082106-06; 081979-08-TR-ET; 081979-08; 081355-03-TR-ET Revised 1; 081355-03; 081979-05-TR-ET; 081979-05; 081355-04-TR-ET-Revised 2; 081355-04; 081931-01-TR-ET; 081931-01; 081358-03-TR-ET Revised; 081358-03; 082106-03-TR-ET; 082106-03; 081981-02-TR-ET Revised; 081981-02; 081991-04-TR-ET; 081991-04; 081991-03-TR-ET Revised; 081991-03.

⁴⁰⁹ 081358-01-TR-ET, pp.5-8; 081358-01, min.00:59:42-01:03:52; 081991-01-TR-ET Revised 1, p.8; 081991-01, min.00:14:24-00:15:51; 081979-07-TR-ET, pp.2-3; 081979-07, min.09:30-11:01; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081358-03-TR-ET Revised, pp.29-30; 081358-03, min.00:39:20-00:39:58.

⁴¹⁰ 081355-02-TR-ET Revised 1, p.4; 081355-02, min.00:24:40-00:25:12; 081355-04-TR-ET-Revised 2, pp.3-4; 081355-04, min.00:32:59-00:33:30; 082136-01-TR-ET Revised, pp.2-3, 8; 082136-01, min.00:06:54-00:10:28, 00:19:14-00:19:30; 081991-01-TR-ET Revised 1, pp.7-8; 081991-01, min.00:13:54-00:15:51; 082106-07-TR-ET Revised, p.2; 082106-07, min.00:06:24-00:08:04; 082106-01-TR-ET, pp.12-13; 082106-01, min.00:16:12-00:17:50; 082106-04-TR-ET Revised, p.2; 082106-04, min.0:28:46-0:30:37; 081355-03-TR-ET Revised 1, pp.4-5; 081355-03, min.00:08:26-00:09:47.

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information of confidential investigations, including witness identities, and to obstruct the mandate of the SC/SPO.⁴¹¹ The Accused and GASHI made disparaging comments about, and/or threats in relation to, witnesses.⁴¹²

177. The evidence set out above⁴¹³ establishes that the Accused were aware of, and desired to, participate in a group in order to obstruct official persons in performing official duties; alternatively, the Accused were aware that, as a result of participation in the group, this prohibited consequence might ensue, and they acceded to the occurrence of this prohibited consequence. KLINAKU⁴¹⁴ and GASHI⁴¹⁵ also made it clear that their intent mirrored that of the Accused.

C. The Accused intimidated witnesses during criminal proceedings (Count 3)

178. The evidence set out in the Statement of Facts,⁴¹⁶ including as further elaborated in relation to Counts 1-2 and 4-6,⁴¹⁷ also establishes that between at least 7 and 25 September 2020, the Accused and Associates, including KLINAKU and GASHI, used serious threats 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 SC.

⁴¹¹ 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:06:03-00:06:55, 00:09:41-00:11:53; 081344-02-TR-ET Revised, pp.2-4; 081344-02, min.00:02:40-00:09:49; 081347-01-TR-ET Revised, p.3; 081347-01, min.00:02:27-00:03:57; 081355-04-TR-ET-Revised 2, p.6; 081355-04, min.00:32:59-00:34:11; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:03:15-00:11:45; 081991-03-TR-ET Revised, pp.4-5; 081991-03, min.00:09:29-00:10:50.

⁴¹² 081344-01-TR-ET Revised 1, pp.2-6; 081344-01, min.00:01:26-00:09:09, 00:11:27-00:13:16; 081358-01-TR-ET, pp.10-14; 081358-01, min.01:06:42-01:10:49; 081355-04-TR-ET-Revised 2, pp.7, 26; 081355-04, min.00:34:48-00:35:22, 00:50:33-00:51:07; 081355-03-TR-ET Revised 1, pp.5-6; 081355-03, min.00:09:48-00:10:22.

⁴¹³ See Section III A(i).

⁴¹⁴ 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

⁴¹⁵ 081355-03-TR-ET Revised 1, pp.3-6, 16-17; 081355-03, min.00:04:59-00:08:25, 00:27:52-00:28:49, 00:29:03-00:30:22; 081931-01-TR-ET, pp.2, 4-6; 081931-01, min. 00:01:31-00:04:33, 00:09:45-00:13:18.

⁴¹⁶ See Section II.

⁴¹⁷ See Section III A-B, D-F.

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179. In particular, the Accused announced that documents including names, personal details and previous statements of SPO witnesses had been made available to the press.⁴¹⁸ They referred to specific witness names and locations of residence, along with other personal details,⁴¹⁹ and made it clear that the documents they were making public contained this information⁴²⁰ and that, now, persons will find out who these witnesses are.⁴²¹ This threat was also echoed by GASHI.⁴²²

180. The Accused's public assertions that they had recognized several of the names contained in the documents⁴²³ were clearly intended to put anyone who cooperated with the SPO and may be known to the Accused on notice that their cooperation was now known. These assertions must be understood in the context of the Accused's roles as the leaders of the KLA WVA in which capacity they no doubt know hundreds of former KLA members. Indeed, HARADINAJ stated that he and others were making public the names, surnames, and former and current places of residences of persons who gave statements 'so it is known',⁴²⁴ and that the First Disclosure was intended to make it clear to witnesses that, rather than being protected, they would be exploited,

⁴¹⁸ 081344-01-TR-ET Revised 1, pp.1-6; 081344-01, min.00:01:26-00:06:30, 00:09:43-00:13:16; 082136-01-TR-ET Revised, pp.1-3, 5-7; 082136-01, min.00:03:15-00:10:28, 00:15:30-00:16:18. KLINAKU and GASHI confirmed that the KLA WVA had provided documents to the media, 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49; 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

⁴¹⁹ 081344-01-TR-ET Revised 1, pp.2-3; 081344-01, min.00:01:26-00:06:30; 081344-02-TR-ET Revised, pp.1-3; 081344-02, min.00:00:01-00:02:31; 081979-07-TR-ET, p.3; 081979-07, min.24:45-25:32; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081979-08-TR-ET, pp.1, 3-4; 081979-08, min.00:00:13-00:01:49, 00:06:33-00:08:53; 081979-05-TR-ET, pp.2-3; 081979-05, min.00:02:10-00:06:38; 081979-05-TR-ET, pp.6-8; 081979-05, min.00:14:21-00:17:28; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28; 081358-03-TR-ET Revised, p.30; 081358-03, min.00:39:20-00:39:58.

⁴²⁰ 081344-01-TR-ET Revised 1, pp.1-6; 081344-01, min.00:01:26-00:06:30, 00:09:43-00:13:16; 081358-01-TR-ET, pp.6-8; 081358-01, min.01:01:00-01:03:52; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28.

⁴²¹ 081355-04-TR-ET-Revised 2, pp. 26, 30-31; 081355-04, min. 00:50:33-00:51:07, 00:59:42-00:59:50; 081344-01-TR-ET Revised 1, pp.3-4; 081344-01, min.00:06:31-00:09:09.

⁴²² 081355-03-TR-ET Revised 1, pp.5, 8-9; 081355-03, min.00:09:48-00:10:22, 00:15:33-00:16:08; 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

⁴²³ 081358-01-TR-ET, pp.9-10; 081358-01, min.01:05:00-01:06:42. On another televised programme, referring to the files, HARADINAJ stated: 'if it was the name of a person I knew that I read, I knew him. Even when no name was mention I still recognised the person they were talking about. Or I knew the region', 081355-04-TR-ET-Revised 2, p.11; 081355-04, min.00:38:39-00:38:51.

⁴²⁴ 081344-01-TR-ET Revised 1, pp.4-5; 081344-01, min.00:09:43-00:13:16.

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also noting that persons who have provided information have not been protected but have been killed, discredited, or derided.⁴²⁵

181. The Accused and others sought to ensure the maximum possible dissemination of the information they made public and constantly pressured the media to further publish this information.⁴²⁶ During an appearance on a television programme on 17 September 2020, HARADINAJ, told a journalist from Gazeta Infokus, [REDACTED], that this journalist had received the files but did not publish them, so he had not done his job.⁴²⁷ HARADINAJ also told this journalist that he and others would pay this journalist to publish the documents, and, when the journalist noted this would be in breach of the law and one could be imprisoned for doing so, HARADINAJ told him ‘drop that “breach of law” with me. Are you really talking to me about that?’⁴²⁸

182. While appearing as a guest on another television programme, HARADINAJ stated that he dared the media to publish the files and that the KLA WVA had not ‘published’ them because they are a non-governmental organization and thought of the media as the ‘fourth power’ or ‘fourth force’, meaning that the KLA WVA thought the media were more professional, more daring, and had legal protection.⁴²⁹

183. Finally, GUCATI and HARADINAJ made several disparaging remarks and accusations against witnesses, including GUCATI referring to them as ‘Albanian-speaker[s]’ or ‘traitor[s]’ who lie,⁴³⁰ and HARADINAJ describing them as ‘criminals,

⁴²⁵ 081355-04-TR-ET-Revised 2, p.26; 081355-04, min.00:50:33-00:51:07.

⁴²⁶ 082136-01-TR-ET Revised, pp.5-6, 11-13; 082136-01, min.00:14:19-00:15:30, 00:23:40-00:25:41; 081991-01-TR-ET Revised 1, pp.3, 10; 081991-01, min.00:04:44-00:05:37, 00:20:23-00:21:06; 082106-06-TR-ET Revised 2, p.3; 082106-06, min.00:05:02-00:07:52; 081979-08-TR-ET, p.2; 081979-08, min.00:04:24-00:05:16; 081347-01-TR-ET Revised, p.8; 081347-01, min.00:17:26-00:17:40; SPOE00220800-00220800 (SPOE00220800-SPOE00220800-ET); *See also* 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

⁴²⁷ 081355-02-TR-ET Revised 1, p.6; 081355-02, min.00:27:21-00:27:53.

⁴²⁸ 081355-02-TR-ET Revised 1, p.15; 081355-02, min.00:35:33-00:35:48.

⁴²⁹ 081355-04-TR-ET-Revised 2, pp.21-22; 081355-04, min.00:44:46-00:45:53; *See also* 081358-03-TR-ET Revised, pp.4, 28, 31; 081358-03, min.00:05:55-00:07:34, 00:37:46-00:37:58, 00:40:19-00:40:41.

⁴³⁰ 081358-01-TR-ET, pp.6-7, 12-13; 081358-01, min.01:01:00-01:02:33, 01:09:36-01:10:49.

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bloodsuckers⁴³¹ and spies who betrayed their people.⁴³² GUCATI accused witnesses of cooperating in order to obtain documents for asylum purposes.⁴³³

184. GUCATI and HARADINAJ's objectives in carrying out their actions were transparent. They themselves acknowledged that their actions were carried out as part of their efforts to obstruct the work of the SC/SPO.⁴³⁴

185. The evidence set out above⁴³⁵ establishes that the Accused were aware of, and desired 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 SC; alternatively, the Accused were aware that, as a result of their actions, this prohibited consequence might ensue, and that they acceded to the occurrence of this prohibited consequence. KLINAKU's⁴³⁶ and GASHI's⁴³⁷ intent mirrored that of the Accused.

D. The Accused retaliated against witnesses (Count 4)

186. The evidence set out in the Statement of Facts,⁴³⁸ including as further elaborated in relation to Counts 1-3 and 5-6,⁴³⁹ also establishes that between at least 7 and 25 September 2020, the Accused and Associates, including KLINAKU and GASHI, took or attempted to take actions harmful to witnesses with the intent to retaliate for providing truthful information relating to the commission or possible commission of criminal offences to the SPO.

⁴³¹ 081355-04-TR-ET-Revised 2, p.7; 081355-04, min.00:34:48-00:35:22.

⁴³² 081355-04-TR-ET-Revised 2, p.26; 081355-04, min.00:50:33-00:51:07.

⁴³³ 081358-01-TR-ET, pp.10-12; 081358-01, min.01:06:42-01:09:36; *See also* 089185-06-TR-ET, p.1; 089185-06 min.08:01-08:54.

⁴³⁴ *See* Section III A(i)(b).

⁴³⁵ *See* Section III A(i).

⁴³⁶ 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

⁴³⁷ 081355-03-TR-ET Revised 1, pp.5, 8-9; 081355-03, min.00:09:48-00:10:22, 00:15:33-00:16:08.

⁴³⁸ *See* Section II.

⁴³⁹ *See* Section III A-C, E-F.

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187. In particular, for the declared purpose of obstructing the work of the SC/SPO,⁴⁴⁰ during the Three Press Conferences, the over fifteen media appearances concerning the First, Second and/or Third Disclosure that they, KLINAKU and/or GASHI attended, at times jointly, and in posts uploaded to social media, the Accused made accusations against, and disparaging remarks about, witnesses,⁴⁴¹ repeatedly disseminating their identities, personal data, and evidence, and announcing such dissemination,⁴⁴² and repeatedly encouraging others to disseminate such information.⁴⁴³

188. When the presenter of a programme on which GUCATI appeared noted that things could happen because the documents contained names, GUCATI, clearly unperturbed by the potential consequences of his actions, responded that this could happen.⁴⁴⁴

189. The Accused's actions were indeed harmful to witnesses, and infringed the witnesses' fundamental rights, as guaranteed in the Constitution of the Republic of

⁴⁴⁰ See Section III A(i)(b).

⁴⁴¹ 081358-01-TR-ET, pp.6-7, 12-13; 081358-01, min.01:01:00-01:02:33, 01:09:36-01:10:49; 081355-04-TR-ET-Revised 2, pp.7, 26; 081355-04, min.00:34:48-00:35:22, 00:50:33-00:51:07; 081358-01-TR-ET, pp.10-12; 081358-01, min.01:06:42-01:09:36; See also 089185-06-TR-ET, p.1; 089185-06, min.08:01-08:54.

⁴⁴² 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:01:26-00:06:30; 081344-02-TR-ET Revised, pp.1-2; 081344-02, min.00:00:01-00:02:31; 081979-07-TR-ET, p.3; 081979-07, min.24:45-25:32; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081979-08-TR-ET, pp.1, 3-4; 081979-08, min.00:00:13-00:01:49, 00:06:33-00:08:53; 081979-05-TR-ET, pp.6-7; 081979-05, min.00:14:21-00:17:28; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28; 081358-03-TR-ET Revised, p.30; 081358-03, min.00:39:20-00:39:58; See: (i) SPOE00220724-00220752, p.SPOE00220752 (SPOE00220724-SPOE00220752-ET, p.SPOE00220752), 081991-01-TR-ET Revised 1, p.8, 081991-01, min.00:14:24-00:15:51; and (ii) SPOE00220724-00220752, p.SPOE00220731 (SPOE00220724-SPOE00220752-ET, p.SPOE00220731), 081979-05-TR-ET, pp.2-3, 081979-05, min.00:02:10-00:06:38.

⁴⁴³ 082136-01-TR-ET Revised, pp.5-6, 11-13; 082136-01, min.00:14:19-00:15:30, 00:23:40-00:25:41; 081991-01-TR-ET Revised 1, pp.3, 10; 081991-01, min.00:04:44-00:05:37, 00:20:23-00:21:06; 082106-06-TR-ET Revised 2, p.3; 082106-06, min.00:05:02-00:07:52; 081979-08-TR-ET, p.2; 081979-08, min.00:04:24-00:05:16; 081347-01-TR-ET Revised, p.8; 081347-01, min.00:17:26-00:17:40; SPOE00220800-00220800 (SPOE00220800-SPOE00220800-ET); See also 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49; 081355-02-TR-ET Revised 1, p.15; 081355-02, min.00:35:33-00:35:48; 081355-04-TR-ET-Revised 2, pp.21-22; 081355-04, min.00:44:46-00:45:53; 081358-03-TR-ET Revised, pp.4-5; 081358-03, min.00:05:55-00:07:34.

⁴⁴⁴ 081358-01-TR-ET, p.8; 081358-01, min.01:03:52-01:05:00.

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Kosovo and the European Convention on Human Rights. Witnesses felt worried, stressed, unsafe, threatened and/or intimidated in the wake of the Accused's actions.⁴⁴⁵

190. One of the witnesses stated that after learning of the publication of confidential information, he felt panicked and worried about his safety [REDACTED].⁴⁴⁶ Another witness stated that he was afraid for his security and that he was hiding in his own home.⁴⁴⁷ A witness stated that he was very scared about the KLA WVA's publication of confidential documents and that he was sure that this was intended to threaten witnesses.⁴⁴⁸

191. A witness noted that, because of the confidential information being made public, the pool of people who could potentially harm his family has been broadened.⁴⁴⁹ Another witness stated that he was informed by friends that his name was in the confidential documents and that he immediately took measures to enhance his children's safety.⁴⁵⁰ This witness noted that he had started to feel like people were isolating him and his family and that people did not seem to differentiate between witnesses and spies, adding that he felt that his family was endangered.⁴⁵¹ Another witness stated that, since his name featured in the confidential documents, people were looking at him and his family differently [REDACTED].⁴⁵²

⁴⁴⁵ 084008-084010, pp.084008-084009, para.6; *See also* 088301-088301 RED; 090025-090025 RED; 084249-084250 RED; 082102-082103 RED; 089940-089941 RED; 090177-090177 RED; 089946-089947 RED; 089938-089939 RED; 084247-084248 RED; 085880-085883 RED; 084236-084242 RED; 089936-089937 RED; 089953-089954 RED; 089955-089956 RED; 089988-089988 RED; 089991-089992 RED; 090004-090005 RED; 090006-090007 RED; 090052-090053 RED; 090175-090176 RED; 091216-091217 RED; 084303-084303 RED; 092911-092912 RED; 093383-093383 RED; 093386-093387 RED; 093388-093388 RED.

⁴⁴⁶ 084008-084010, p.084009, para.7; 093386-093387 RED.

⁴⁴⁷ 084008-084010, p.084009, para.8; 089946-089947 RED.

⁴⁴⁸ 084008-084010, p.084009, para.9; 090177-090177 RED.

⁴⁴⁹ 084008-084010, p.084009, para.10; 089938-089939 RED.

⁴⁵⁰ 084008-084010, p.084009, para.11; 084247-084248 RED.

⁴⁵¹ 084008-084010, p.084009, para.11; 084247-084248 RED.

⁴⁵² 084008-084010, p.084009, para.12; 085880-085883 RED.

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192. The evidence set out above⁴⁵³ establishes that the Accused were aware of, and desired to, take actions harmful to witnesses to retaliate for providing truthful information relating to the commission or possible commission of criminal offences to the SPO; alternatively, the Accused were aware that as a result of their acts or omissions, this prohibited consequence might ensue, and that they acceded to the occurrence of this prohibited consequence. KLINAKU's⁴⁵⁴ and GASHI's⁴⁵⁵ intent mirrored that of the Accused.

E. The Accused, through unauthorised revelation of secret information disclosed in official proceedings, violated the secrecy of proceedings (Count 5)

193. The evidence set out in the Statement of Facts,⁴⁵⁶ including as further elaborated in relation to Counts 1-4 and 6,⁴⁵⁷ also establishes that between at least 7 and 25 September 2020, the Accused and Associates, including KLINAKU, without

⁴⁵³ See Section III A(i).

⁴⁵⁴ 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49.

⁴⁵⁵ 081355-03-TR-ET Revised 1, pp.5, 8-9; 081355-03, min.00:09:48-00:10:22, 00:15:33-00:16:08.

⁴⁵⁶ See Section II.

⁴⁵⁷ See Section III A-D, F.

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authorisation by the SPO, SC, or any other competent authority, revealed the Confidential Information,⁴⁵⁸ detailed descriptions of which are set out above.⁴⁵⁹

194. In particular, this evidence shows that during the Three Press Conferences, the over fifteen media appearances concerning the First, Second and/or Third Disclosure that they, KLINAKU and/or GASHI attended, at times jointly, and in posts uploaded to social media, the Accused repeatedly made the Confidential Information available, and/or mentioned contents thereof including the identities, personal data, and evidence of witnesses, to members of the press, television viewers and other members of the public.⁴⁶⁰

⁴⁵⁸ In this regard, it is noted that: (i) the SPO has the authority to give 'protected confidential status' to documentation or information (Articles 35(2)(f), 54(8), 61(4) and 62(2) of the Law); (ii) the documents, papers, records and archives of, *inter alia*, the SPO are not public documents of Kosovo and there is no general right of access pursuant to Article 62 of the Law, *see also* Rule 106 of the 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) concerning internal documents; (iii) the SPO has the authority to take necessary measures or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence (Article 23, 35(2)(f) of the Law; *See also* Rule 30 of the Rules); (iv) information providers, including third states and international institutions, may enter into agreements with the SPO, including concerning the confidentiality and use of such information (Article 4(2), 35(2)(d)-(e) of the Law; *See also* Article 58 of the Law; Rule 107 of the Rules); (v) the Single Judge ruled that the First Disclosure and Second Disclosure included sensitive information and are typically non-public (091971-091980, p.091976, para.12; 092028-092038, p.092033, para.12; 092017-092027, p.092022, para.12; 091981-091991, pp.091986-091987, para.12); and (vi) Batch 2 included copies of documents already contained in Batch 1 (084015-084026, pp.084018-084019, paras 22-26; 093492-093590, pp.093492-093493, paras 5-6, Annexes 3-4), for which a specific order of non-disclosure had been issued by the Single Judge on 7 September 2020 (091971-091980; 092028-092038). *See also* KSC-BC-2020-07/F00074, paras 36 (establishing that SPO investigations qualify as 'official proceedings' for the purposes of Article 392(1) of the KCC) and 37 (setting out the definition of 'Protected Information' for the purpose of Article 392(1) of the KCC within the SC legal framework).

⁴⁵⁹ *See* Section II, paras 25-29, 49, 81, and Section III A(i)(d).

⁴⁶⁰ 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:01:26-00:06:30; 081344-02-TR-ET Revised, pp.1-3; 081344-02, min.00:00:01-00:02:31; 081979-07-TR-ET, p.3; 081979-07, min.24:45-25:32; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081979-08-TR-ET, pp.1, 3-4; 081979-08, min.00:00:13-00:01:49, 00:06:33-00:08:53; 081979-05-TR-ET, pp.6-7; 081979-05, min.00:14:21-00:17:28; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:03:15-00:10:28; 081358-03-TR-ET Revised, pp.29-30; 081358-03, min.00:39:20-00:39:58; Section II, paras 55, 59, 66; *See*: (i) SPOE00220724-00220752, p.SPOE00220752 (SPOE00220724-SPOE00220752-ET, p.SPOE00220752), 081991-01-TR-ET Revised 1, p.8, 081991-01, min.00:14:24-00:15:51; and (ii) SPOE00220724-00220752, p.SPOE00220731 (SPOE00220724-SPOE00220752-ET, p.SPOE00220731), 081979-05-TR-ET, pp.2-3; 081979-05, min.00:02:10-00:06:38.

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195. The fact that the Accused were not authorised, by the SPO, SC, or any other competent authority, to reveal the information in the First, Second and Third Disclosures is evident by the immediate action taken by the SC and SPO to stop the further dissemination of the Confidential Information.⁴⁶¹

196. The evidence set out above⁴⁶² establishes that the Accused acted with awareness of, and desire for, revealing the Confidential Information without authorization, or at a minimum, were aware that this prohibited consequence might ensue as a result of their acts or omissions, and that they acceded to the occurrence of this prohibited consequence.

F. The Accused, through unauthorised revelation of the identities and personal data of protected witnesses, violated the secrecy of proceedings (Count 6)

197. The evidence set out in the Statement of Facts,⁴⁶³ including as further elaborated in relation to Counts 1-5,⁴⁶⁴ also establishes that between at least 7 and 25 September 2020, the Accused and Associates, including KLINAKU, without authorisation by the SPO, SC, or any other competent authority, revealed or attempted to reveal, the identities and personal data of witnesses under protection in SC Proceedings and prior criminal proceedings in Kosovo.

198. The identities and personal data of [REDACTED] witnesses included in Batches 1, 2, and 3 were classified and protected as confidential by the SPO.⁴⁶⁵ Documents in Batches 1, 2, and 3 including such information were marked confidential, were stated to refer to confidential investigations, and related to witnesses whose identities,

⁴⁶¹ See Section II, paras 22-24, 47-48, 79-80.

⁴⁶² See Section III A(i).

⁴⁶³ See Section II.

⁴⁶⁴ See Section III A-E.

⁴⁶⁵ 084015-084026.

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personal data, and evidence had previously been classified and treated confidentially by the SITF/SPO.⁴⁶⁶

199. The First Order, *inter alia*, recognised the confidential and non-public nature of the First Disclosure (and Batch 1) and prohibited the further dissemination of the contents of the First Disclosure (and Batch 1), including personal details of witnesses included in the First Disclosure (and Batch 1).⁴⁶⁷ Batch 2 includes copies of six pages, which include the identities of witnesses, already contained in Batch 1⁴⁶⁸ and therefore subject to the First Order.

200. Batch 3 includes the identities of witnesses [REDACTED].⁴⁶⁹

201. Batch 3 includes references to the names, [REDACTED] of witnesses [REDACTED].⁴⁷⁰

202. Batch 3 further includes references to the statements of witnesses and other documents and information provided to the SPO by international organisations and other entities subject to confidentiality and use restrictions.⁴⁷¹ These include the statements of witnesses and documents provided to the SPO subject to conditions that the materials be treated as confidential and used solely for the purpose of investigations and judicial proceedings.⁴⁷² Other information referenced was provided on condition of confidentiality and solely for the purpose of generating new evidence; any other use or disclosure requires provider consent.⁴⁷³

⁴⁶⁶ 084015-084026.

⁴⁶⁷ 091971-091980; 092028-092038.

⁴⁶⁸ 084015-084026, pp.084018-084019, paras 22-26; 093492-093590, pp.093492-093493, paras 5-6, Annexes 3-4.

⁴⁶⁹ 084015-084026, p.084020, para.32; *See also* KSC-BC-2020-05/F00008/RED, KSC-BC-2020-05/F00043/A02, KSC-BC-2020-06/F00139/A02, KSC-BC-2020-06/F00005/RED.

⁴⁷⁰ 084015-084026, p.084020, para.33; SITF00372142-00372153.

⁴⁷¹ 084015-084026, p.084020, para.34.

⁴⁷² 084015-084026, p.084020, para.34.

⁴⁷³ 084015-084026, p.084020, para.34.

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203. The fact that the Accused were not authorized, by the SPO, SC, or any other competent authority, to reveal the information in the First, Second and Third Disclosures is evident by the immediate action taken by the SC and SPO to stop the further dissemination of the Confidential Information.⁴⁷⁴

204. As set out above,⁴⁷⁵ the revelation resulted in serious consequences for the persons under protection, or the criminal proceedings were severely hindered.

205. The evidence set out above⁴⁷⁶ establishes that the Accused acted with awareness of, and desire for, revealing the identity or personal data of witnesses [REDACTED] without authorization, or at a minimum, were aware that this prohibited consequence might ensue, and they acceded to the occurrence of this prohibited consequence. The same evidence also establishes that the Accused must have known or had reason to know they were revealing the identity or personal data of witnesses [REDACTED].

IV. The Accused are individually criminally responsible for their actions

A. The Accused committed the crimes

206. The acts set out above⁴⁷⁷ establish that the Accused, with the required intent,⁴⁷⁸ committed the crimes of obstructing official persons in performing official duties by serious threat (Count 1) and by common action of a group (Count 2), intimidation during criminal proceedings (Count 3), retaliation (Count 4), and violating the secrecy of proceedings through unauthorized revelation of protected information (Count 5) and through the revelation of the identities and personal data of protected witnesses (Count 6).

⁴⁷⁴ See Section II, paras 22-24, 47-48, 79-80.

⁴⁷⁵ See Section III D and fn.281.

⁴⁷⁶ See Section III A(i).

⁴⁷⁷ See Sections II, III.

⁴⁷⁸ See Section III A(i).

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B. The Accused attempted to commit the crimes

207. Insofar as it is ultimately found that the crimes charged in Counts 1-4 and 6 were not completed, or that the elements of the intended offences were not fulfilled, the acts set out above⁴⁷⁹ nevertheless establish that the Accused, with the required intent,⁴⁸⁰ took action toward the commission of these crimes and, as such, attempted to commit them.

C. The Accused committed the crimes jointly

208. The acts set out above⁴⁸¹ establish that the Accused, with the required intent,⁴⁸² together and/or with others, including KLINAKU, GASHI, and other members and representatives of the KLA WVA, participated in, or substantially contributed in any other way to, the commission of the crimes charged in Counts 1, and 3-6.

209. The fact that there was an express or implied agreement to commit a crime is demonstrated by the common purpose, shared by the Accused, KLINAKU, GASHI and others, to obstruct the work of the SC/SPO.⁴⁸³ The express or implied agreement to commit a crime is also demonstrated by the concerted nature of the Accused's actions, established, *inter alia*, by the following acts, which also establish that they participated in the commission of the crimes as charged in Counts 1, and 3-6 or substantially contributed to the commission of the crimes:

- i. reviewing the Confidential Information;⁴⁸⁴

⁴⁷⁹ See Sections II, III A-D, F.

⁴⁸⁰ See Section III A(i).

⁴⁸¹ See Sections II, III A, C-F.

⁴⁸² See Section III A(i).

⁴⁸³ See Section III A(i)(b).

⁴⁸⁴ 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:00:01-00:06:30; 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:07:17-00:11:53; 081355-04-TR-ET-Revised 2, p.9; 081355-04, min.00:37:46-00:37:48; 082136-01-TR-ET Revised, pp.1-2; 082136-01, min.00:03:15-00:06:03; 081355-03-TR-ET Revised 1, pp.3-5; 081355-03, min.00:04:59-00:08:25.

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- ii. deciding and/or partaking in decisions about whether and how to disseminate it;⁴⁸⁵
- iii. organising and partaking in events, including press conferences and public appearances, where Confidential Information was publicly disseminated and discussed;⁴⁸⁶
- iv. disseminating the Confidential Information;⁴⁸⁷
- v. revealing the identities and personal data of witnesses, including protected witnesses;⁴⁸⁸
- vi. making accusations against and disparaging comments about witnesses;⁴⁸⁹

⁴⁸⁵ 081344-01-TR-ET Revised 1, pp.1-6, 8; 081344-01, min.00:00:01-00:09:09, 00:11:27-00:13:16, 00:16:02-00:16:11; 081358-01-TR-ET, pp.6-13; 081358-01, min.01:01:00-01:02:33, 01:03:52-01:06:42, 01:07:54-01:10:49; 081991-01-TR-ET Revised 1, pp.5-6; 081991-01, min.00:07:42-00:08:04, 00:08:42-00:08:58, 00:10:15-00:11:29; 081344-02-TR-ET Revised, pp.1-4; 081344-02, min.00:00:01-00:02:31, 00:02:40-00:09:49; 093457-093458 (093457-093458-ET); 082136-01-TR-ET Revised, pp.1-2, 4; 082136-01, min.00:03:15-00:06:04, 00:12:02-00:12:10.

⁴⁸⁶ 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:00:01-00:06:30; 082014-082016, p.082015, paras 9, 11; 081344-02-TR-ET Revised, pp.1-4; 081344-02, min.00:00:01-00:09:49; 093457-093458 (093457-093458-ET); 082136-01-TR-ET Revised, pp.1-3; 082136-01, min.00:03:15-00:10:28; 081358-01-TR-ET, pp.5-9; 081358-01, min.00:59:42-01:03:52; 081991-01-TR-ET Revised 1, p.8; 081991-01, min.00:14:24-00:15:51; 081979-07-TR-ET, pp.2-3; 081979-07, min.09:30-11:01; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081358-03-TR-ET Revised, pp.29-30; 081358-03, min.00:39:20-00:39:58.

⁴⁸⁷ 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:01:26-00:06:30; 081344-02-TR-ET Revised, pp.1-3; 081344-02, min.00:00:01-00:02:31; 081979-07-TR-ET, p.3; 081979-07, min.09:30-11:01, 24:45-25:32; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081979-08-TR-ET, pp.1, 3-4; 081979-08, min.00:00:13-00:01:49, 00:06:33-00:08:53; 081979-05-TR-ET, pp.6-7; 081979-05, min.00:14:21-00:17:28; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28; 081358-03-TR-ET Revised, pp.29-30; 081358-03, min.00:39:20-00:39:58; Section II, paras 55, 59, 66; *See*: (i) SPOE00220724-00220752, p.SPOE00220752 (SPOE00220724-SPOE00220752-ET, p.SPOE00220752), 081991-01-TR-ET Revised 1, p.8, 081991-01, min.00:14:24-00:15:51; and (ii) SPOE00220724-00220752, p.SPOE00220731 (SPOE00220724-SPOE00220752-ET, p.SPOE00220731), 081979-05-TR-ET, pp.2-3; 081979-05, min.00:02:10-00:06:38.

⁴⁸⁸ 081344-01-TR-ET Revised 1, pp.2-3; 081344-01, min.00:01:26-00:06:30; 081344-02-TR-ET Revised, pp.1-3; 081344-02, min.00:00:01-00:02:31, 00:02:40-00:09:49; 081979-07-TR-ET, p.3; 081979-07, min.24:45-25:32; 082106-06-TR-ET Revised 2, pp.1-2; 082106-06, min.00:00:19-00:03:50; 081979-08-TR-ET, pp.1, 3-4; 081979-08, min.00:00:13-00:01:49, 00:06:33-00:08:53; 081979-05-TR-ET, pp.6-7; 081979-05, min.00:14:21-00:17:28; 082136-01-TR-ET Revised, pp.2-3; 082136-01, min.00:06:54-00:10:28; 081358-03-TR-ET Revised, p.30; 081358-03, min.00:39:20-00:39:58; Section II, paras 55, 59, 66; *See*: (i) SPOE00220724-00220752, p.SPOE00220752 (SPOE00220724-SPOE00220752-ET, p.SPOE00220752), 081991-01-TR-ET Revised 1, p.8, 081991-01, min.00:14:24-00:15:51; and (ii) SPOE00220724-00220752, p.SPOE00220731 (SPOE00220724-SPOE00220752-ET, p.SPOE00220731), 081979-05-TR-ET, pp.2-3; 081979-05, min.00:02:10-00:06:38.

⁴⁸⁹ 081358-01-TR-ET, pp.6-7, 10-13; 081358-01, min.01:01:00-01:02:33, 01:06:42-01:10:49; 081355-04-TR-ET-Revised 2, pp.7, 26; 081355-04, min.00:34:48-00:35:22, 00:50:33-00:51:07.

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- vii. encouraging and advising persons with access to confidential information relating to SPO investigations to continue providing it to the KLA WVA, and promising to continue disseminating such confidential information;⁴⁹⁰ and/or
- viii. encouraging, instructing, and advising members of the media and public to take and/or record, and further disseminate the Confidential Information.⁴⁹¹

210. KLINAKU's participation and/or contribution to the crimes, and his intent, mirrored those of the Accused, having, between 7 and 25 September 2020: (i) reviewed the First Disclosure prior to the First Press Conference;⁴⁹² (ii) represented the KLA WVA, including in interactions with the SPO⁴⁹³ and during television programmes;⁴⁹⁴ (iii) participated in, and/or had knowledge of, the dissemination of, at a minimum, the First Disclosure to members of the media and the encouragement to such media to further disseminate the First Disclosure;⁴⁹⁵ (iv) publicly stated that, as far as he and

⁴⁹⁰ 081355-02-TR-ET Revised 1, p.4; 081355-02, min.00:24:40-00:25:12; 081355-04-TR-ET-Revised 2, pp.3-4; 081355-04, min.00:32:59-00:33:30; 082136-01-TR-ET Revised, pp.2-3, 7-8; 082136-01, min.00:06:54-00:10:28, 00:19:14-00:19:30; 081991-01-TR-ET Revised 1, pp.7-8; 081991-01, min.00:13:54-00:15:51; 082106-07-TR-ET Revised, pp.2-3; 082106-07, min.00:06:24-00:08:04, 00:10:49-00:10:55; 082106-01-TR-ET, pp.12-13; 082106-01, min.00:16:12-00:17:50; 082106-04-TR-ET Revised, p.2; 082106-04, min.0:28:46-0:30:37; 081979-11-TR-ET Revised, pp.3-5; 081979-11, min.00:06:03-00:06:55, 00:09:41-00:11:53; 081344-02-TR-ET Revised, pp.2-4; 081344-02, min.00:02:40-00:09:49; 081347-01-TR-ET Revised, p.3; 081347-01, min.00:02:27-00:03:57.

⁴⁹¹ 082136-01-TR-ET Revised, pp.5-6, 11-13; 082136-01, min.00:14:19-00:15:30, 00:23:40-00:25:41; 081991-01-TR-ET Revised 1, pp.3, 10; 081991-01, min.00:04:44-00:05:37, 00:20:23-00:21:06; 082106-06-TR-ET Revised 2, p.3; 082106-06, min.00:05:02-00:07:52; 081979-08-TR-ET, p.2; 081979-08, min.00:04:24-00:05:16; 081347-01-TR-ET Revised, p.8; 081347-01, min.00:17:26-00:17:40; SPOE00220800-00220800 (SPOE00220800-SPOE00220800-ET); 081355-02-TR-ET Revised 1, pp.6, 15; 081355-02, min.00:27:21-00:27:53, 00:35:33-00:35:48; 081355-04-TR-ET-Revised 2, pp.21-22; 081355-04, min.00:44:46-00:45:53.

⁴⁹² 081344-01-TR-ET Revised 1, pp.1-3; 081344-01, min.00:00:01-00:06:30.

⁴⁹³ 083988-083991 RED, p.083989, para.7; 091927-091930, p.091928, para.10; 081340-081340 (081340-081340-ET); *See also* KSC-BC-2020-07/F00008, para.4.

⁴⁹⁴ 081931-02-TR-ET Revised; 081931-02; 081981-02-TR-ET Revised; 081981-02.

⁴⁹⁵ 083988-083991 RED, p.083989, para.7; 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49; 081981-02-TR-ET Revised, p.6; 081981-02, min.00:10:04-00:10:07; *See also* KSC-BC-2020-07/F00008, para.4.

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others were concerned, the SC does not exist and that he and others never accepted it;⁴⁹⁶ and (v) taken part in organizing, at a minimum, the Third Press Conference.⁴⁹⁷

211. GASHI's participation and/or contribution to the crimes, and his intent, also mirrored those of the Accused, having, between 7 and 25 September 2020: (i) reviewed documents forming part of one or more of the Three Disclosures and publicly acknowledged their sensitive nature;⁴⁹⁸ (ii) publicly asserted that the publication of the Confidential Information means that the judge must think again before deciding whether to confirm the indictment against President THAÇI and others, that he hoped that the leaked documents would help the indictment against President THAÇI not to be confirmed,⁴⁹⁹ and that the documents could be used to attack the credibility of the SC;⁵⁰⁰ (iii) made threats to witnesses during televised appearances by stating that the theory that witnesses cannot be protected in Kosovo was being confirmed and asking whether witnesses are really being protected in The Hague, noting that he and others knew that the documents could be used to intimidate certain persons;⁵⁰¹ (iv) praised the conduct of the unidentified person who took the documents to the KLA WVA;⁵⁰² and (v) publicly reiterated the intentions of the accused and the KLA WVA to reveal any information brought to them, including because they were against the SC.⁵⁰³

D. The Accused agreed to commit the crimes

⁴⁹⁶ 081931-02-TR-ET Revised, p.1; 081931-02, min.00:12:22-00:12:49; *See also* 081981-02-TR-ET Revised, p.7; 081981-02, min.00:10:57-00:11:04.

⁴⁹⁷ 082014-082016, p.082015, para.9.

⁴⁹⁸ 081355-03-TR-ET Revised 1, pp.3-5; 081355-03, min.00:04:59-00:08:25; 081931-01-TR-ET, p.2; 081931-01, min.00:01:31-00:04:33.

⁴⁹⁹ 081355-03-TR-ET Revised 1, pp.16-17; 081355-03, min.00:27:52-00:28:49, 00:29:03-00:30:22; *See also* 081931-01-TR-ET, pp.2-3; 081931-01, min.00:01:31-00:04:33, 00:04:42-00:06:21.

⁵⁰⁰ 081355-03-TR-ET Revised 1, pp.3-5; 081355-03, min.00:04:59-00:09:47.

⁵⁰¹ 081355-03-TR-ET Revised 1, pp.5, 8-9; 081355-03, min.00:09:48-00:10:22, 00:15:33-00:16:08.

⁵⁰² 081355-03-TR-ET Revised 1, pp.4-5; 081355-03, min.00:08:26-00:09:47.

⁵⁰³ 081931-01-TR-ET, pp.2-5; 081931-01, min.00:01:31-00:06:21, 00:09:45-00:13:18.

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212. The acts set out above⁵⁰⁴ establish that the Accused, with the required intent,⁵⁰⁵ agreed, together and/or with others, including KLINAKU, GASHI, and other members and representatives of the KLA WVA, to commit the crimes charged in Counts 1-6 and took substantial acts towards the commission of these crimes.

213. The agreement between two or more of the Accused, KLINAKU, GASHI and others to commit the crimes, as well as that one or more such persons undertook any substantial acts towards the commission of the crimes is further demonstrated by the evidence and factors set out in relation to co-perpetration.⁵⁰⁶

E. The Accused incited the crimes

214. The acts set out above⁵⁰⁷ establish that the Accused, with the required intent:⁵⁰⁸ (i) incited the commission of the crimes charged in Counts 1-6, and these crimes were committed; (ii) incited the attempted commission of the crimes charged in Counts 1-6; and/or (iii) incited the commission of the crimes charged in Counts 1-3 and 6 and such crimes were neither committed, nor attempted.

215. In particular, the Accused incited one another and others, including KLINAKU, GASHI, and other members and representatives of the KLA WVA, to commit the crimes charged in the Indictment, including in one or more of the following ways:⁵⁰⁹

- i. deciding and/or partaking in decisions about whether and how to disseminate the Confidential Information;
- ii. organising and partaking in events, including press conferences and public appearances, where Confidential Information was publicly disseminated and discussed;
- iii. disseminating the Confidential Information;

⁵⁰⁴ See Sections II, III.

⁵⁰⁵ See Section III A(i).

⁵⁰⁶ See Section IV C.

⁵⁰⁷ See Sections II, III.

⁵⁰⁸ See Section III A(i).

⁵⁰⁹ The evidence in relation to (i)-(vii) is set out in Section IV C, para.209 (ii)-(viii).

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- iv. revealing the identities and personal data of witnesses, including protected witnesses;
- v. making accusations against and disparaging comments about witnesses;
- vi. encouraging and advising persons with access to confidential information relating to SPO investigations to continue providing it to the KLA WVA, and promising to continue disseminating such confidential information; and/or
- vii. encouraging, instructing, and advising members of the media and public to take and/or record, and further disseminate the Confidential Information.

216. Further, as set out above, the Accused also incited members of the press and public to commit the crimes charged, including in one or more of the way sets out in (i)-(vii) above, in particular by:

- i. encouraging and advising persons with access to confidential information relating to SPO investigations to continue providing it to the KLA WVA, and promising to continue disseminating such confidential information; and/or
- ii. encouraging, instructing, and advising members of the media and public to take and/or record, and further disseminate the Confidential Information.

F. The Accused assisted the commission of the crimes

217. The acts set out above⁵¹⁰ establish that the Accused, with the required intent,⁵¹¹ assisted in the commission of the crimes charged in Counts 1-6. The Accused's provision of assistance took the form, *inter alia*, of one or more of the acts set out above in relation to co-perpetration.⁵¹²

⁵¹⁰ See Sections II, III.

⁵¹¹ See Section III A(i).

⁵¹² See Section IV C, para.209 (i)-(viii).

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V. Conclusion

218. The evidence set out above shows that over a period of 19 days, during the Three Press Conferences, appearances in over fifteen televised programmes, and numerous social media posts, the Accused, and others, adopted a consistent pattern of criminal conduct which harmed witnesses and obstructed SC proceedings.

219. The Accused undertook each of their actions while occupying the two senior positions in an organization composed of hundreds, if not thousands, of former KLA members.

220. The Accused must be held responsible for the serious crimes they committed, the evidence of which is predominantly unequivocally captured on camera. This and other evidence which will be presented at trial will establish, beyond reasonable doubt, the Accused's responsibility for the charged crimes.