



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

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

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon  
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**Registry Submissions for Trial Preparation Conferences and on the Draft Order  
on the Conduct of Proceedings (F00267/A01)**

**with one confidential Annex**

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## I. SUBMISSIONS

1. On 21 July 2021, Trial Panel II ('Panel') issued an Order<sup>1</sup> scheduling the Trial Preparation Conference for 1 and 2 September 2021 and inviting submissions on the Draft Order on the Conduct of Proceedings ('Draft Order').<sup>2</sup>
2. Pursuant to the Order, Article 34(1) and (8) of the Law,<sup>3</sup> and Rules 23(2), 24 and 27 of the Rules,<sup>4</sup> the Registrar submits observations on the support provided to witnesses (A), as well as specific comments on the Draft Order (B).

### A. SERVICES OFFERED BY WPSO TO WITNESSES

3. In accordance with its mandate,<sup>5</sup> the Witness Protection and Support Office ('WPSO') has developed guidelines and instructions on the support it provides to witnesses prior to, during, and after their testimony, which incorporate best practices on familiarising witnesses and on other support services.<sup>6</sup> What follows is a summary of the support WPSO provides in areas not already covered by the Draft Order.
4. On occasion, this submission refers to timelines or procedures adopted by Trial Panel I in case KSC-BC-2020-05 ('Case 05').<sup>7</sup> These examples are provided purely for informational purposes and for ease of reference.

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<sup>1</sup> KSC-BC-2020-07, F00267, Trial Panel II, Order for Submissions and Scheduling the Trial Preparation Conference, 21 July 2021, public ('Order').

<sup>2</sup> Order, paras 13, 34(g)-(h).

<sup>3</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>4</sup> Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020, ('Rules').

<sup>5</sup> Article 34(8) of the Law; Rule 27(2)(b) of the Rules.

<sup>6</sup> See Annex 1, confidential (annexing non-public practice directions, instructions, and protocol(s) of the Registry).

<sup>7</sup> KSC-BC-2020-05, F00150, Trial Panel I, Decision on witness familiarisation, 9 July 2021, public. Cf. KSC-BC-2020-05, F00131, Registry Submissions for Trial Preparation Conferences, 2 June 2021.

**Initial information from the Calling Party**

5. WPSO will schedule a pre-trial meeting with each Calling Party<sup>8</sup> no later than 35 days before the first witness is due to testify.<sup>9</sup>
6. The Calling Parties are expected to provide WPSO with a completed Witness Information Form ('WIF') for each witness no later than 35 days prior to the day the witness is required to testify.<sup>10</sup> The Calling Party is expected to make use of the WIF to indicate any assistance that may be needed, including psychosocial support and other support services.<sup>11</sup>
7. The Calling Party should notify WPSO at the time of providing the WIF of any witness who may potentially incriminate him- or herself. WPSO will ensure that the Defence Office of the Registry is informed in the event that legal assistance pursuant to Rule 151(4) of the Rules is required.
8. Furthermore, the Calling Parties are expected to submit, no later than 30 days prior to the first day of testimony, a provisional Witness Appearance List ('WAL').<sup>12</sup> To enable logistical preparations for appearances, an up-to-date list of witnesses expected to testify<sup>13</sup> in the following two weeks is requested to be filed 14 days in advance. Parties are encouraged to inform WPSO of any foreseen changes to the order of testimony as soon as possible.

**Initial familiarisation procedure**

9. The Calling Party will be requested to facilitate an introductory meeting between WPSO and the witness.<sup>14</sup> WPSO will explain to the witness the services and assistance it will provide, as well as inform the witness on topics related to the witness's safety,

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<sup>8</sup> Annex 1, KSC-BD-42, confidential, sect. 1 (defining 'Calling Entity'). For the purposes of this submission, 'Calling Entity' and 'Calling Party' are interchangeable.

<sup>9</sup> *Id.*, sect. 3.

<sup>10</sup> *Id.*, sects 4.1 and 9.2.

<sup>11</sup> *Id.*, sect. 4.2.

<sup>12</sup> *Id.*, sect. 4.3.

<sup>13</sup> *Cf.* Draft Order, para. 41.

<sup>14</sup> *See* Annex 1, KSC-BD-42, confidential, sect. 5.

welfare, travel and logistics, accommodation and any allowances the witness is entitled to.<sup>15</sup> WPSO will also arrange all necessary travel and logistics to enable the timely appearance of the witness before the Specialist Chambers ('SC'), with due regard to the witness's safety and well-being.<sup>16</sup>

10. A pre-travel support assessment may take place for witnesses with particular welfare needs or vulnerabilities.<sup>17</sup>

11. Upon the witness's arrival at the location of testimony, WPSO will provide the witness with a welcome and orientation briefing describing the specific program for the witness's appearance and testimony before the SC.<sup>18</sup>

12. At this time, WPSO may undertake a vulnerability assessment of the witness.<sup>19</sup> A summary of this assessment will be submitted directly to the Panel prior to the testimony of the witness, including any appropriate recommendations as concerns special measures under Rule 80(4)(c) of the Rules. Information concerning any recommended measures will also be provided to the Parties.

### **Courtroom familiarisation**

13. In advance of the scheduled testimony, WPSO will accompany the witness to the courtroom and familiarise the witness with the courtroom setting.<sup>20</sup> The witness waiting rooms and other relevant facilities will also be shown to the witness.<sup>21</sup>

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<sup>15</sup> See Annex 1, KSC-BD-20, KSC-BD-40, KSC-BD-41, confidential.

<sup>16</sup> Annex 1, KSC-BD-42, confidential, sects 5.1 and 7 to 13.

<sup>17</sup> Annex 1, KSC-BD-20, confidential, sect. 4.

<sup>18</sup> Id., sect. 14.1.

<sup>19</sup> Annex 1, KSC-BD-19, confidential.

<sup>20</sup> Annex 1, KSC-BD-42, confidential, sect. 14.3.

<sup>21</sup> Id., sect. 15.

### **Courtesy meeting with the Parties**

14. Subject to the Panel's order on the conduct of trial proceedings and subject to the witness's consent, WPSO can also provide witnesses with an opportunity to acquaint themselves with the Parties.<sup>22</sup>

### **Cut-off date for contact between the Calling Party and the witness**

15. Should the Panel decide on a cut-off date for contact between the Calling Party and the witness prior to testimony, WPSO can act as a conduit for communication between the witness and the Calling Party, when necessary and as directed by the Panel.

16. For witnesses testifying in person at the seat of the SC, in Case 05, Trial Panel I set the cut-off date as the witness's arrival in the Netherlands. For witnesses to be examined away from the trial venue pursuant to Rule 145(1) of the Rules, in Case 05, Trial Panel I set the cut-off date as the date of WPSO's arrival at the location of testimony.<sup>23</sup>

17. If preparation meetings<sup>24</sup> are held with a witness, the cut-off point is suggested as the end of the witness preparation meeting.

### **Information on protective measures**

18. WPSO will inform the witness about any matter related to his/her security and safety, including any protective measures ordered, as well as the right to request such measures pursuant to Rule 80(1) of the Rules. WPSO will also fully inform the witness in accordance with Rule 80(8) of the Rules, as applicable.

19. Should WPSO, in the course of the familiarisation process, encounter new information that it believes may justify a request for protective and/or special

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<sup>22</sup> Id., sect. 18.

<sup>23</sup> KSC-BC-2020-05, F00150, Trial Panel I, Decision on witness familiarisation, 9 July 2021, public, para. 18.

<sup>24</sup> Draft Order, paras. 47-61. *See below* paras 42-45.

measures, it will discuss the matter with the witness and inform the Panel, and if appropriate, the Calling Party, subject to any order of the Panel on the conduct of trial proceedings.<sup>25</sup>

**In-court assistance, including medical, psychological, and other support<sup>26</sup>**

20. To the extent possible and with the consent of the witness, when submitting the WIF, the Calling Party should bring to the attention of WPSO all critical information at their disposal that may impact the witness's physical or psychological well-being, dignity, safety, and privacy in relation to their travel and appearance before the SC, including any special needs.<sup>27</sup>

21. Before their testimony, witnesses will be provided with a psychosocial support briefing.<sup>28</sup> WPSO will monitor the witness's well-being before, during, and after testimony and, subject to the witness' consent, provide psychosocial support and intervention as required, in accordance with WPSO's mandate.<sup>29</sup>

22. Pursuant to Rules 27(3) and 80(4)(c) of the Rules, WPSO may, on order of a Panel or *proprio motu*, conduct a medical and/or psychological assessment through a qualified professional, prior to or during a court appearance, on a person's vulnerability, or fitness to appear and on any necessary protective measures, including any special measures to facilitate the testimony of traumatised or vulnerable witnesses.

23. Should a witness require any special measures or other type of in-court assistance, WPSO will discuss the measures with the witness and, subject to the

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<sup>25</sup> Annex 1, KSC-BD-42, confidential, sect. 17.

<sup>26</sup> Should the Panel order that a witness's testimony be received via video-conference, the Registrar shall ensure the efficient and expeditious implementation of the order, and WPSO will assist the witness in obtaining any appropriate support necessary. *See* Rules 141(1) and 144 of the Rules.

<sup>27</sup> Annex 1, KSC-BD-42, confidential, sect. 9.

<sup>28</sup> Annex 1, KSC-BD-42, confidential, sect. 16; KSC-BD-19, confidential.

<sup>29</sup> *Ibid.*

witness's consent and any order of the Panel on the conduct of trial proceedings, inform the Panel, and, if appropriate, the Calling Party.

### **Information about role, rights, and obligations and risk of self-incrimination**

24. WPSO will inform witnesses about their role, rights, and obligations as witnesses before the SC, including the obligation to testify truthfully and to take a solemn declaration before giving testimony, in accordance with Rule 141(2) of the Rules.

25. In addition to the Calling Party's obligations under Rule 151 of the Rules, WPSO will also remind witnesses about the provisions of Rule 151 concerning self-incrimination.

### **B. OBSERVATIONS ON THE DRAFT ORDER**

26. In addition to the information provided above, the Registry submits the following observations on specific matters outlined in the Draft Order.

### **Public Character of Proceedings**

27. In the event a Party believes that confidential information is disclosed during a public session before the content is streamed to the website, the Party should immediately request the Panel to go into private session and make an oral request for a redaction order. Alternatively, the Party should immediately bring the matter to the attention of the Court Officer, who will then raise it with the Presiding Judge.

### **Attitude towards the Trial Panel and the Parties**

28. Should the Panel wish to have written communications between a Party and the Panel<sup>30</sup> filed as correspondence in the case file, Parties may be requested to also copy or otherwise notify the Court Management Unit ('CMU')<sup>31</sup> of the communication(s).

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<sup>30</sup> Draft Order, para. 9.

<sup>31</sup> See Rule 24 of the Rules; Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019, public ('PD on Files and Filings'), art. 3.

### **Presentation and Admission of Evidence**

29. CMU can assign an exhibit number to evidentiary materials admitted by the Panel, at the Presiding Judge's or Panel's direction.<sup>32</sup>

### **Witnesses – Protective Measures**

30. Should protective measures involving face and/or voice distortion be ordered, CMU will provide information to the Panel on the options available should the protective measures be varied or rescinded after the witness's testimony.<sup>33</sup>

### **Witnesses – Interview of Witnesses by Opposing Party**

31. Where an Opposing Party wishes to interview a witness, CMU will coordinate with other Registry Units on the practical arrangements for the interview, as directed by the Panel.<sup>34</sup> For this purpose, the Opposing Party is requested to copy or otherwise notify CMU when notifying the Calling Party of the intended interview.<sup>35</sup>

32. Considering the logistical preparations required, it is recommended that the interview takes place no earlier than ten days from the date the witness's agreement to be interviewed by the Opposing Party is notified to CMU.<sup>36</sup>

33. For the purpose of facilitating the interview, it is suggested that the following information be conveyed by the Calling (rather than opposing or requesting) Party:<sup>37</sup>

- CMU to receive notification of the witness's agreement to be interviewed, as well as the information specified in paras 29(i) and (iii)-(v) of the Draft Order.

This information will be filed in the case file.<sup>38</sup>

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<sup>32</sup> PD on Files and Filings, art. 23. *See* Draft Order, para. 21.

<sup>33</sup> Draft Order, para. 26.

<sup>34</sup> *Id.*, para. 28.

<sup>35</sup> *Id.*, para. 27.

<sup>36</sup> It is envisaged that the requesting Party informs the Registry in writing of the "preferred dates" for the interview once the witness has agreed to be interviewed, but a timeline has not been specified. *See Cf. id.*, para. 29(i).

<sup>37</sup> Draft Order, para. 29.

<sup>38</sup> *Id.*, para. 31.



- WPSO to receive (i) information about protective measures that have been ordered, requested or will be requested in relation to the witness, and (ii) whether the witness has any special needs, as defined in Rule 146, or requires any special measures;<sup>39</sup> (iii) an updated WIF for the respective witness in order to, *inter alia*, facilitate travel arrangements and assess whether WPSO's presence is required at the interview; (iv) an indication of whether the Calling Party envisages that the witness may require legal assistance. Considering the sensitive nature of the above information, which may include personal medical data, it is suggested that communications on the above matters are shared with WPSO only and not filed in the case file.

34. WPSO, in liaison with other relevant Registry Units and in coordination with the witness, will decide on the location of the interview, based on the Registry's assessment of security and feasibility. In principle, it is envisaged that such interviews take place at the seat of the SC.<sup>40</sup>

35. The Registry also suggests that remote or on-site support by a WPSO representative should be decided based on WPSO's assessment of the witness's needs and potential vulnerabilities, rather than based on a Party's request.<sup>41</sup>

36. To enable the Court Officer to ensure compliance with para. 35(vi) of the Draft Order, the Registry seeks authorisation for the Court Officer to end the interview should the interviewing Party breach any of the relevant provisions, including those specified in para. 32 of the Draft Order.

37. It is advised that Parties be reminded to seek leave of the Panel where confidential and strictly confidential records need to be shown or provided to the witness other than the witness's own statements.

38. For the purpose of audio-video recording the interview, a staff member of the Registry's Information Technology and Support Unit ('ITSU') will be available to

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<sup>39</sup> Cf. Draft Order, para. 29(ii); Rule 80(c) of the Rules.

<sup>40</sup> Cf. Draft Order, para. 33(i).

<sup>41</sup> Cf. Draft Order, para. 33(iv).

manage the recording, as well as to provide assistance in case of technical difficulties. ITSU staff may thus be required to be present for certain portions of the interview.

39. To enable the production of any transcript of the interview,<sup>42</sup> the recording should be both audio and video.<sup>43</sup>

40. The memorandum and audio-video recording of the interview,<sup>44</sup> as well as any transcripts that may be produced,<sup>45</sup> will be filed as confidential and accessible only to the Parties.

### **Witnesses – Scheduling of Witnesses and Material To Be Used in Examination**

41. It is advised that the Parties consult WPSO to ensure the feasibility of changes to the order of appearance of witnesses, considering the logistics involved in ensuring the timely presence of witnesses at trial.<sup>46</sup>

### **Witnesses – Witnesses Preparation**

42. The Calling Party is requested to indicate to WPSO its intention to carry out a preparation session with a witness as early as possible through the WIF.

43. Witness travel dates and times for preparation sessions should be closely coordinated with WPSO to enable proper logistical planning, including for the extended stay of any witness at the location of testimony.<sup>47</sup> Based on its assessment, WPSO may recommend, for example for vulnerable witnesses, that preparation sessions be held more than 24 hours before their testimony.<sup>48</sup>

44. In principle, it is envisaged that preparation sessions take place at the seat of the SC or the location of testimony.<sup>49</sup> It is suggested that a decision to have the interview

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<sup>42</sup> Draft Order, para. 39.

<sup>43</sup> Cf. Id., paras 28, 32(iii), 33(i), 35(iv), 38(ii) and 39.

<sup>44</sup> Id., para. 38.

<sup>45</sup> Id., para. 39.

<sup>46</sup> Annex 1, KSC-BD-42, confidential, sect. 6.

<sup>47</sup> Draft Order, para. 56.

<sup>48</sup> Cf. Draft Order, para. 56.

<sup>49</sup> Cf. Draft Order, para. 54.

at another location should be subject to the Registry's assessment of security and feasibility.<sup>50</sup>

45. Lastly, it is noted that the Draft Order envisages the re-reading of prior statements as part of any witness preparation conducted by the Calling Party.<sup>51</sup> Should a witness preparation session not be required by the Calling Party for any reason, WPSO is available to assist for any re-reading of prior statements, as needed.<sup>52</sup>

### **Witnesses – Use of Prior Statements**

46. Parties are reminded that to enable the use of prior witness statements or transcripts to refresh a witness's memory, whether or not the document has been admitted into evidence,<sup>53</sup> it would need to be available and released in Legal WorkFlow or, where permitted, in a hardcopy version.<sup>54</sup>

### **Recording of Use of Time**

47. The Registry has in place a system for recording the usage of time during court proceedings.<sup>55</sup> Guidance from the Panel is requested on whether objections by a Party (e.g., raised during cross-examination or re-direct examination) should be accounted for as procedural or administrative matters<sup>56</sup> or otherwise.

### **Legal WorkFlow**

48. Where use of hardcopies of a document is permitted,<sup>57</sup> CMU will take custody of the hardcopy used and assign it an exhibit number if admitted into evidence by the

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<sup>50</sup> Cf. *ibid.*

<sup>51</sup> *Id.*, paras 47-61.

<sup>52</sup> *See, e.g.*, KSC-BC-2020-05, F00150, Trial Panel I, Decision on witness familiarisation, 9 July 2021, public, paras 27-30.

<sup>53</sup> Draft Order, para. 78.

<sup>54</sup> *See id.*, para. 92.

<sup>55</sup> *Id.*, para. 87.

<sup>56</sup> *Id.*, para. 87(v).

<sup>57</sup> Draft Order, paras 92-93. The Registry notes that additional hardcopies may be needed for the Accused and stenographer.

Panel. Subsequently, CMU will upload a digital version of the document to Legal WorkFlow and maintain custody of the hardcopy version. The electronic version will be considered as the authoritative official version.

### **Other matters**

49. To facilitate the transport of Detainees in coordination with the Host State authorities, the Defence is requested to notify CMU of the Detainee's envisaged modality of attendance (i.e., in-person or via video-conference), ideally every Thursday afternoon for the following week. Any changes should be communicated to CMU as soon as possible, and no later than 72 hours before the start of the hearing.

## **II. CLASSIFICATION**

50. This submission is filed as public, whereas Annex 1 is submitted as confidential as it contains internal regulations concerning operations of the Registry that are not authorised for public distribution.

**Word count: 2980**



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**Dr Fidelma Donlon**  
**Registrar**

Friday, 27 August 2021  
At The Hague, the Netherlands