

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 Christophe Barthe

Judge Guénaël Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 2 September 2021

Language: English

Classification: Public

**Written Observations on the Draft Order of the Conduct of Proceedings, pursuant
to the First Oral Order made on 2 September 2021**

Specialist Prosecutor

Jack Smith

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Huw Bowden

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Toby Cadman

Carl Buckley

I. INTRODUCTION

1. By oral order on 2 September 2021, the Trial Panel ordered the Gucati Defence to file written observations, if any, on the Draft Order of the Conduct of Proceedings ('Draft Order')¹ by 3 September 2021.
2. The Gucati Defence hereby sets out below its written observations in relation accordingly.

II. SUBMISSIONS

Draft Order Paragraphs 10 to 11

3. There is no objection to paragraphs 10 and 11 as drafted, provided that they are to be understood within the following context: that the burden of proving the case against the Accused falls at all times upon the Prosecution, that the making of admissions by the Accused is entirely voluntary and that no adverse inference can be drawn from an Accused's refusal to make an admission (in accordance with Articles 42(1) and Article 92(3) of the Law and Rule 140 of the Rules).

Draft Order Paragraph 15

¹ Draft Order on the Conduct of Proceedings, KSC-BC-2020-07/F00267/A01

4. The Gucati Defence adopts the proposal of the SPO in relation to this paragraph, namely that whereas leave may be required for exhibits or witnesses to be added to the respective parties' lists, notice only should be sufficient where a decision is made to remove witnesses or exhibits² (for the reasons as set out by the SPO).

Draft Order Paragraph 16

5. The paraphrasing of Rule 138(1) therein is not accepted. Rule 138(1) provides a discretion to the Trial Panel to exclude evidence that is irrelevant, non-authentic or where its probative value is outweighed by its prejudicial effect.

Draft Order Paragraphs 41-42

6. The Gucati Defence agrees with these paragraphs as drafted and opposes the amendment proposed by the SPO in relation to the time for filing a list of anticipated witnesses³. The Draft Order proposes the filing, seven days in advance, of a list of anticipated witnesses for each week. That period provides sufficient notice to the parties and will allow for appropriate specificity in relation to the order of witnesses to be called. The proposed amendment by the SPO of the provision of a list of anticipated witnesses for the next month, on 28 days notice, would simply produce meaningless witness lists in the context of this case (where the case of no individual party is expected to last longer than 3 weeks in total).

² *Prosecution Submissions on the Conduct of Proceedings*, KSC-BC-2020-07/F00284, Public, at paragraphs 5-6

³ *Prosecution Submissions on the Conduct of Proceedings*, KSC-BC-2020-07/F00284, Public, at paragraphs

7. The Gucati Defence does adopt the proposal made by the SPO in relation to flexibility over the use of video links (for the reasons set out by the SPO)⁴.

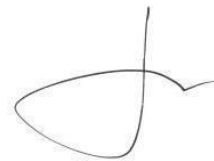
Draft Order Paragraphs 45

8. The Gucati Defence is content with the amendment suggested by the SPO⁵.

III. CLASSIFICATION

9. This filing is classified as public.

Word count: 478 words



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2 September 2021

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⁴ *Prosecution Submissions on the Conduct of Proceedings*, KSC-BC-2020-07/F00284, Public, at paragraph 14

⁵ *Prosecution Submissions on the Conduct of Proceedings*, KSC-BC-2020-07/F00284, Public, at paragraph 19