



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 3 September 2021

Language: English

Classification: Public

**Prosecution proposed redactions to Rule 102(3) notice
with strictly confidential and *ex parte* Annexes 1 and 2**

Specialist Prosecutor's Office

Jack Smith

Counsel for Mr Gucati

Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

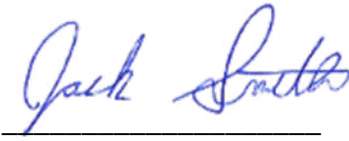
1. The Specialist Prosecutor's Office ('SPO') hereby provides two versions of an addendum to the Rule 102(3) notice in accordance with an order of the Trial Panel.¹
2. As set forth orally in court, the SPO submits that the materials listed on the attached annexes are neither relevant nor material to the case against the Accused. The Defence has not put forth any facts supporting disclosure relating to the claimed defences of entrapment or public incitement. On all the submissions made to the Trial Panel and all of the evidence submitted, these defences are wholly improbable, and broad disclosure invading the confidentiality of open SPO investigations is unsupported and unwarranted.
3. Pursuant to Rule 108,² the Panel should find that given the risks that any disclosure (including a listing of items pursuant to Rule 102(3) which will necessarily communicate information to the defence and is therefore disclosure) will pose to open and ongoing SPO investigations, and in light of the lack of any foundation for the requested disclosure, listing of items detailing the SPO's investigations related to the source of the leaks should either not be required or only required in redacted form.³ For those items falling also under Rule 106, the SPO has not waived its internal work product privilege with respect to these items.
4. The annexes are filed strictly confidential and *ex parte* pursuant to the Trial Chamber's order and because they pertain to continuing and sensitive SPO investigations.

¹ Oral Order of 2 September 2021 (final session).

² 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.

³ Should any or all of the proposed redactions be rejected, the SPO requests that providing this further information be stayed in order for the SPO to meaningfully seek further relief pursuant to Article 45(2) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

Word count: 326



Jack Smith

Specialist Prosecutor

Friday, 3 September 2021

At The Hague, the Netherlands