



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:** Fidelma Donlon

**Date:** 6 September 2021

**Language:** English

**Classification:** **Public**

---

**Order on the Agenda for the Specialist Prosecutor's Conference**

---

**Specialist Prosecutor**  
Jack Smith

**Counsel for Hysni Gucati**  
Jonathan Elystan Rees  
Huw Bowden

**Counsel for Nasim Haradinaj**  
Toby Cadman  
Carl Buckley

**TRIAL PANEL II**,<sup>1</sup> pursuant to Articles 40(2) and 40(4) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 116(1)-(2), 118 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 21 July 2021, the Panel scheduled the Trial Preparation Conference for 1 and 2 September 2021 and provisionally set the dates for the Specialist Prosecutor's Office ("SPO") Preparation Conference for 8 and 9 September 2021.<sup>2</sup> The Parties indicated their availability for both conferences.<sup>3</sup>

2. On 1 and 2 September 2021, the Panel held the Trial Preparation Conference, during which the Panel scheduled by way of an oral order the SPO Preparation Conference to take place on 8 and 9 September 2021.<sup>4</sup>

## II. APPLICABLE LAW

3. In accordance with Rule 116(2) of the Rules, the Panel shall, within thirty (30) days of holding the Trial Preparation Conference, hold the SPO Preparation Conference.

4. Pursuant to Rule 118 of the Rules, at the SPO Preparation Conference, the Panel, after having heard the Parties, may, *inter alia*: (i) determine the number of witnesses the SPO may call and instruct the SPO to remove repetitive witnesses; (ii) invite the SPO to reduce or narrow the number of charges; (iii) determine the time available to the SPO for presenting evidence; (iv) request the SPO to shorten the estimated length

---

<sup>1</sup> F00263, President, *Decision Assigning Trial Panel II*, 15 July 2021.

<sup>2</sup> F00267, Panel, *Order for Submissions and Scheduling the Trial Preparation Conference*, 21 July 2021.

<sup>3</sup> CRSPD51, *Email from CMU to Chambers re date of TPC*, 19 July 2021, confidential.

<sup>4</sup> Oral Order Scheduling SPO Preparation Conference, 2 September 2021, Transcript page 604, line 21 to page 604, line 23.

of the direct examination of any witness identified on its Rule 95(4)(b) list; and (v) verify that the disclosure obligations of the Parties have been met. The Panel may also permit, upon timely notice and a showing of good cause, the amendment of the SPO lists of witnesses and exhibits. The Panel shall publicly set the date for the opening of the case, which shall itself be within thirty (30) days from the SPO Preparation Conference. The Presiding Judge shall take note of the points of agreement between the Parties on matters of fact and law, after having heard the Parties and having regard to the Pre-Trial Briefs. The Panel shall also set target dates for the closing of the SPO case and, if possible, for the closing of the case pursuant to Rule 129 and 136 of the Rules respectively.

### III. DISPOSITION

5. In light of the foregoing, the Panel hereby sets the agenda of the SPO Preparation Conference to include the following issues:

- a. addressing ongoing issues of disclosure, including in relation to the updated Rule 102(3) detailed notice;
- b. taking note of the points of agreement between the Parties on matters of fact and law, and, in connection to that:
  - i. hearing submissions from the Parties on the elements of the offences and modes of liability, as charged in the indictment; and
  - ii. following up on the Defence submissions on relevant jurisprudence, proposed definitions and legislation, as ordered by the Panel on 2 September 2021;<sup>5</sup>

---

<sup>5</sup> Oral Order for Defence Submissions, 2 September 2021, Transcript p. 601, line 17 to page 602, line 10.

- c. determining the number of SPO witnesses and hearing submissions from the Defence on the SPO request to add one witness to its list;
- d. determining the time available to the SPO for presenting its evidence;
- e. determining a date for the opening of the case and, in this regard, inquiring with the Defence whether it wishes that the Specialist Prosecutor read the entire indictment on that occasion or only the charges;
- f. receiving an estimate from the SPO regarding the length of its opening statement and seeking confirmation from the Defence that they elect to make an opening statement only at the end of the SPO case and before the beginning of their case, if any;
- g. setting a provisional schedule for the SPO presentation of evidence;
- h. setting target dates for the closing of the SPO case and, if possible, for the closing of the case pursuant to Rule 136 of the Rules; and
- i. any other matter raised by the Parties and any other intervening issue that the Panel may wish to address.



**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Monday, 6 September 2021  
At The Hague, the Netherlands