



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: 17 September 2021

Language: English

Classification: **Public**

Order on the Conduct of Proceedings

Specialist Prosecutor

Jack Smith
Matthew Halling
Valeria Bolici
James Pace

Counsel for Hysni Gucati

Jonathan Elystan Rees
Huw Bowden

Counsel for Nasim Haradinaj

Toby Cadman
Carl Buckley



TRIAL PANEL II, pursuant to Articles 2-3, 19-23, 40 of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 43, 80, 95(4)(a), 102 (1)(b)(iii), 104(5)(c), 116(3) and (5), 120, 127(3), 132, 134(b), 138(1), 143(3)-(4), 149, 153-155 and 156 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 15 July 2021, the President assigned Trial Panel II ("Trial Panel", "Panel") to the present case upon transmission of the case file,¹ and on 16 July 2021, the Pre-Trial Judge transmitted the case file to the Panel pursuant to Rule 98 of the Rules.²

2. On 21 July 2021, the Panel scheduled the Trial Preparation Conference for 1 and 2 September 2021 and sought submissions from the Parties and the Registrar on, *inter alia*, a draft order on the conduct of the proceedings,³ which was provided to the Parties and the Registrar.⁴

3. On 27 August 2021, the Specialist Prosecutor's Office, the Registry and the Defence for Nasim Haradinaj filed submissions.⁵ On 2 September 2021, further to leave granted by the Panel, the Defence for Hysni Gucati filed submissions.⁶

4. On 1 September 2021, at the Trial Preparation Conference, the Panel ordered the Parties to indicate to the Registry directly their agreement, objections or suggestions

¹ F00263, President, *Decision Assigning Trial Panel II*, 15 July 2021.

² F00265, Pre-Trial Judge, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021.

³ F00267, Panel, *Order for Submissions and Scheduling the Trial Preparation Conference*, 21 July 2021.

⁴ F00267/A01, *Annex to the Order for Submission and Scheduling the Trial Preparation Conference*, 21 July 2021.

⁵ F00284, Specialist Prosecutor, *Prosecution Submissions on the Conduct of Proceedings*, 27 August 2021; F00286, Registry, *Registry Submissions for Trial Preparation Conferences and on the Draft Order on the Conduct of Proceedings (F00267/A01)* with one confidential Annex, 27 August 2021; F00287, Defence for Nasim Haradinaj, *Submissions in Preparation for Trial Preparation Conference*, 27 August 2021.

⁶ F00293, Defence for Hysni Gucati, *Written Observations on the Draft Order of the Conduct of Proceedings, Pursuant to the First Oral Order Made on 2 September 2021*, 2 September 2021.



regarding the logistical arrangements accompanying initial contact, arrival and familiarisation of witnesses and ordered the Registry to report back to the Panel by 10 September 2021.⁷

5. On 10 September 2021, the Registry reported on the Parties' submissions.⁸

II. APPLICABLE LAW

6. Pursuant to Article 40(2) of the Law, the Trial Panel, having heard the Parties, may adopt such procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings. It may give directions for the conduct of fair and impartial proceedings and in accordance with the Rules.

7. Pursuant to Rule 116(1) of the Rules, the Trial Panel shall, on an ongoing basis, take all the measures and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the trial proceedings. Pursuant to Rule 116(3) of the Rules, prior to the opening of the case and after hearing the Parties, the Trial Panel may give directions on the conduct of proceedings as necessary to ensure a fair and expeditious trial.

III. DISCUSSION

8. Before finalising the present order, the Trial Panel has carefully considered the Parties' submissions and, where relevant, amended its order accordingly. While not all these submissions have been adopted by the Panel, it has been greatly assisted by them.

⁷ Oral Order Regarding Submissions on Familiarisation of Witnesses, 1 September 2021, p. 480, lines 10-20.

⁸ F00310, Registry, *Registry Report Pursuant to the Oral Order of 1 September 2021 in Relation to the Registrar's Submissions on the Conduct of Proceedings (F00286)*, 10 September 2021.



9. The Panel notes that while it did not incorporate all submissions made by the Registry, it invites the Parties to pay heed to the practices and procedures of the Registry in servicing the present proceedings.

10. In accordance with the aforementioned provisions and further to its responsibility to ensure that the trial is conducted in a fair and expeditious manner, and informed by the practice of other relevant jurisdictions, the Trial Panel, having heard from the Parties, issues the annexed Order on the Conduct of Proceedings (“Order”).

11. The Order remains subject to future variation by the Trial Panel, where necessary, as trial progresses.

IV. DISPOSITION

12. In light of the foregoing, the Trial Panel hereby:

- a. **ADOPTS** the guidelines set out in the Order to govern the presentation of evidence and the conduct of proceedings; and
- b. **ORDERS** the Parties to comply with these guidelines throughout the duration of the trial, subject to any further orders of the Trial Panel.

Judge Charles L. Smith, III
Presiding Judge

Done in English on Friday, 17 September 2021
At The Hague, the Netherlands.