

**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:** 29 September 2021

**Language:** English

**Classification:** Public

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**Request for Reconsideration of Decision F00328**

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**Specialist Prosecutor**

Jack Smith

**Counsel for Hysni Gucati**

Jonathan Elystan Rees QC

Huw Bowden

**Counsel for Nasim Haradinaj**

Toby Cadman

Carl Buckley

## I. INTRODUCTION

1. On 27/09/2021, the Accused received notification of the Order on Rule 117 Defence Motions<sup>1</sup>.
2. The Accused requests the Trial Party to permit the filing of a Reply and thereafter reconsider the Order pursuant to Rule 79.

## II. SUBMISSIONS

3. Article 79(1) provides for a power, in exceptional circumstances and where a clear error of reasoning has been demonstrated or where reconsideration is necessary to avoid injustice, a Panel may, upon request by a Party reconsider its own decisions.
4. On 17 September 2021, in accordance with the direction made by the Trial Panel previously, the Accused filed a motion to challenge the admissibility of evidence pursuant to Rule 138(1)<sup>2</sup>.
5. On 24 September 2021, the SPO responded to the motion<sup>3</sup>.
6. In accordance with Rules 9(2) and 76, the Accused was entitled to reply to that response by Friday 1 October 2021.

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<sup>1</sup> KSC-BC-2020-07/F00328, Order on Rule 117 Defence Motions, Trial Panel II, Public, 27 September 2021

<sup>2</sup> KSC-BC-2020-07/F00317, Motion to Challenge the Admissibility of Evidence Pursuant to Rule 138(1), Guccati, Confidential

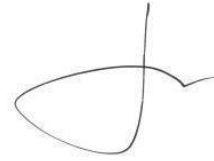
<sup>3</sup> KSC-BC-2020-07/F00322, Prosecution Consolidated Response to Defence Admissibility Challenges, SPO, Confidential, 24 September 2021

7. No prior direction of the Trial Panel had reduced that time limit (under Rule 9(5)) or, indeed, purported to remove the right of reply set out in Rule 76 entirely. A Party must be able to place reliance upon the time limits in the Rules (in the absence of any direction of the Trial Panel shortening any time limit), otherwise the Rules are meaningless.
8. Accordingly, the Order on Rule 117 Defence Motions was premature and unfairly curtailed the rights of the Accused under Rule 76.
9. It was a clear error of reasoning to proceed to make a decision on the motion before the expiry of the time limit for a reply.
10. The rights of the Accused, including the right to reply under Rule 76, is entitled to full respect.
11. In the circumstances, in order to avoid injustice, the Trial Panel is requested to reconsider the decision under Rule 79, giving permission for the Accused to submit a reply to be taken into account before reconsideration.

### III. CLASSIFICATION

- IV. This filing is classified as public.

Word count: 366 words

A handwritten signature in black ink, appearing to be 'J. E. Rees', written in a cursive style.

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27 September 2021

Cardiff, UK