



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: 29 September 2021

Language: English

Classification: Confidential

Order on the Reclassification of and Responses to the Rule 151 Transmission

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 (“Panel”), pursuant to Rule 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 24 September 2021, the SPO received a request from Arianit Koci (“Mr Koci”), the lawyer who was permitted to attend W04866’s witness interview on the latter’s request, to represent W04866 in accordance with Rule 151(6) of the Rules (“Annex”).¹
2. On 27 September 2021, the SPO transmitted for the Panel’s consideration Mr Koci’s request to represent W04866 for the purpose of his testimony (“Request”).²

II. SUBMISSIONS

3. While reiterating its view that there are no grounds to believe that W04866 is responsible for an offence within the jurisdiction of the Specialist Chambers, the SPO does not object that W04866 be given self-incrimination assurances or be assigned Mr Koci from the List of Counsel for the purpose of his upcoming testimony.³

III. APPLICABLE LAW

4. Pursuant to Rule 82(5) of the Rules, the Panel may reclassify a filing *proprio motu*.

¹ F00327/A01, SPO, *Annex 1 to Transmission of Rule 151 Request – Email from Arianit Koci to SPO* (“Annex”), 24 September 2021, strictly confidential & *ex parte*.

² F00327, SPO, *Transmission of Rule 151 Request with One Strictly Confidential and ex parte Annex* (“Request”), 27 September 2021, strictly confidential and *ex parte*.

³ Request, para. 2 *referring to* Transcript, 8 September 2021, p. 692.



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

IV. DISCUSSION

5. The Panel notes that the SPO filed both the Request and the Annex as strictly confidential and *ex parte*.⁴

6. Considering: (i) that the SPO has no objection to the Request being reclassified as confidential;⁵ (ii) that it is in the interests of justice to give the possibility to the Defence to respond to the Request, should it wish to; and (iii) that the Annex contains personal information of W04866 which need not be disclosed and is of no assistance to the Defence for the purpose of responding to the Request, the Panel directs the Registrar to reclassify only the Request (F00327) as confidential. Once the Request is reclassified, the Panel orders the Defence to respond to it, if it so wishes.

V. DISPOSITION

7. For these reasons, the Panel:

- a. **DIRECTS** the Registrar to reclassify as confidential the Request (F00327) by 30 September 2021;
- b. **ORDERS** the Defence to respond to the Request, if it so wishes, by 6 October 2021; and
- c. **INFORMS** the SPO that no reply will be entertained.

Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 29 September 2021
At The Hague, the Netherlands

⁴Request, para. 3.

⁵Request, para. 3.