



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: 30 September 2021

Language: English

Classification: Public

Order to the Defence to File Replies to F00322

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 Article 40 of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 79 and 116(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 1 and 2 September 2021, the Trial Panel (“Panel”) held a Trial Preparation Conference (“Conference”) in accordance with Rule 116(2) of the Rules. During that Conference, in accordance with Rule 117(2), the Panel ordered the Parties to file any Rule 117 motion no later than 17 September 2021.¹
2. On 17 and 18 September 2021, the Defence of Mr Gucati (“Gucati Defence”)² and Defence of Mr Haradinaj (“Haradinaj Defence”)³ respectively filed motions challenging the admissibility of certain proposed Prosecution exhibits (“Motions”).
3. On 24 September 2021, the Specialist Prosecutor Office (“SPO”) responded to the Motions (“Response”).⁴
4. On 27 September 2021, the Panel issued an order dismissing the Motions (“Order”).⁵

¹ Order setting deadline for submissions of Rule 117 motions, 2 September 2021, p. 603, line 21 to p. 604, line 1.

² F00317, Gucati Defence, *Motion to Challenge the Admissibility of Evidence Pursuant to Rule 138(1)* (“Gucati Motion”), 17 September 2021, confidential.

³ F00318, Haradinaj Defence, *Rule 117(2) Application to Have the Evidence of SPO Witnesses Ruled Inadmissible* (“Haradinaj Motion”), 18 September 2021, confidential.

⁴ F00322, SPO, *Prosecution Consolidated Response to Defence Admissibility Challenges* (“Response”), 24 September 2021, confidential.

⁵ F00328, Panel, *Order on Rule 117 Defence Motions* (“Order”), 27 September 2021, para. 18.



5. On 29 September 2021, both the Gucati and the Haradinaj Defence filed requests for reconsideration of the Order (“Requests”).⁶

II. SUBMISSIONS

6. The Gucati Defence submits that, by issuing the Order prior to expiration of the time limit for the filing of replies, the Panel unfairly prejudiced the Accused and committed a clear error of reasoning.⁷ On this basis, the Gucati Defence requests the Panel to permit the filing of a reply to the Response and to reconsider the Order, taking the reply into account.⁸

7. The Haradinaj Defence similarly requests the Panel to grant the Defence permission to submit a reply to be taken into account before reconsidering the Order.⁹

III. APPLICABLE LAW

8. Pursuant to Rule 76 of the Rules, any reply to a response shall be filed within five days of the response, and the Panel may only consider a reply or parts thereof addressing new issues arising from the response.

9. Pursuant to Rule 79 of the Rules, the Panel may upon request by a Party, in exceptional circumstances and where a clear error of reasoning has been demonstrated or where reconsideration is necessary to avoid injustice, reconsider its own decisions.

⁶ F00335, Gucati Defence, *Request for Reconsideration of Decision F00328 (“Gucati Request”)*, 29 September 2021; F338, Haradinaj Defence, *Application for Reconsideration of Decision F00328 on Rule 117 Defence Motions (“Haradinaj Request”)*.

⁷ Gucati Request, paras 6, 8-9.

⁸ Gucati Request, paras 2, 11.

⁹ Haradinaj Request, para. 32.



10. Pursuant to Rule 116(4) of the Rules, the Panel may issue orders on any matter as necessary to ensure a fair and expeditious trial.

IV. DISCUSSION

11. For the purpose of deciding upon the Requests, the Panel finds it appropriate to authorise the Defence to file their replies to the Response.

V. DISPOSITION

12. For these reasons, the Panel **DIRECTS** the Gucati Defence and the Haradinaj Defence to file replies to the Response by **4 October 2021**.

Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 30 September 2021

At The Hague, the Netherlands