



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: 8 October 2021

Language: English

Classification: Confidential

Order on Rule 151 Request

Specialist Prosecutor

Jack Smith
Matthew Halling
Valeria Bolici
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Defence Office

Counsel for Hysni Gucati

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Huw Bowden

Counsel for Nasim Haradinaj

Toby Cadman
Carl Buckley



TRIAL PANEL II ("Panel"), pursuant to Article 40(2) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 151(6) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 8 September 2021, during the Trial Preparation Conference, after having heard the Parties on the issue, the Panel granted the request of the Specialist Prosecutor's Office ("SPO") to add W04866 to its witness list.¹
2. On 24 September 2021, Arianit Koci ("Mr Koci"), the lawyer who was permitted to attend W04866's witness interview on the latter's request, sent the SPO a request to represent W04866 in accordance with Rule 151(6) of the Rules ("Annex").²
3. 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").³
4. On 29 September 2021, the Panel issued an order: (i) directing the Registrar to reclassify the Request as confidential; (ii) ordering the Defence to respond to the Request, if it so wishes, by 6 October 2021; and (iii) informing the SPO that no reply will be entertained.⁴
5. The Defence filed no responses.

¹ Transcript, 8 September 2021, p. 707, lines 22-25.

² 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*.

³ F00327, SPO, *Transmission of Rule 151 Request with One Strictly Confidential and ex parte Annex* ("Request"), 27 September 2021, strictly confidential and *ex parte*.

⁴ F00336, Panel, *Order on the Reclassification of and Responses to the Rule 151 Transmission* ("Order"), 29 September 2021, confidential.



II. SUBMISSIONS

6. 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 (“SC”), the SPO does not object to W04866 being given self-incrimination assurances or be assigned Mr Koci from the List of Counsel for the purpose of his upcoming testimony.⁵

III. APPLICABLE LAW

7. Pursuant to Rule 151(3) of the Rules, where the Panel decides to compel a witness to testify, it may determine that an assurance with respect to self-incrimination should be provided prior to the testimony of the witness, having *ex parte* sought the views of the Specialist Prosecutor.

8. Pursuant to Rule 151(6) of the Rules, the Panel may, where appropriate, order the Registrar to assign Counsel to witnesses so that witnesses may receive legal advice regarding the effect of their testimony.

IV. DISCUSSION

9. As regards assurances under Rule 151(3) of the Rules, the Panel takes note of the SPO submissions that there are no grounds to believe that W04866 is responsible for an offence within the SC jurisdiction. In light of this and absent any contrary suggestion from the Defence, the Panel considers that providing assurances with respect to self-incrimination under that provision is both unnecessary and premature at this stage.

10. As regards Mr Koci’s request to represent W04866 pursuant to Rule 151(6) of the Rules, the Panel notes that: (i) Mr Koci is duly admitted to the List of Counsel;⁶ (ii) he

⁵ Request, para. 2 *referring to* Transcript, 8 September 2021, p. 692.

⁶ See Kosovo Specialist Chambers website, [List of Counsel](#), no. 96.



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attended the interview of W04866 at the latter's request;⁷ (iii) the SPO does not object to assigning Mr Koci to W04866 for the purpose of his testimony;⁸ and (iv) the Defence did not object to the Request. For these reasons, the Panel finds it appropriate that Mr Koci be assigned as W04866's counsel so that the witness may receive legal advice regarding the effect of his upcoming testimony in the present proceedings. The Panel also finds it appropriate that Mr Koci be present in the courtroom or via videoconference during W04866's testimony.

V. DISPOSITION

11. For these reasons, the Panel:

- a. **GRANTS** the request of Mr Koci;
- b. **DIRECTS** the Registrar to assign Mr Koci to represent W04866 for the purpose of his upcoming testimony in the present case; and
- c. **AUTHORISES** the presence of Mr Koci in the courtroom or via videoconference during the testimony of W04866.

Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 8 October 2021
At The Hague, the Netherlands

⁷ Request, para. 1.

⁸ Request, para. 2.