

Annex 1

Defence Instructions to Expert Witness 17

Confidential



Ms. Anna Myers

Whistleblowing International Network (WIN)

Brunswick House, 51 Wilson Street

Glasgow G1 1UZ

Scotland, United Kingdom

15 September 2021

Dear Ms. Myers,

Further to our initial telephone conversation, the Defence team for Mr. Nasim Haradinaj currently appearing before the Kosovo Specialist Chambers at the Hague, seeks to formally instruct you in your capacity as Executive Director of the Whistleblowing International Network to serve as an expert on 'Whistle Blowing'.

We would further advise at this stage that upon preparation of any expert report, it is likely that you will be required to attend Court and give evidence; if it is that this is likely to cause any difficulties, we would be grateful if you could advise accordingly.

You are already aware of certain relevant information concerning the forthcoming trial, and the basis upon which you are to be instructed, however, we have sought to formalise the position below in terms of the background to your instruction, that information coming from the papers disclosed at this stage.

Mr. Nasim Haradinaj is jointly indicted with Mr. Hysni Gucati, by the Specialist Prosecutor's Office of the Kosovo Specialist Chamber and we would ask that your expert opinion covers both Mr. Gucati and Mr. Haradinaj, as the President and Vice-President, respectively, the Kosovo Liberation Army War Veterans Association ("KLA WVA"), a non-profit non-governmental organisation in the Republic of Kosovo.

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The Kosovo Specialist Chambers was developed to investigate and prosecute allegations of War Crimes/Crimes Against Humanity that are said to have been committed during the conflict with Serbia leading to the declaration of independence made by Kosovo.

Neither Haradinaj nor Gucati are alleged to have committed War Crimes/Crimes Against Humanity, they are currently indicted for offences that might best be described as ‘interfering with the administration of justice’. We have included a copy of the indictment for your reference.

The offences indicted surround three separate ‘leaks’ of documents, those documents are purported to have originated from the Office of the Specialist Prosecutor. The three batches of documents were delivered by unknown persons to the offices of the KLA WVA in September 2020, who upon delivering the documents promptly left. We do not know the identity of the person who delivered the three batches of documents.

It is alleged that those documents were ‘secret’ or ‘confidential’, or otherwise not for public disclosure, it being said that they contained the names of various individuals who had been spoken to by the SPO, or counterparts in other countries, and therefore, by disclosing their names, or information associated with current ongoing investigations by the SPO, individual lives were put in danger, and investigations jeopardised.

The Defendants, as part of their defence, seek to maintain that any disclosure of documents that were made, they were compelled to do so on a public interest basis, given their concerns regarding the nature of the investigations being undertaken by the SPO, the fact that the KSC appeared to be a mono-ethnic entity in that it specifically targeted previous members of the KLA only despite there being credible allegations of offences having been committed by members of the Serbian military and police, and further, that the coordination with Serbia as a state, and members of its investigatory agencies and political organs was contrary to Kosovan interests; noting that Serbia still refuses to acknowledge Kosovo as an independent sovereign state. It is the Defendants’ case, that many of those persons from Serbia cited in the leaked

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documents are alleged to have been involved in the commission of war crimes in Kosovo against ethnic Albanians, including a series of massacres that have never been properly investigated and are not subject to any investigations by the Office of the Specialist Prosecutor in the Hague, thus compounding the reasonable belief that the process is mono-ethnic.

It is not that the Defendants have repeatedly sought to raise concerns as to the lack of equality in the process, the improper coordination with Serbian officials, and that by transferring case files to Serbian officials, as has been evidenced in the past, victims' and witnesses' lives have been put in danger by the actions of the Office of the Specialist Prosecutor in the Hague, and its predecessor the Special Investigative Task Force, that being his reasonably held belief.

The Defendants maintain that they, prior to any leaks of the batches of documents, had raised their concerns officially through formal channels, such as seeking to raise parliamentary intervention; however, no action was taken, and further, the issues raised were simply ignored and/or glossed over.

The Defendants, and in particular Mr. Haradinaj, have been publicly vocal regarding their concerns in respect of the KSC, again, in an effort to have the issue considered formally however again, their concerns were simply ignored by those in a position to address these valid and credible concerns.

Against this background, they therefore felt that they had no option but to publicly disclose documents that came into their position, despite not knowing whether those documents were genuine or otherwise, on the basis that it was in the public interest that people knew of that which was occurring, including the seeming refusal of the SPO to investigate credible allegations of criminality that involved individuals other than members of the KLA. In this regard it is important that the Defendants had publicly called on its members to cooperate with the SPO, despite having serious misgivings, and have publicly called for all persons accused of war crimes to face justice, but not justice that targets one group in a discriminatory way, and a process that is not in accordance with the strict laws of the Republic of Kosovo and its Constitution.

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In terms of the parameters of any report that you are in a position to provide, we would be grateful if you could specifically comment on the following points and/or questions:

1. What experience and/qualifications do you have that qualifies you as an Expert on the subject of 'Whistle-blowers';
2. Have you provided evidence or any expert testimony on the subject of whistle-blowers previously, if so, and without breaching any confidence, are you in a position to confirm the context.
3. What is your understanding of the definition of the phrase 'Whistle-blower';
4. What, with reference to any relevant legislation or international treaty, must an individual demonstrate or satisfy to enable him/her to be recognised as a 'Whistle-blower';
5. What steps must be taken by an individual prior to a 'public disclosure' being deemed as being within the public interest for the purposes of being categorised as a 'whistle-blower'.
6. Do you consider the Defendants to have satisfied these relevant requirements;
7. Do you consider the Defendants to be 'Whistle-blowers' within the framework you have already explained;

We are required to disclose and serve the aforesaid report to all parties by Friday 1 October 2021 and therefore we would be grateful for your report in good time prior to this.

We have attached a number of documents that might assist you in drafting you're report, namely:

1. Publicly Redacted Indictment;
2. Publicly Redacted Defence Pre-Trial Brief
3. Publicly Redacted Prosecution Pre-Trial Brief.

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In the interests of pushing things forward, we look forward to hearing from you by **30 September 2021**.

Respectfully,

Toby M Cadman

(Head of Chambers) (Barrister)

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