



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 4 November 2021

Language: English

Classification: Public

Decision on the Haradinaj Request to Reclassify as Public Parts of the Transcript

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Article 40(4) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 84(1) and 120 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. Between 18 and 26 October 2021, the Panel heard the testimony of W04841, the first witness for the Specialist Prosecutor’s Office (“SPO”).
2. On 24 October 2021, the Defence for Nasim Haradinaj (“Defence”) submitted a request for the reclassification as public of parts of the trial hearing transcripts held in private session (“Request”).¹
3. On 26 October 2021, the SPO responded to the Request (“Response”).²

II. SUBMISSIONS

4. The Request is twofold. First, the Defence requests that the Panel reclassify as public the following excerpt of the cross-examination of W04841, which was heard in private session (“Excerpt”):

MR. REES: You have said you know nothing about the investigation into the process by which the documents arrived at the KLA War Veterans Association headquarters. If I was to ask you, then, if you were aware of any evidence that the Specialist Prosecutor's Office has that documents were stolen, what would you say?

THE WITNESS: I have no idea.³

¹ F00395, Haradinaj Defence, *Defence Submissions on the Reclassification as Public of Parts of the Trial Hearing Transcripts Held in Private Session* (“Request”), 24 October 2021, confidential. See also F00395/RED, public.

² F00403, Specialist Prosecutor, *Prosecution Response to the Haradinaj Defence Request for Reclassification of Testimony Heard in Private Session* (“Response”), 26 October 2021, confidential.

³ Request, paras 13, 16, 24, referring to Transcript, 21 October 2021, p. 1249, lines 4-10.

5. Secondly, the Defence invites the Panel to review the parts of the transcripts recording private sessions with a view to reclassify them as public or issue public redacted versions thereof where necessary and appropriate.⁴

6. The SPO does not object to the reclassification of the Excerpt as public, stating that it sees no reason for it to remain unavailable to the public.⁵ With respect to the generic invitation to the Panel to review all private session transcripts, the SPO submits, however, that it would be preferable that the Defence specify the excerpts heard in private session which it deems require reclassification.⁶

III. APPLICABLE LAW

7. The principle of publicity of proceedings is enshrined in the legal framework of the Specialist Chambers. Pursuant to Article 40(4) of the Law, hearings shall be public unless the Panel decides to close the proceedings in accordance with the Rules. Pursuant to Rule 120 of the Rules: (i) proceedings before a Panel other than deliberations shall be held in public, unless otherwise decided by the Panel after hearing the Parties; (ii) closed or private sessions shall be ordered in exceptional circumstances and reasons for it shall be announced in public; and (iii) the Panel may order closed or private sessions for reasons of, *inter alia*, non-disclosure of the identity of a witness or a victim participating in the proceedings, or the interests of justice.

8. Pursuant to Rule 84(1) of the Rules, the Panel shall review the classification of records of proceedings and, where applicable, order their reclassification.

⁴ Request, para. 25.

⁵ Response, para. 1.

⁶ Response, para. 3.

IV. DISCUSSION

9. At the outset, the Panel observes that the Excerpt contains no confidential information. Therefore, there is no reason for the Excerpt to remain confidential and the Panel will order its reclassification as public.

10. The Panel notes that the Defence included in the Request comments regarding its assessment of W04841's evidence,⁷ which the SPO disputed.⁸ These matters are not relevant to the present decision.

11. With respect to the generic review invitation of the Defence, the Panel is mindful of its general obligation, pursuant to Rule 84(1) of the Rules, to review the classification of records of proceedings and to order their reclassification where applicable. Generic requests from the Parties to this effect are unnecessary. That being said, should any Party deem that specific sections of the record held in private session should be reclassified as public, it may submit a reasoned request identifying the specific excerpts of transcripts for which it seeks reclassification, with proposed public redacted versions where necessary.

V. CLASSIFICATION

12. The Panel notes that the Defence filed a public redacted version of the Request and that the SPO does not oppose the reclassification of the Response.⁹ Considering the present decision, the Panel directs the Registry to reclassify the Response (F00403) as public.

⁷ Request, paras 18, 24.

⁸ Response, para. 2.

⁹ Response, para. 4.

VI. DISPOSITION

13. For these reasons, the Panel:

- a. **GRANTS** the request to reclassify the Excerpt; and
- b. **ORDERS** the Registry to reclassify as public, by **8 November 2021**:
 - i. the Excerpt reproduced in paragraph 4 of this decision in the 21 October 2021 transcript (p. 1249, lines 4-10); and
 - ii. the Response (F00403).



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 4 November 2021

At The Hague, the Netherlands