

**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 Guenael Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Nasim Haradinaj

**Date:** 6 December 2021

**Language:** English

**Classification:** **Public**

---

**Defence Application for Leave to Appeal in respect of ‘Decision on Prosecution Requests in Relation to Proposed Defence Witnesses’**

---

**Specialist Prosecutor**

Jack Smith  
Valeria Bolici  
James Pace  
Matthew Halling

**Counsel for Nasim Haradinaj**

Toby Cadman  
Carl Buckley  
Jonathan Worboys

**Counsel for Hysni Gucati**

Jonathan Elystan Rees QC  
Huw Bowden  
Eleanor Stephenson

## I. INTRODUCTION

1. On 3 December 2021, the Trial Panel issued its 'Decision on Prosecution requests in Relation to Proposed Defence Witnesses'.<sup>1</sup>
2. The Defence for Mr. Haradinaj seeks leave to appeal that decision as per the outline below.

## II. SUBMISSIONS

3. At paragraph 102 – 111 of its decision, the Trial Panel discusses the evidence of DW1253 and further, grants the 'Second Expert Witness Challenge' and thus declines to hear the evidence of DW1253.

4. Further, at paragraph 120 of that decision, the Trial Panel rules that

*"In this particular instance, the Panel considers that, should the Haradinaj Defence request leave to appeal under Rule 77 of the Rules, the Panel would be inclined to grant such leave in relation to the following issues arising from this decision:*

*(a) The Panel's findings in relation to the irrelevance of the proposed testimony of DW1250 and DW1251 and its decision not to hear these witnesses; and*

*(b) The Panel's findings in relation to the impermissible character of the proposed evidence of DW1253 under Rule 149 of the Rules and its decision not to hear this witness"*

---

<sup>1</sup> KSC-BC-2020-07/F00470

5. At paragraph 121, the Trial Panel, in ordering the Haradinaj Defence to advise by 6 December 2021 as to whether it does seek leave to appeal, explicitly rules that the defence is *“not required to make submissions regarding the certification test under Rule 77(2) of the Rules in relation to the above issues”*.
6. The Defence for Mr. Haradinaj now confirms that it does request leave to appeal in respect of the decision concerning the testimony of DW1250, DW1251, and DW1253.
7. Further, the Defence for Mr. Haradinaj now confirms that it does not seek leave to appeal in respect of any other issues arising out of the impugned decision.
8. Accordingly, the Defence for Mr. Haradinaj does not address the certification test per Rule 77(2) noting that it is merely required to confirm an intention at this stage.

Word Count: 437 words



**Toby Cadman**

**Specialist Counsel**



**Carl Buckley**

**Specialist Co-Counsel**